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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JONI DALGAR,

Plaintiff,

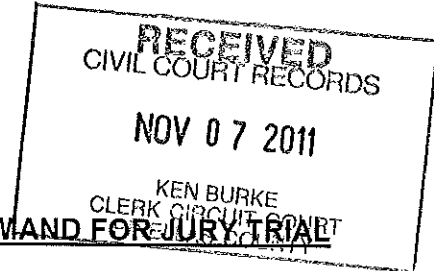
v.

KENNETH A. GORDON,
FRANBIZ FL158, INC., and
FRANBIZ 601, INC.,

Defendants.

CASE NO. 11-10486 C1

DATE:



JONI DALGAR'S VERIFIED COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, JONI DALGAR ("DALGAR"), by and through her undersigned attorneys, sues Defendants, KENNETH GORDON ("GORDON"), FRANBIZ FL 158 and FRANBIZ 601 for damages, asserting as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. This is an action to remedy defendants' pervasive breaches of fiduciary duty, gross corporate mismanagement, self-dealing, excessive self-compensation, preferential illicit distributions, failure to accede to an accounting, failure to disclose all material information, including the corporate records, unfair dealing, along with retaliatory discharge of plaintiff various other forms of misconduct. Indeed, Defendant KEN GORDON concocted various wide schemes of diversion of corporate assets to personally enrich himself at the expense of FRANBIZ 601, FRANBIZ FL 158 and its minority shareholder and partner, plaintiff JONI DALGAR.

2. These schemes included engaging in tax fraud to improperly assign GORDON's personal and family expenses as company business expenses; wasting corporate assets through inappropriate payments such as putting a strip tease artist on the company payroll to perform minimal, if any, legitimate corporate duties; improperly refusing to make profit distributions to minority shareholder DALGAR; refusing to accede to DALGAR's demands for an accounting; and otherwise grossly mismanaging and wasting FRANBIZ FL 158 corporate assets and cutting DALGAR out of corporate opportunities.
3. This is a direct action (as opposed to a derivative action) because DALGAR has suffered special harm, which is unique and personal to her. Her injuries are separate and distinct from those sustained by the only other shareholder GORDON. Further, FRANBIZ FL 158 is a closed corporation with only two shareholders (specifically GORDON and DALGAR), and GORDON owes a fiduciary duty to DALGAR. *Tillis v. United Parts, Inc.* 395 So. 2d. 618 (Fla. 5th DCA 1981). Further, GORDON's fiduciary duty to DALGAR arises out of GORDON's status as sole operator and managing shareholder, with exclusive dominion over business and its financial data and reporting. See also, *Garrer v. Perrson*, 543 F. Supp. 349 (M.D. Fla. 1988)
4. Lastly, despite the increase in revenue, profits, expansion, only GORDON has enjoyed numerous profits and business opportunities from the corporate defendants

PARTIES, JURISDICTION AND VENUE

5. This is an action for damages in excess of \$15,000 exclusive of interest, attorneys' fees, and costs.

6. Plaintiff JONI DALGAR, at all times relevant to the claims herein, was a resident of Pinellas County, Florida; was formerly employed as an executive officer of FRANBIZ 601; and currently is and all relevant times herein a 25% shareholder of FRANBIZ FL 158.
7. Defendant GORDON is the Chief Executive Officer of FRANBIZ 601; the 75% majority shareholder of FRANBIZ FL158; and at all times relevant, a resident of Pinellas County, Florida.
8. FRANBIZ 601 is a for profit corporation organized under Florida laws, doing business as the holding company for certain "franchise businesses" (designated as various "Franbiz" entities) including FRANBIZ FL 158. These franchise businesses hold "area franchise agreements" to provide operating, management and support services to the franchisees of more than 220 United Parcel Service ("UPS" or "The UPS Store") stores operating throughout Florida. These stores were initially known as: Mail Boxes Etc. ("MBE") stores until UPS acquired MBE in 2003. At all times material to the claims asserted herein, DALGAR was employed as an executive officer of FRANBIZ 601.
9. FRANBIZ FL 158 is a Florida for profit corporation that holds the UPS/Mail Boxes Etc. "area franchise agreement" for UPS stores in the greater Jacksonville and Charlotte County, Florida areas. Plaintiff DALGAR owns 25% of the shares of FRANBIZ FL 158.
10. This Court has jurisdiction pursuant to Fla. Stat. §26.012(a) and (c).
11. Pursuant to Fla. Stat. §§ 47.011 and 47.05, venue is proper because the causes of action accrued in Pinellas County, Florida and because defendants have, or

usually keep, an office for transaction of their customary business in Pinellas County, Florida.

12. DALGAR retained the law offices of Feldman, Fox and Morgado, P.A. and seeks to recover her reasonable attorneys' fees and costs pursuant to the Florida Statutes.

ALLEGATIONS COMMON TO ALL COUNTS

13. In 1994, GORDON needed to partner with someone with an operations background to open, manage and develop a new Mail Boxes Etc. superstore located in Orlando, Florida. Unlike DALGAR who had a successful track record of ten years' operations expertise, GORDON only had a sales background. Accordingly, DALGAR and GORDON entered in a shareholders agreement whereby DALGAR would contribute her operations expertise to manage the Orlando store and also invested \$15,000 cash to acquire a 20% interest in the store. She would later acquire an additional 5%.
14. Although the parties initially envisioned that DALGAR would manage the Orlando superstore for only a year, DALGAR nevertheless stayed with the Orlando property for three years, tirelessly working to turn it into one of the more successful stores within the state.
15. Due to DALGAR's success in managing and developing the Orlando store, GORDON first promoted DALGAR to the position of Vice President of Operations for FRANBIZ 601 and later promoted her to the position of President of that entity.
16. DALGAR also became the minority shareholder in FRANBIZ FL 158. To that end, DALGAR invested \$20,000 cash and transferred \$30,000 of her equity

interest in the Orlando Mail Boxes Etc. store in order to acquire a 25% shareholder interest in FRANBIZ 158, which operated as the Mail Boxes Etc. "area franchise agreement" for the greater Jacksonville, and Charlotte County Florida region.

17. Under the terms of the Stock Purchase Agreement, DALGAR purchased the first 5% ownership of FRANBIZ FL 158, and was also granted the option to purchase an additional 5% stock ownership in each of the next four consecutive years for payment of \$1,000 per year. Thus, at the end of the fifth year in 2004, DALGAR owned 25% of FRANBIZ FL 158 after investing a total of \$25,000 cash in that entity and transferring \$30,000 of her equity interest in the Orlando store.

18. As the Jacksonville area franchisee, FRANBIZ FL 158 provides operations, management and sales support to the individual Mail Boxes Etc. store franchisees. Thus, an "area franchisee" acts as the intermediary between the nationwide corporate entity and the individual stores. The area franchisee works to ensure the success of the stores while confirming that the stores adhere to corporate guidelines and branding requirements.

19. DALGAR escalated her efforts as GORDON's partner in 2003, working tirelessly to rebrand all the MBE stores to UPS stores in light of UPS's acquisition of MBE. Indeed, DALGAR never took a day off work in 2003 to the extent she can recall.

20. As a result of DALGAR's exemplary efforts, the number of stores controlled by DALGAR and GORDON under the various franchise agreements increased nearly 500 percent from 46 stores when DALGAR first partnered with GORDON in 1994 to more than 220 stores by the time that GORDON terminated DALGAR.

21. Executives at Mail Boxes Etc. ("MBE") and individual store franchisees not only recognized DALGAR's exemplary work ethic and her unwavering commitment to growing the franchise businesses, but they also understood that DALGAR functioned as more than a mere minority shareholder and employee of GORDON. Based upon her extraordinary commitment and authority, all understood that DALGAR and GORDON were partners. Accordingly, MBE required DALGAR to execute an area franchise agreement along with GORDON.

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Tax Fraud, Mismanagement and Waste

22. GORDON routinely and inappropriately assigned highly personal expenses as FRANBIZ 601 and FRANBIZ FL 158 business expenses, thus lowering his personal tax liability while enriching himself to the detriment of DALGAR.

GORDON's personal expenses charged to the companies included, but are not limited to:

(a) personal telephones and automobiles for relatives and friends who were not on the companies' payroll or otherwise not providing legitimate products or services to the companies;

(b) expenses for family vacations;

(c) airfare for GORDON's son's girlfriend, neither of whom were on the companies' payroll; and

(d) receiving kickbacks from vendors.

23. Particularly troubling was GORDON's hiring a female strip tease artist that he met through a friend at a strip club. Although this individual performed few, *if*

any, legitimate company duties, GORDON put her on the FRANBIZ 601 company payroll at a \$48,000 per year salary.

24. Unlike all other FRANBIZ employees who customarily reported to DALGAR, GORDON required the strip tease artist to report directly to him.
25. Because FRANBIZ FL158 pays 24%-25% of FRANBIZ 601's expenses, GORDON's inappropriate billing, gross mismanagement and waste of corporate assets of FRANBIZ 601 directly decreased the value of the shares of FRANBIZ FL 158.
26. Alarmed by GORDON's behavior, DALGAR repeatedly raised concerns about GORDON's inappropriate waste of corporate assets and gross management of the affairs of the FRANBIZ companies. GORDON merely disregarded DALGAR's concerns or simply ignored her.
27. Although DALGAR found the increasing responsibilities to be overwhelming and the work conditions highly oppressive with GORDON acting in a narcissistic, self-absorbed fashion – effectively using the FRANBIZ companies as his personal ATM or piggy bank – DALGAR nevertheless maintained her loyalty to GORDON and the FRANBIZ companies until GORDON terminated DALGAR effective January 21, 2008.
28. Despite requests for profit distributions, GORDON continuously kept and continues to keep nearly all of profits as retained earnings. Said simply, DALGAR hasn't seen but a tiny fraction of the profits that company has reaped only GORDON has.
29. GORDON provided "loans" to family members.

30. DALGAR was forced to routinely pay taxes on the capital gains attributed to her share in FRANBIZ FL 158. GORDON, however, refuses to allow DALGAR to share in profits and refuses even to provide an adequate accounting of the worth of those shares.
31. GORDON refuses to provide her with documentation and corporate records she is entitled to under the law as a shareholder.

COUNT I
BREACH OF FIDUCIARY DUTY AS TO GORDON

32. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein
33. DALGAR and GORDON share a relationship whereby DALGAR reposes trust and confidence in GORDON to conduct business in best interests of the shareholders of FRANBIZ 158.
34. GORDON undertakes such trust and assumes a duty to advise counsel and/or protect DALGAR.
35. GORDON breached his fiduciary duties to DALGAR by
- (a) enriching himself to DALGAR's detriment by improperly assigning GORDON's personal expenses as FRANBIZ 601 business expenses;
 - (b) refusing DALGAR's demands for an accounting;
 - (c) refusing to make profit distributions to DALGAR;
 - (c) otherwise grossly mismanaging the affairs, and wasting the assets, of FRANBIZ 601.
36. GORDON's breach caused DALGAR to suffer damages.

37. The breach of the fiduciary duty was both intentionally in actions and negligently in others. See *Palafrugell Holdings, Inc. v. Cassel*, 825 So.2d 937 (Fla. 3 DCA 2001). (breach of fiduciary duty can be either negligent and/or intentional).

38. The breach of fiduciary duty committed against DALGAR was to her specifically as opposed to the corporation in general.

WHEREFORE, DALGAR demands judgment against GORDON for compensatory and punitive damages, including disgorging corporate profits and distributions which GORDON has personally attained, along with pre-judgment and post judgment interest, attorney's fees and costs, with damages to be determined at trial and for such other further relief as the Court deems just and proper. See *Mortellite v American Tower, L.P.*, 819 So.2d 928 (punitive damages allowed in such a claim)

COUNT II
EQUITABLE ACCOUNTING
AS TO ALL DEFENDANTS

39. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

40. DALGAR and GORDON share a fiduciary relationship.

41. DALGAR and Defendants also entered in numerous complex transactions.

42. Despite DALGAR's numerous requests for an accounting of the affairs of FRANBIZ 601 and FRANBIZ FL 158, GORDON refuses to furnish such an accounting to DALGAR.

43. A remedy at law is inadequate.

WHEREFORE, DALGAR demands an accounting of the affairs of FRANBIZ 601 and FRANBIZ FL 158 and damages against GORDON for his refusal to provide an accounting.

COUNT III
RETALIATORY DISCHARGE UNDER FLORIDA WHISTLEBLOWER ACT

44. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

45. DALGAR is a person who performed services for and under the control and direction of GORDON (“DEFENDANT EMPLOYER”) for wages and other remuneration.

46. GORDON and FRANBIZ 601 are a private person and a private corporation, respectively, that employed ten or more persons at all times relevant to the claims asserted herein.

47. DALGAR objected to, or refused to participate in, illegal activities, policies and practices of DEFENDANT EMPLOYER which violate federal Internal Revenue Service laws and regulations, violate other federal and Florida State laws, and violate generally accepted accounting practices.

48. DEFENDANT EMPLOYER committed a retaliatory discharge against DALGAR in retaliation for, and as a direct result of, the conduct described in paragraphs 20 through 26, above.

49. DEFENDANT EMPLOYER’s conduct caused DALGAR to suffer damages.

WHEREFORE DALGAR demands damages against DEFENDANT EMPLOYER for violation of Florida’s Private Sector Whistleblower Act, Fl. Stat. 448.102, including but not limited to all relief available under Fl. Stat. 448.103, such as

- (a) compensation for lost wages, benefits, and other remuneration,
- (b) any other compensatory damages allowable at law,
- (c) attorneys’ fees, court costs and expenses, and

(d) such other relief as this Court deems just and proper.

COUNT IV
BREACH OF DUTY OF GOOD FAITH, DUTY OF LOYALTY & DUTY OF CARE AS TO GORDON

50. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

51. Florida law expressly provides a duty of good faith, loyalty and care. F.S. 607.08310(1). See also *FDIC v. Stahi*, 854 F. Supp. 1565, 1571.

52. These duties include a director and/or managing shareholders requirements to be diligent and prudent in managing the corporation's affairs. Additionally, a managing shareholder must always act in the best interest of the corporation. *Citizens State Bank v. Adams*, 140 Fla. 578. (Fla. 1940).

53. GORDON's gross corporate mismanagement, self-dealing, excessive self-compensation, preferential illicit distributions, failure to accede to an accounting, failure to disclose all material information, including the corporate records, and unfair dealing constitute breaches of duty his duty of loyalty, care and good faith.

54. Indeed, GORDON made excessive preferential and illicit distributions to himself.

55. GORDON squeezed out DALGAR from the operations and enjoyment of the enterprise without consideration.

56. GORDON refused and refuses to pay DALGAR and dividends, profits, or other valuable consideration while making preferential distributions to himself.

57. GORDON has usurped corporate opportunities.

58. In doing so, GORDON has acted purposefully, maliciously, and with wanton or reckless disregard for the rights and interest of DALGAR in derogation of GORDON's duties of loyalty, care and good faith.

59. As there was no legitimate business purpose for GORDON's actions they constitute a breach of his duties of loyalty, care and good faith.

WHEREFORE, DALGAR demands judgment against GORDON for compensatory and punitive damages, including disgorging corporate profits and distributions which GORDON has personally attained, along with pre-judgment and post judgment interest, attorney's fees and costs, with damages to be determined at trial and for such other further relief as the Court deems just and proper.

COUNT V
ABUSE OF CONTROL

60. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

61. GORDON, through his position of power and control of FRANBIZ 601 and FRANBIZ FL158, through the shares owned and controlled by him, engaged in the conduct set forth in paragraphs 1 through 31 above for the purposes of maintaining, enriching, and entrenching himself in a position of power and profit to control FRANBIZ 601 and FRANBIZ FL 158 to the detriment of DALGAR to continue to receive the substantial benefits, salaries, and emoluments associated with his position.

62. GORDON's course of conduct constituted an abuse of his ability and shares to control and influence FRANBIZ 601 and FRANBIZ FL158

63. By reasons of the foregoing, DALGAR has been damaged.

WHEREFORE, DALGAR demands judgment against GORDON for compensatory and punitive damages, including disgorging corporate profits and distributions which GORDON has personally attained, along with pre-judgment and post

judgment interest, attorney's fees and costs, with damages to be determined at trial and for such other further relief as the Court deems just and proper.

COUNT VI
CONVERSION

64. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

65. GORDON converted property of DALGAR'S to his own benefit.

66. The property of DALGAR's converted by GORDON was the right to receive any benefits associated with her shares. Said deprivation is inconsistent with DALGAR's ownership interest.

67. The actions by GORDON in this regard were not acts of the corporation or as a director or officer carrying out his corporate obligations and responsibilities, but were individual tortious acts taken by them for his own personal benefit while knowing such acts would be harmful to DALGAR.

68. GORDON knew and intended his acts to cause damage to DALGAR. He consciously, maliciously and intentionally deprived her of shareholder rights and her property.

WHEREFORE, DALGAR demands judgment against GORDON for compensatory and punitive damages, including pre-judgment and post judgment interest, for attorney's fees and costs, and for such other further relief as the Court deems just and proper.

COUNT VII
MISAPPROPRIATION OF BUSINESS OPPORTUNITIES

69. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

70. GORDON had a fiduciary duty to at least disclose to DALGAR any available business opportunities where FRAN BIZ FL 158 and FRAN BIZ 106 might have an interest or expectance in said business opportunity.

71. GORDON had knowledge of business opportunities that properly belonged to FRAN BIZ FL 158.

72. GORDON had knowledge of business opportunities that properly belonged to FRAN BIZ FL 601.

73. GORDON never disclosed to DALGAR any business opportunities that might be available to FRAN BIZ FL 158.

74. GORDON never disclosed to DALGAR any business opportunities that might be available to FRAN BIZ 601.

75. Business opportunities included, but are not limited to, allowing DALGAR to accept or reject the acquisition of more UPS stores or allowing DALGAR to vote on changes to the existing franchisee she owned.

76. The failure to disclose business opportunities constitutes a failure to perform and a breach of duty by GORDON as the majority shareholder.

WHEREFORE, DALGAR demands judgment against GORDON for compensatory and punitive damages, including disgorging corporate profits and distributions which GORDON has personally attained, along with pre-judgment and post judgment interest, attorney's fees and costs, with damages to be determined at trial and for such other further relief as the Court deems just and proper.

COUNT VIII
DEFALCATION

77. DALGAR realleges and incorporates paragraphs 1 through 31 as if fully stated herein.

78. Both factually, and as a matter of law, DALGAR placed trust and confidence in the controlling majority shareholder GORDON that he would maintain and preserve the business and interest of the FRAN BIZ FL 158 for its shareholders.

79. Indeed, GORDON represented that he would indeed look after the interests of FRAN BIZ FL 158.

80. As a matter of law, an express trust was created since GORDON, the controlling shareholder, was chief officer and managing shareholder of FRAN BIZ FL 158.

81. The controlling and managing shareholder GORDON acted as a trustee.

82. DALGAR, based on information and belief, and on that basis alleges that GORDON intentionally used DALGAR's property and to help him establish other entities and/or business opportunities (*e.g.* additional franchise opportunities).

83. In the alternative, DALGAR, based on information and belief, and on that basis alleges that GORDON as the controlling and majority shareholder used had dominion over proceeds from divestiture that DALGAR has never received.

WHEREFORE, DALGAR demands judgment against GORDON for compensatory and punitive damages, including disgorging corporate profits and distributions which GORDON has personally attained, along with pre-judgment and post

judgment interest, attorney's fees and costs, with damages to be determined at trial and for such other further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all issues so triable.

VERIFICATION

I, JONI DALGAR, declare that I have reviewed the Complaint and all of the allegations herein and I believe the allegations are true to the best of my knowledge.

Joni Dalgas 11-7-11

Joni Dalgas Date

Respectfully submitted on this 7th day of November 2011:

Dale Morgado

Dale James Morgado, Esq.
Florida Bar 64845
FELDMAN, FOX & MORGADO, PA
100 N. Biscayne Blvd, Suite 2902
Miami, Florida 33132
Tele: (305) 222-7850
Fax: (305) 384-4676
Email: dmorgado@ffmlawgroup.com

Trial Counsel and Lead Attorney for Plaintiff