

**IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
CIVIL DIVISION**

HALON V, LLC

PLAINTIFF

VS. CASE NO.: O4CV-20-_____

**THOMAS A TERMINELLA, a/k/a TOM
TERMINELLA; MONICA TERMINELLA;
THE TERIMINELLA COMPANY, INC.;;
MONICA’S MEADOW, LLC; WEDINGTON
MINE, LLC; JOHNSON MINE, LLC; and
JOHN DOES 1-10**

COMPLAINT

COMES NOW the Plaintiff, HALON V, LLC, by and through its undersigned counsel, and for its cause of action against the above-named Defendants alleges and states:

INTRODUCTION

1. This is an action to enforce rights and remedies afforded to Plaintiff under Ark. Code Ann. § 16-66-418 as well as for unjust enrichment and veil piercing.

PARTIES

2. Halon V, LLC (“Halon” or “Plaintiff”) is and at all times relevant hereto was a limited liability company organized and operated under the laws of the State of Arkansas with its principal place of business in Benton County, Arkansas.

3. Upon information and belief, separate Defendant, Thomas A. Terminella, a/k/a Tom Terminella (“Tom”), is, and at all times relevant hereto was, a resident of Washington County, Arkansas.

4. Upon information and belief, separate Defendant, Monica Terminella (“Monica”), is, and at all times relevant hereto was, a resident of Washington County, Arkansas.

5. Upon information and belief, Tom and Monica are, and at all times relevant hereto were, a married couple.

6. The Terminella Company, Inc. (the “Terminella Company”) is an Arkansas corporation with its principal place of business in Washington County, Arkansas.

7. Monica’s Meadow, LLC (“Monica’s Meadow”) is an Arkansas limited liability company with its principal place of business in Washington County, Arkansas.

8. Wedington Mine, LLC (“Wedington Mine”) is an Arkansas limited liability company with its principal place of business in Washington County, Arkansas.

9. Johnson Mine, LLC (“Johnson Mine”) is an Arkansas limited liability company with its principal place of business in Washington County, Arkansas.

10. The John Doe Defendants are unknown tortfeasors whose identities remain unknown despite diligent inquiry. An affidavit of counsel pursuant to the John Doe Statute is attached hereto.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this controversy pursuant to Ark. Const. amend. LXXX, § 6 and Ark. Code Ann. § 16-13-201(a).

12. Venue is proper in this Court pursuant to Ark. Code Ann. § 16-66-418(a)(1) and other applicable Arkansas law.

13. This Court also has personal and in rem jurisdiction over all of the parties and property involved in this Complaint pursuant to Ark. Code Ann. § 16-4-101 (b) and the Constitutions of Arkansas and the United States.

PROCEDURAL BACKGROUND OF UNDERLYING CASE

14. On July 30, 2009, the Circuit Court of Benton County entered a judgment (the “Judgment”) against Tom and in favor of First State Bank (“FSB”). The Judgment was entered in a case style *First State Bank v. Primetime Play, LLC, et al.*, bearing case number 04CV-09-1152 (the “Underlying Case”).

15. On September 9, 2019, the court in the Underlying Case entered an Order of Revivor extending the life of the Judgment for 10 years pursuant to Ark. Code Ann. § 16-65-501. The Order of Revivor states that the unpaid balance of the Judgment as of September 9, 2019 is \$806,300.88.

16. On or about October 10, 2019, the Judgment was assigned to Halon. On October 29, 2019, the court in the Underlying Case entered an order which provided that Halon is the real party in interest in the Underlying Case, standing in the shoes of FSB and authorized to enforce the Judgment according to law as if it were the original plaintiff.

17. On October 22, 2019, Halon caused the Clerk of the Circuit Court of Benton County to issue a writ of Execution (the “Writ”) which commanded the Sheriff of Washington County (“Sheriff”) to levy upon and seize all personal property of Tom which was described in the Writ.

18. On or about November 25, 2019, the Sheriff returned the Writ stating that he found no property upon which to levy.

FACTUAL BACKGROUND

Mr. Terminella

19. Upon information and belief, Tom obtained his real estate license in 1987 at age 20.

20. Thereafter, he became a successful real estate developer and real estate broker/agent.

21. Upon information and belief, in 1997, Tom formed Terminella and Associates, Inc., in which he owned a substantial interest and worked as its President and Executive Broker.

22. When the Great Recession hit in around 2008, Tom's development projects suffered. Lenders moved to foreclose and obtained millions of dollars of judgments against him.

23. Millions of dollars of judgments against Tom remain unsatisfied and outstanding.

24. On or about September 7, 2011, in an effort to collect the Judgment that FSB held against Tom, it caused a writ of execution to be issued out of the Circuit Court of Washington County, Arkansas. The writ asked the Sheriff of Washington County to levy upon and sell all of Tom's shares including his shares in Terminella & Associates, Inc. ("Terminella & Associates").

25. Pursuant to that writ, an execution sale was scheduled for November 18, 2011.

26. Prior to the execution sale, Tom dissolved Terminella & Associates on or about November 3, 2011.

27. At this point, Tom, with the aid of Monica or other close family members, started a trend of creating business which were owned on paper by Monica or other close family members, but still run and controlled by Tom.

The Terminella Company, Inc.

28. On October 7, 2011, between the time the Sheriff of Washington County levied upon Tom's shares in Terminella & Associates and the date set for the execution sale, Monica formed the Terminella Company, Inc.

29. Upon information and belief, Tom is and always has been the executive broker of the Terminella Company.

30. Upon information and belief, Tom performs the same, or nearly the same, duties for the Terminella Company as he did for Terminella & Associates.

31. Upon information and belief, the Terminella Company occupies the same office space that Terminella & Associates, occupied before it was dissolved.

32. Upon information and belief, Monica, or the Monica M. Terminella Trust¹ owns all of the shares of the Terminella Company.

33. Upon information and belief, Monica holds the title of president of the Terminella Company, but the duties she performs for the company are limited and menial.

34. In fact, Monica does not hold an Arkansas Real Estate License, much less a Broker's License, despite owning a realty company.

35. Upon information and belief, the Terminella Company had ordinary business income for the years 2014 to 2019 which exceeded \$1,000,000.00 in aggregate.

36. Upon information and belief, all or substantially all of the Terminella Company's income from its creation in 2011 to present was made possible by the fruits of Tom's skill, real estate expertise, contacts, labor, and last but not least, his actual real estate broker and sales agent licenses.

37. Upon information and belief, despite providing the skill, real estate expertise, contacts, labor, and licenses to the Terminella Company to achieve ordinary income in excess of \$1,000,000.00 for the years 2014 to 2019, Tom did not receive any salary, bonus, or commission.

38. Upon information and belief, all or substantially all of the Terminella Company's income from its creation in 2011 to present was made possible by Tom but flowed only to Monica.

¹ Upon information and belief, a revocable trust for which Monica is the settlor and trustee.

39. Upon information and belief, Tom continues to divert the fruits of his skill, real estate expertise, contacts, labor, and licenses for the benefit of the Terminella Company and Monica.

40. Upon information and belief, the benefits of the fruits of Tom's skill, real estate expertise, contacts, labor, and licenses for the Terminella Company have increased the value of the Terminella Company and increased Monica's income.

41. Upon information and belief, Monica has used the business assets of the Terminella Company to support Tom's personal lifestyle.

42. Upon information and belief, Monica has used the income she has received from the Terminella Company to support Tom's personal lifestyle.

43. Upon information and belief, Tom purposefully does not take any compensation from the Terminella Company in order to keep income away from his creditors.

44. Upon information and belief, Tom does not legally own any shares in the Terminella Company because he knows his creditors could execute on them as FSB attempted to execute on his shares in Terminella & Associates in 2011.

45. Through the above-described arrangement, Tom has acquired and concealed an equitable interest in the Terminella Company and its profits.

Monica's Meadow, LLC

46. Upon information and belief, Monica's Meadow was formed on December 29, 2015 as a single member LLC with the sole member being the Monica M. Terminella Trust.

47. Upon information and belief Tom signed the operating agreement of Monica's Meadow in a capacity of "Special Trustee" despite the fact that there is no known document making him a "Special Trustee" of the Monica M. Terminella Trust.

48. Upon information and belief, the operating agreement of Monica's Meadow appointed Tom as the company's manager.

49. On or about October 10, 2019, Monica's Meadow bought approximately 14 acres in Washington County for \$13,750.00

50. On or about August 18, 2020, Monica's Meadow sold the aforesaid 14 acres for approximately \$90,000.00

51. Upon information and belief, the more than \$75,000.00 gain that Monica's Meadow was able to achieve by purchasing and selling the 14 acres was due solely to Tom's skill, real estate expertise, contacts, labor, and licenses for Monica's Meadow.

52. Despite owning Monica's Meadow, in a recent deposition Monica did not know how much the 14 acres was purchased for, from who it was purchased, what it sold for, or who it was sold to. She also did not know what caused the increase in value of the property. Erroneously, she also claimed the only improvement made by Monica's Meadow to the property was clearing it years ago, despite the fact that Monica's Meadow owned the property for less than one year.

53. Thus, it is extremely clear that Tom did everything to create the profit Monica's Meadow enjoyed.

54. Upon information and belief, Tom did not receive any compensation for using his time and talents to achieve this gain for Monica's Meadow.

55. Upon information and belief, Monica has used the income derived from Monica's Meadow to support Tom's personal lifestyle.

56. Through the above-described arrangement, Tom has acquired and concealed an equitable interest in Monica's Meadow and its profits.

Wedington Mine, LLC

57. Upon information and belief, Wedington Mine was created on June 5, 2018.

58. Initially Wedington Mine had four members, and the Monica M. Terminella Trust held a 25% membership interest.

59. Upon information and belief, the other memberships were held by three of Tom's brothers.

60. Upon information and belief, Monica sold her interest in 2018 for an amount that exceeded her contributions—in other words, at a profit.

61. Upon information and belief, Wedington Mine was formed for the purpose of purchasing land in Washington County and operating an open cut dirt mine thereon.

62. Upon information and belief, Tom found the opportunity for Wedington Mine to acquire its land.

63. Upon information and belief, at the closing, when the land was purchased by Wedington Mine, Tom signed the real estate purchase and sale settlement statement as Manager and Director of Operations of Wedington Mine.

64. Upon information and belief, Tom, in a stated capacity as manager of Wedington Mine, applied to the Arkansas Department of Environmental Quality ("ADEQ") for a permit to conduct mining operations on the company's property.

65. Upon information and belief, as manager of Wedington Mine, Tom applied to the Washington County Planning Commission for a conditional use permit ("CUP") to conduct open cut mining operations on the company's land.

66. Upon information and belief, as manager of Wedington Mine, Tom applied to the Washington County Quorum Court for a CUP to conduct open cut mining operations on the company's land.

67. Upon information and belief, neither Monica nor any other member of Wedington Mine aided or assisted Tom in applying for a permit from ADEQ.

68. Upon information and belief, neither Monica nor any other member of Wedington Mine aided or assisted Tom in applying for a CUP from Washington County.

69. Upon information and belief, the Washington County Quorum Court denied the CUP and Wedington Mine has appealed that decision.

70. Upon information and belief, Tom has played an active role in the appeal on behalf of Wedington Mine.

71. Upon information and belief, neither Monica nor any of the members of Wedington Mine have played an active role in the appeal.

72. Upon information and belief, Tom has received no compensation for the work he has done assisting Wedington Mine in acquiring its land and applying for the mining permit and CUP.

73. Upon information and belief, Tom has devoted considerable skill, real estate expertise, and labor for the benefit of Wedington Mine without compensation.

74. Upon information and belief, Tom continues to divert the fruits of his skill, real estate expertise, contacts, and labor for the benefit of Wedington Mine, its current members, and Monica.

75. Upon information and belief, the benefits of the fruits of Tom's skill, real estate expertise, contacts, and labor for Wedington Mine have increased the value of Wedington Mine.

76. Upon information and belief, Monica has used the income she has received from Wedington Mine to support Tom's personal lifestyle.

77. Through the above-described arrangement, Tom has acquired and concealed an equitable interest in Wedington Mine and its profits.

Johnson Mine, LLC

78. Upon information and belief, Johnson Mine was created on October 20, 2015.

79. Initially Johnson Mine had four members, and the Monica M. Terminella Trust held a 25% membership interest.

80. Upon information and belief, the other memberships were held by three of Tom's brothers.

81. Upon information and belief, in October of 2018 Monica sold her interest in Johnson Mine for an amount that exceeded her tax basis by more than \$150,000.00—in other words, at a profit.

82. Upon information and belief, Johnson Mine was formed for the purpose of purchasing land in Washington County and operating an open cut dirt mine thereon.

83. Upon information and belief, Tom found the opportunity for Johnson Mine to acquire its land.

84. Upon information and belief, Tom has acted as one of Johnson Mine's managers.

85. Upon information and belief, Tom continues to act as one of Johnson Mine's managers.

86. Upon information and belief, Monica's share of the ordinary income from Johnson Mine exceeded \$190,000.00 in 2016 alone.

87. Upon information and belief, Tom has devoted considerable skill, real estate expertise, and labor for the benefit of Johnson Mine without compensation.

88. Upon information and belief, Tom continues to divert the fruits of his skill, real estate expertise, contacts, and labor for the benefit of Johnson Mine, its current members, and Monica.

89. Upon information and belief, the benefits of the fruits of Tom's skill, real estate expertise, contacts, and labor for Johnson Mine have increased the value of Johnson Mine.

90. Upon information and belief, Monica has used the income she has received from Johnson Mine to support Tom's personal lifestyle.

91. Through the above-described arrangement, Tom has acquired and concealed an equitable interest in Johnson Mine and its profits.

CAUSES OF ACTION

COUNT I: Discovery of Property Pursuant to Ark. Code Ann. § 16-66-418

92. Plaintiff incorporates and adopts its allegations set forth in paragraphs 1-91 above.

93. Ark. Code Ann. § 16-66-418 provides in pertinent part that after a writ of execution is returned unsatisfied, "the plaintiff in the execution may institute an action . . . for the discovery of any money, chose in action, equitable or legal interest, and all other property to which the defendant is entitled. . . ." (emphasis added).

94. Clearly Tom has an equitable interest in the Terminella Company, Monica's Meadow, LLC; Wedington Mine, LLC; and Johnson Mine, LLC.

95. Tom also has an equitable interest in the proceeds of these companies which have flowed to Monica.

96. These businesses owe all or substantially all of their value to Tom.

97. The revenues these businesses produced were almost entirely because of Tom.

98. Yet, Tom received no compensation for his work, expertise, and necessary licenses.

99. Upon information and belief, “the reason the [companies] failed to make any payment to [Tom] was to put essentially every dollar of [Tom]'s current and future assets and income out of the reach of his creditors.” *Cadle Co. v. Steiner*, No. CV054018721S, 2011 WL 925450, at *2 (Conn. Super. Ct. Feb. 10, 2011).

100. Further, upon information and belief, each of these business are “‘a family enterprise orchestrated by [Tom],’ where he, *inter alia*, oversees the close corporation's daily affairs and participates in decision-making, and where family members are involved in the business.” *Cadle Co. v. Ogalin*, 495 F. Supp. 2d 278, 283 (D. Conn. 2007).

101. The Plaintiff is entitled to a judgment declaring that Tom is an equitable owner of the above businesses and thus entitled to the rights and remedies provided for in Ark. Code Ann. § 16-66-418. The Plaintiff is likewise entitled to a judgment for the revenues that Tom has produced through these businesses.

102. Further, this Court should “enforce the surrender [of Tom’s equitable interests in these businesses]” pursuant to Ark Code Ann. § 16-66-418(e).

Count II: Veil Piercing of The Terminella Company, Inc and Monica’s Meadow, LLC

103. Plaintiff incorporates and adopts its allegations set forth in paragraphs 1-102 above.

104. Clearly in opening the Terminella Company on the heels of Tom dissolving Terminella and Associates to run virtually the same business was an act by Tom and Monica to hinder and delay creditors of Tom.

105. This abuse can further be seen from the way the Terminella Company has been operated. It has been operated exclusively by Tom. In fact, without Tom’s broker’s license, the Terminella Company, could not operate. But he provides more than just the licenses, he provides the skill, expertise, and all of the labor—yet receives no compensation whatsoever.

106. It is clear that Monica owns the Terminella Company on paper only. She does not act like the owner of a business.

107. This is because the Terminella Company is operated fraudulently and abusively to divert assets and revenues that would normally be Tom's to outside the reach of Tom's creditors all the while allowing Tom to benefit from same.

108. The Terminella Company is nothing but the alter ego of Tom Terminella.

109. Tom could be doing everything he does in his own name or in a company owned by him and profiting from same, but in an attempt to hinder and delay Tom's creditors, Tom and Monica have manipulated the business form to shield Tom's assets while simultaneously allowing Tom to benefit from the fruits of his labors.

110. Thus, this Court should reverse pierce the corporate veil and allow the Plaintiff to collect its judgment against the Terminella Company.

111. The same rings true for Monica's Meadow. Monica knows nothing about Monica's Meadow, yet she purportedly owns it.

112. What is clear is that Tom runs and operates Monica's Meadow and caused it to generate a profit. He then indirectly benefited from the profit Monica's meadow generated when Monica used the profits to support Tom's personal lifestyle.

113. Again, Tom could be doing everything he did for Monica's Meadow in his own name or in a company owned by him and profiting from same, but in an attempt to hinder and delay Tom's creditors, Tom and Monica have manipulated the business form to shield Tom's assets while simultaneously allowing Tom to benefit from the fruits of his labors.

114. Thus, the veil should be pierced as to Monica's Meadow, LLC and the Plaintiff should be able to collect its judgment against Monica's Meadow's assets.

Count III: Unjust Enrichment Against All Defendants

115. Plaintiff incorporates and adopts its allegations in paragraphs 1-114 set forth above.

116. By retaining all of the profits and revenues of Tom's labors, skill, knowledge, and licenses without providing Tom any compensation whatsoever, Monica, the Terminal Company, Monica's Meadow, Wedington Mine, and Johnson Mine have been unjustly enriched.

117. Simply put, in equity and good conscious Monica, the Terminal Company, Monica's Meadow, Wedington Mine, and Johnson Mine should not be able to retain the enrichment brought through Tom's labors, expertise, knowledge, and licenses.

118. Further, by failing to compensate Tom, Monica, the Terminal Company, Monica's Meadow, Wedington Mine, and Johnson Mine have violated and clearly gone against the spirit of federal and Arkansas minimum wage laws.

119. The purpose Tom's diversion of his labor, skill, knowledge, and licenses without any compensation whatsoever is clear: to hinder, delay, and defraud his creditors. Certainly, Monica, the Terminal Company, Monica's Meadow, Wedington Mine, and Johnson Mine all were unjustly enriched by this diversion while the Plaintiff was directly injured and damaged as Tom's diversions were effective in keeping valuable assets and profits outside the reach of his creditors.

120. In sum, the Defendants were "unjustly enriched because [they] received all the profits from [these businesses] without compensating [Tom], to the detriment of the plaintiff." *See Cadle Co. v. Steiner*, No. CV054018721S, 2011 WL 925450, at *3 (Conn. Super. Ct. Feb. 10, 2011).

DEMAND FOR JURY TRIAL

121. Plaintiff demands a trial by jury on all issues so triable.

WHEREFORE, under Count I, Plaintiff prays for judgment declaring that Tom Terminella holds an equitable interest in business entities and that such interest is subject to execution, and for all other just and proper relief to which it is so entitled. Under Count II, the Plaintiff prays for judgment declaring that the corporate veil should be pierced on the Terminella Company, Inc and Monica's Meadow, LLC and that the Plaintiff may collect its judgment against their assets, and for all other just and proper relief to which it may be so entitled. Under Count III, Plaintiff prays for judgment against all Defendants in an amount to be determined by the Court, but in an amount greater than that required for federal diversity jurisdictional purposes, and for all other just and proper relief to which it may be so entitled.

Respectfully Submitted by:

/s/ J. Brian Ferguson
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AFFIDAVIT

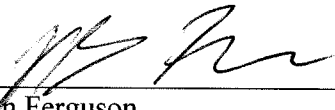
STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

J. Brian Ferguson, being duly sworn, upon his oath states:

1. I am over the age of 18 and make this affidavit based on my own personal knowledge.
2. I am counsel for the Plaintiff in the above captioned matter.
3. Pursuant to Ark. Code Ann. § 16-56-125(c), I hereby state under oath that the John Doe Defendants listed above are unknown tortfeasors whose identities remain unknown despite diligent inquiry.

FURTHER AFFIANT SAYETH NOT.

Dated this 13th day of October 2020.

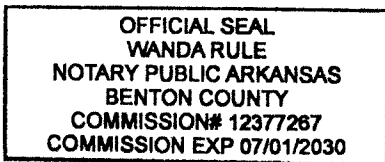


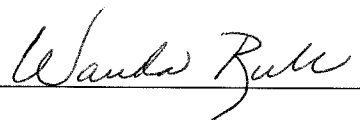
J. Brian Ferguson

ACKNOWLEDGMENT

On this 13th day of October 2020, before me, the undersigned Notary Public, personally appeared J. Brian Ferguson, to execute the foregoing instrument, to me personally known, or satisfactorily identified, who signed the foregoing instrument in my presence and under oath.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.





Notary Public