

FILED
HALL CO., GA
IN THE SUPERIOR COURT OF HALL COUNTY
2009 FEB 19 PM 1:46

CHARLES BAKER, CLERK
SUPERIOR-STATE COURT

BY *[Signature]*

STATE OF GEORGIA

GASPARE BADALAMENTE, RON BROCK,)
BOB CHRISTMAS, HUNTER FLEMING,)
REX GRANT, NEPTUNE HOLDINGS, LLC,)
RICK HAMILTON, MATT HANDTE, JAY)
HOLLANDER, ARDEN HOTHAM, FRANK)
LAKE, ROBERT MONROE, THOMAS SHOLES,)
JUDD WILLIAMS, DONALD R. WILLERS,)
ALAN B. COOK and MICHAEL GOTTSMAN,)

Plaintiffs,)

vs.)

WENDELL SPELL, NORTH GEORGIA)
EQUIPMENT SALES, LLC, SAM SHAW,)
DEBORAH ALMAND, AND)
GREGORY ROWLAND,)

Defendants.)

CIVIL ACTION

FILE NO:

2009CV703A

**VERIFIED COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES**

Plaintiffs file this Verified Complaint for Injunctive Relief and Damages against Defendants for breaches of fiduciary duty, fraud, embezzling, theft by taking, theft by deception, theft by conversion and violation of the Georgia Racketeer Influenced and Corruption Organizations Act for damages and injunctive relief, including the freezing of assets, showing the Court as follows:

1.

Defendant, Wendell Spell ("Spell"), is a resident of Hall County, Georgia and may be served at 539 Cleveland Highway, Clermont, GA 30527. Defendant is subject to the jurisdiction of this Court and venue is proper.

2.

Defendant, North Georgia Equipment Sales, LLC (“NGAESI”), is a Georgia limited liability company whose registered agent, Pamela R. Spell, may be served by second original at 539 Cleveland Highway, Clermont, Georgia 30527.

3.

Defendant, Sam Shaw (“Shaw”), is a resident of Clermont, Hall County, Georgia and may be served at 5847 F Gailey Road, Clermont, Georgia 30527. Defendant is subject to the jurisdiction of this Court and venue is proper.

4.

Defendant, Deborah Almand (“Almand”), is a resident of Clermont, Hall County, Georgia and may be served at 5716 Will Guest Road, Clermont, Georgia 30527. Defendant is subject to the jurisdiction of this Court and venue is proper.

5.

Defendant, Gregory Rowland (“Rowland”), is a resident of Gainesville, Hall County, Georgia and may be served at 4607 Babbling Creek Way, Gainesville, Georgia 30506. Defendant is subject to the jurisdiction of this Court and venue is proper.

6.

For at least three (3) years, Defendants have engaged in a conspiracy to defraud and steal from Plaintiffs by fraudulently selling items of heavy equipment to Plaintiffs. In a scheme commonly referred to as a “ponzi” scheme, Defendants stole millions of dollars from Plaintiffs and others.

COUNT ONE

THEFT BY TAKING

7.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 6 as if set forth fully and completely herein.

8.

Defendants committed theft by taking of property belonging to Plaintiffs within the meaning of O.C.G.A. §16-8-2 “by taking when one unlawfully takes or being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property.”

9.

Plaintiffs suffered actual damages and losses as the result of Defendants multiple thefts by taking.

10.

Plaintiffs actual damages and losses were proximately by Defendants multiple thefts by taking.

11.

Plaintiffs damages are continuing. Plaintiffs are entitled to recover from Defendants a sum of damages which will make Plaintiffs whole and compensate Plaintiffs for the losses which Defendants have caused Plaintiffs.

12.

Defendants have exhibited willful misconduct, malice, fraud, wantonness, oppression and/or that entire want of care which would raise the presumption of conscious indifference to

consequences. Therefore, Plaintiffs are entitled to punitive damages in an amount to be determined by the enlightened conscience of the jury at a trial.

13.

Plaintiffs have suffered an injury and will continue to suffer injury for which there is no adequate remedy at law.

14.

Plaintiffs are in immediate danger of significant loss or damages within the meaning of O.C.G.A. §16-14-6 unless the Court enters injunctive relief prohibiting Defendants from conveying, disposing, disbursing, encumbering, liquidating, moving, transferring, or withdrawing any real property, personal property, assets or funds currently in Defendants' possession, custody or control.

COUNT TWO

THEFT BY DECEPTION

15.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 14 as if set forth fully and completely herein.

16.

Defendants committed theft by deception within the meaning of O.C.G.A. §16-8-3 by obtaining "property by any deceitful means or artful practice with the intention of depriving the owner of the property."

17.

Plaintiffs suffered actual damages and losses as the result of Defendants multiple thefts by deception.

18.

Plaintiffs actual damages and losses were proximately by Defendants multiple thefts by deception.

19.

Plaintiffs' damages are continuing. Plaintiffs are entitled to recover from Defendants a sum of damages which will make Plaintiffs whole and compensate Plaintiffs for the losses which Defendants have caused Plaintiffs.

20.

Defendants have exhibited willful misconduct, malice, fraud, wantonness, oppression and/or that entire want of care which would raise the presumption of conscious indifference to consequences. Therefore, Plaintiffs are entitled to punitive damages in an amount to be determined by the enlightened conscience of the jury at a trial.

21.

Plaintiffs have suffered an injury and will continue to suffer injury for which there is no adequate remedy at law.

22.

Plaintiffs are in immediate danger of significant loss or damages within the meaning of O.C.G.A. §16-14-6 unless the Court enters injunctive relief prohibiting Defendants from conveying, disposing, disbursing, encumbering, liquidating, moving, transferring, or withdrawing any real property, personal property, assets or funds currently in Defendants' possession, custody or control.

COUNT THREE

THEFT BY CONVERSION

23.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 22 as if set forth fully and completely herein.

24.

Defendants committed theft by conversion within the meaning of O.C.G.A. §16-8-4 by engaging "in the unauthorized assumption and exercise of the rights of ownership over money, funds and property" belonging to Plaintiffs.

25.

Plaintiffs suffered actual damages and losses as the result of Defendants multiple thefts by conversion.

26.

Plaintiffs actual damages and losses were proximately by Defendants multiple thefts by conversion.

27.

Plaintiffs' damages are continuing. Plaintiffs are entitled to recover from Defendants a sum of damages which will make Plaintiffs whole and compensate Plaintiffs for the losses which Defendants have caused Plaintiffs.

28.

Defendants have exhibited willful misconduct, malice, fraud, wantonness, oppression and/or that entire want of care which would raise the presumption of conscious indifference to

consequences. Therefore, Plaintiffs are entitled to punitive damages in an amount to be determined by the enlightened conscience of the jury at a trial.

29.

Plaintiffs have suffered an injury and will continue to suffer injury for which there is no adequate remedy at law.

30.

Plaintiffs are in immediate danger of significant loss or damages within the meaning of O.C.G.A. §16-14-6 unless the Court enters injunctive relief prohibiting Defendants from conveying, disposing, disbursing, encumbering, liquidating, moving, transferring, or withdrawing any real property, personal property, assets or funds currently in Defendants' possession, custody or control.

COUNT FOUR

FRAUD AND DECEIT

31.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 30 as if set forth fully and completely herein.

32.

Defendants committed fraud by deceit within the meaning of O.C.G.A. §16-9-50 and 16-9-53 by fraudulently selling items of heavy equipment to Plaintiffs.

33.

Plaintiffs suffered actual damages and losses as the result of Defendants multiple thefts by fraud and deceit.

34.

Plaintiffs' actual damages and losses were proximately by Defendants multiple thefts by fraud and deceit.

35.

Plaintiffs' damages are continuing. Plaintiffs are entitled to recover from Defendants a sum of damages which will make Plaintiffs whole and compensate Plaintiffs for the losses which Defendants have caused Plaintiffs.

36.

Defendants have exhibited willful misconduct, malice, fraud, wantonness, oppression and/or that entire want of care which would raise the presumption of conscious indifference to consequences. Therefore, Plaintiffs are entitled to punitive damages in an amount to be determined by the enlightened conscience of the jury at a trial.

37.

Plaintiffs have suffered an injury and will continue to suffer injury for which there is no adequate remedy at law.

38.

Plaintiffs are in immediate danger of significant loss or damages within the meaning of O.C.G.A. §16-14-6 unless the Court enters injunctive relief prohibiting Defendants from conveying, disposing, disbursing, encumbering, liquidating, moving, transferring, or withdrawing any real property, personal property, assets or funds currently in Defendants' possession, custody or control.

COUNT FIVE

VIOLATION OF GEORGIA R.I.C.O (O.C.G.A. §16-14-4(b))

39.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 38 as if set forth fully and completely herein.

40.

Defendants' action of theft by taking, theft by conversion and theft by deception constitute racketeering activities within the meaning of O.C.G.A. §16-14-3(9)(a).

41.

Defendants have engaged in a pattern of racketeering activities within the meaning of O.C.G.A. §16-14-3(8) because the committed at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents.

42.

Defendants have violated O.C.G.A. §16-14-4(a) by acquiring and/or maintaining directly and/or indirectly interest and/or control of personal property belonging to Plaintiffs.

43.

Because of Defendants' violations of O.C.G.A. §16-14-4(a), Plaintiffs have been injured within the meaning of O.C.G.A. §16-14-6.

44.

Plaintiffs are aggrieved persons within the meaning of O.C.G.A. §16-14-6 and Plaintiffs are entitled to the civil remedies set forth in O.C.G.A. §16-14-6.

45.

Plaintiffs have suffered an injury and will continue to suffer injury for which there is no adequate remedy at law.

46.

Plaintiffs are in immediate danger of significant loss or damages within the meaning of O.C.G.A. §16-14-6 unless the Court enters injunctive relief prohibiting Defendants from conveying, disposing, disbursing, encumbering, liquidating, moving, transferring, or withdrawing any real property, personal property, assets or funds currently in Defendants' possession, custody or control.

COUNT SIX

VIOLATION OF GEORGIA R.I.C.O (O.C.G.A. §16-4-4(c))

47.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 46 as if set forth fully and completely herein.

48.

Defendants' action of theft by taking, theft by conversion and theft by deception constitute racketeering activities within the meaning of O.C.G.A. §16-4-3(9)(a).

49.

Defendants have engaged in a pattern of racketeering activities within the meaning of O.C.G.A. §16-4-3(8) because they have conspired and endeavored to commit at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims and methods of commission.

50.

Defendants have violated O.C.G.A. §16-14-4(c) by being a person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity within the meaning of that statute.

51.

Because of Defendants' violations of O.C.G.A. §16-14-4(c), Plaintiffs have been injured within the meaning of O.C.G.A. §16-14-6.

52.

Plaintiffs have suffered an injury and will continue to suffer injury for which there is no adequate remedy at law.

53.

Plaintiffs are in immediate danger of significant loss or damages within the meaning of O.C.G.A. §16-14-6 unless the Court enters injunctive relief prohibiting Defendants from conveying, disposing, disbursing, encumbering, liquidating, moving, transferring, or withdrawing any real property, personal property, assets or funds currently in Defendants' possession, custody or control.

COUNT SEVEN

RECEIVERSHIP

54

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 53 as if set forth fully and completely herein.

55.

Plaintiffs seek the appointment of a receiver to investigate, locate, make claims to and seize any assets which are in any way related to the wrongful activities of Defendants.

56.

Plaintiffs would also seek an order from this Court empowering the receiver to administer any and all claims of injured persons including Plaintiffs and others against these Defendants and any other defendants.

COUNT EIGHT

ATTORNEYS FEES AND EXPENSES OF LITIGATION

57.

Plaintiffs reallege and restate their allegations contained in Paragraphs 1 through 56 as if set forth fully and completely herein.

58.

Defendants have acted in bad faith, have been stubbornly litigious and have caused Plaintiffs unnecessary trouble and expense within the meaning of O.C.G.A. §13-6-11 so as to authorize an award of attorneys fees and expenses to Plaintiffs.


WHEREFORE, Plaintiffs pray for the following relief:

- (a) That process issue and Defendants be served as provided by law;
- (b) That Plaintiffs be awarded actual damages, past, present and future compensatory damages;
- (c) Exemplary damages and punitive damages;
- (d) That the Court issue a restraining order and a preliminary and permanent injunction preventing Defendants from conveying, disposing, disbursing,

encumbering, liquidating, moving, transferring or withdrawing any real property currently in their possession, custody or control;

- (e) That this Court appoint a receiver to investigate, locate, and seize control of any and all assets which will be liquidated to provide compensation to these Plaintiffs and others;
- (f) For such other and further relief and may be just and proper.

Respectfully submitted,



RALPH L. TAYLOR, III
Georgia State Bar No. 701025
Attorney for Plaintiffs

BUCKLEY KING, LPA
2160 Morningside Drive
Suite 200
Buford, GA 30518
770-831-7770
770-945-0294 (Fax)