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COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT
CIVIL ACTION NO. _____

OWENSBOROTIMES

MATTHEW HAYDEN, and ESTATE OF JACK T. WELLS,
individually and derivatively on behalf of
DAVIS AUTO GROUP, LLC

PLAINTIFFS

v.

JERALD RAY DAVIS, JR., EQ BUSINESS SERVICES, LLC,
EQ GROUP REINSURANCE, INC.

DEFENDANTS,

DAVIS AUTO GROUP, LLC

NOMINAL DEFENDANT

* * * * *

COMPLAINT AND DEMAND FOR TRIAL BY JURY

Come now Plaintiffs, Matthew Hayden and the Estate of Jack T. Wells, individually and derivatively on behalf of Davis Auto Group, LLC, for their Complaint against Defendants Jerald Ray Davis, Jr., EQ Business Services, LLC, EQ Group Reinsurance, Inc. and Nominal Defendant Davis Auto Group, LLC, and state as follows:

Parties

1. Plaintiff Matthew Hayden ("Hayden") is a citizen of Owensboro, Kentucky.
2. Plaintiff Estate of Jack T. Wells ("Estate") was opened in the Daviess Probate Court on August 4, 2020, cause number Daviess - 20-P-00441.
3. Mike Simpson and Eugene Hargis are the Co-Executors of the Estate and have the authority to bring this action on behalf of the Estate.

Presiding Judge: HON. JAY A. WETHINGTON (606289)

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12/10/2024 06:43:28

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4. Davis Auto Group, LLC (“Davis Auto”) is a Kentucky limited liability company organized under the laws of the Commonwealth of Kentucky, with its principal office located at 3900 Frederica St. Owensboro, Kentucky 42301.

5. Defendant Jerald Ray Davis, Jr. (“Davis”) is a citizen of Owensboro, Kentucky.

6. Defendant EQ Business Services, LLC (“EQ Business”) is a Florida limited liability company, with its principal office located at 3900 Frederica St. Owensboro, Kentucky 42301.

7. EQ Business conducts business in Owensboro, Kentucky.

8. EQ Business owns one or more assets in Owensboro, Kentucky.

9. Davis is the sole member of EQ Business.

10. Defendant EQ Group Reinsurance, Inc. (“EQ Reinsurance”) is a corporation, with its principal office located at 3900 Frederica St. Owensboro, Kentucky 42301.

11. EQ Reinsurance conducts business in Owensboro, Kentucky.

12. EQ Reinsurance owns one or more assets in Owensboro, Kentucky.

13. Davis is the sole shareholder of EQ Reinsurance.

Jurisdiction and Venue

14. This Court has subject-matter jurisdiction over the causes of action asserted herein against Defendants, pursuant to the Kentucky Constitution, statutory law, common law and the amount in controversy exceeds the minimum jurisdictional limits of this Court.

15. Venue is appropriate in this Court as the conduct alleged herein occurred in Daviess County, Kentucky, and Defendants are located within Daviess County, Kentucky.

Factual Allegations

Formation of Davis Auto

NOT ORIGINAL

12/10/2024 06:43:28

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16. On May 16, 2019, Davis Auto filed its Articles of Organization with the Kentucky Secretary of State.

17. On February 24, 2020, Hayden, Davis, and Jack T. Wells (“Wells”) executed the “OPERATING AGREEMENT OF DAVIS AUTO GROUP LLC A KENTUCKY LIMITED LIABILITY COMPANY (Manager Governed)” (the “Original Operating Agreement”).

18. A true and accurate copy of the Original Operating Agreement is attached hereto as Exhibit A.

19. The Original Operating Agreement established Davis, Hayden, and Wells as members of Davis Auto.

20. On February 24, 2020, Davis Auto made and entered into a “MEMBERSHIP RESTRICTION AND BUY-SELL AGREEMENT” (the “Buy-Sell Agreement”), which was executed by Davis as Manager of Davis Auto, as well as Davis, Hayden, and Wells as members of Davis Auto.

21. A true and accurate copy of the Buy-Sell Agreement is attached hereto as Exhibit B.

22. On June 3, 2020, Hayden, Davis, and Wells executed the “AMENDMENT TO OPERATING AGREEMENT” (the “Amendment”).

23. A true and accurate copy of the Amendment is attached hereto as Exhibit C.

24. At all times following the execution of the Original Operating Agreement, Davis and Hayden have remained members of Davis Auto.

25. On or about August 4, 2020, the Estate became a member of Davis Auto.

26. At all times following the execution of the Original Operating Agreement, there has not been any other member of Davis Auto, other than Davis, Hayden, Wells, and the Estate.

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12/10/2024 06:43:28

OWENSBOROTIMES

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27. The Original Operating Agreement established Davis as the sole Manager of Davis Auto.

28. At all times following the execution of the Original Operating Agreement, Davis has held the title of Manager of Davis Auto.

29. No individual, other than Davis, has held the title of Manager of Davis Auto or served in that capacity or role.

30. The Original Operating Agreement conferred upon Davis, as Manager of Davis Auto, the responsibility for the day-to-day supervision, direction, and control of the business of Davis Auto.

31. Davis, currently and at all times since February 24, 2020, holds a 60% majority membership interest in Davis Auto.

32. Hayden, currently and at all times since February 24, 2020, holds a 20% minority membership interest in Davis Auto.

33. The Estate currently holds a 20% minority membership interest in Davis Auto.

34. Davis Auto's primary business is the operation of a Chrysler, Dodge, Jeep, Ram ("Chrysler") auto dealership.

Failure to Pay Taxes

35. As manager of Davis Auto, Davis was responsible for ensuring that Davis Auto timely fulfilled its tax obligations.

36. On one or more occasions, Davis failed in his duty to ensure that Davis Auto timely met its tax obligations.

37. Due to Davis's failure, Davis Auto incurred and/or paid fees and/or penalties it otherwise would not have had to pay had Davis fulfilled his duty to ensure that Davis Auto timely met its tax obligations.

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12/10/2024 06:43:28

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EQ Reinsurance

38. Davis is the sole shareholder of EQ Reinsurance.
39. Hayden has never been a shareholder of EQ Reinsurance.
40. Wells has never been a shareholder of EQ Reinsurance.
41. The Estate has never been a shareholder of EQ Reinsurance.
42. While manager of Davis Auto, Davis directed Davis Auto to conduct business with EQ Reinsurance.
43. EQ Reinsurance received benefits from Davis Auto.
44. Davis did not notify Hayden, Wells, or the Estate that EQ Reinsurance was conducting business with and/or receiving a benefit from Davis Auto.
45. Hayden, Wells, or the Estate never consented to EQ Reinsurance conducting business with and/or receiving a benefit from Davis Auto.

EQ Business

46. Davis is the sole member of EQ Business.
47. Hayden has never been a member of EQ Business.
48. Wells has never been a member of EQ Business.
49. The Estate has never been a member of EQ Business.
50. While manager of Davis Auto, Davis directed Davis Auto to conduct business with EQ Business.
51. EQ Business received benefits from Davis Auto.
52. Davis did not notify Hayden, Wells, or the Estate that EQ Business was conducting business with and/or receiving a benefit from Davis Auto.
53. Hayden, Wells, or the Estate never consented to EQ Business conducting business with and/or receiving a benefit from Davis Auto.

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12/10/2024 06:43:28

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Self-Dealing

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54. Upon information and belief, Davis improperly used his position as manager of Davis Auto for his personal benefit, including using Davis Auto's assets to pay:

- a. For his personal travel;
- b. For his personal real estate;
- c. For his hotel expenses;
- d. For his pet expenses;
- e. Himself surcharge fees on one or more transactions;
- f. Himself management fees on one or more transactions; and/or
- g. Himself loans.

55. Upon information and belief, Davis also used his position as manager of Davis Auto to improperly provide benefits to his son and girlfriend, including through wages that were unreasonable and/or for which Davis Auto did not receive a benefit.

56. Upon information and belief, Davis's misconduct and gross financial mismanagement has placed Davis Auto in jeopardy of losing its dealership status with Chrysler.

Request for Records and Information

57. On June 6, 2024, Hayden and the Estate, by counsel, requested 19 categories of information and documentation from Davis, pursuant to KRS 275.185(1)-(3), and personal records of Davis relating to Davis Auto ("June 6 Correspondence").

58. A true and accurate copy of the June 6 Correspondence is attached as Exhibit D.

59. On July 5, 2024, Davis, by counsel, responded ("July 5 Correspondence"), in part, by claiming it:

- A. Would produce documents of Davis Auto that it is required to maintain pursuant to KRS 275.185(1);

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12/10/2024 06:43:28

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B. Would only produce the records requested pursuant to KRS 275.185(2) if Hayden hired a third-party to “scan and transmit those documents;” and

C. Could not provide additional information requested pursuant to KRS 275.185(3) relating to the financial viability of the company or its value because the request was “incredibly broad.”

60. A true and accurate copy of the July 5 Correspondence is attached as Exhibit E.

61. Further, other than the records kept under KRS 275.185(1), Davis responded to the June 6 Correspondence without any specific categorization with respect to the 19 different requests made by Hayden but simply that Davis Auto records were maintained in “approximately 50 bankers boxes.”

62. Upon information and belief, Davis Auto possesses records responsive to the June 6 Correspondence other than “50 bankers boxes,” including records in electronic form and in other locations.

63. In addition, Davis refused to produce any personal records of Davis relating to Davis Auto.

64. On October 9, 2024, Hayden and the Estate, by counsel, pursuant to KRS 275.185(3), requested specific documentation and information relating to the financial viability of the company or its value (“October 9 Records Correspondence”).

65. A true and accurate copy of the October 9 Records Correspondence is attached as Exhibit F.

66. On October 9, 2024, Hayden and the Estate, by counsel, requested information from Davis regarding Davis’s alleged failure to ensure that Davis Auto timely fulfilled its tax obligations (“October 9 Tax Correspondence”).

NOT ORIGINAL

12/10/2024 06:43:28

OWENSBOROTIMES

DOCUMENT

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67. A true and accurate copy of the October 9 Tax Correspondence is attached as Exhibit G.

68. On October 18, 2024, Davis sent a written response to the October 9 Tax Correspondence (the “Davis October 18 Tax Correspondence”).

69. A true and accurate copy of the Davis October 18 Tax Correspondence is attached as Exhibit H.

70. In the Davis October 18 Tax Correspondence, Davis conceded that he failed in his duty of ensuring that Davis Auto timely fulfilled its tax obligations.

71. Upon information and belief, Davis and Davis Auto have failed to produce all records requested in the October 9 Records Correspondence.

Derivative and Demand Futility Allegations

72. Hayden and Estate bring this action, in part, derivatively in the right and for the benefit of Davis Auto to redress injuries suffered, and to be suffered, by Davis Auto as a direct result of Davis’s actions and/or inactions, which amount to breaches of fiduciary duty, unlawful self-dealing, ignoring clear conflicts of interest, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by Davis.

73. As minority members of Davis Auto, Hayden and the Estate adequately and fairly represent the interests of the members Davis Auto in enforcing and prosecuting its rights.

74. Hayden, Wells, and the Estate were members of Davis Auto during all times relevant to Davis’s wrongful course of conduct alleged herein.

75. Pursuant to the Original Operating Agreement and Amendment (collectively the “Operating Agreement”), the Manager is vested with the authority to bring an action on behalf of Davis Auto.

NOT ORIGINAL

12/10/2024 06:43:28

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76. Any demand pursuant to K.R.S. § 275.337(2) requesting that Davis Auto bring an action to redress the injuries alleged herein would have been futile, as such demand would have essentially requested that Davis bring an action against himself.

Causes of Action

Count I – Breach of Fiduciary Duties

77. Plaintiffs hereby reallege and incorporate by reference all paragraphs of this Complaint as if fully stated herein.

78. At all relevant times, Davis, as Manager of Davis Auto, owed fiduciary duties to Hayden and the Estate, as members of Davis Auto, including the obligations of good faith, fair dealing, loyalty, and due care.

79. At all relevant times, Davis, as Manager of Davis Auto, owed fiduciary duties to Davis Auto, including the obligations of good faith, fair dealing, loyalty, and due care.

80. Davis breached his fiduciary duties.

81. As a proximate result of Davis's actions and omissions, which constitute wanton and reckless misconduct, Hayden, the Estate, and Davis Auto have been damaged.

Count II – Breach of K.R.S. § 275.170

82. Plaintiffs hereby reallege and incorporate by reference all paragraphs of this Complaint as if fully stated herein.

83. At all relevant times, Davis, as Manager of Davis Auto, had duties of care and loyalty under K.R.S. § 275.170.

84. Davis violated the duties of care and loyalty under K.R.S. § 275.170.

85. As a proximate result of Davis's actions and omissions, which constitute wanton and reckless misconduct, Hayden, the Estate, and Davis Auto have been damaged.

Count III– Breach Covenant of Good Faith and Fair Dealing

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12/10/2024 06:43:28

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86. Plaintiffs hereby reallege and incorporate by reference all paragraphs of this Complaint as if fully stated herein.

87. Within every contract, there is an implied covenant of good faith and fair dealing, and contracts impose on the parties thereto a duty to do everything necessary to carry them out.

88. Davis breached the implied covenant of good faith and fair dealing with respect to the Operating Agreement.

89. As a proximate result of Davis's actions and omissions, which constitute wanton and reckless misconduct, Hayden, the Estate, and Davis Auto have been damaged.

Count IV – Expulsion of Member of Limited Liability Davis Auto

90. Plaintiffs hereby reallege and incorporate by reference all paragraphs of this Complaint as if fully stated herein.

91. Davis has engaged, and is engaging in, wrongful conduct that has adversely and materially affected, and will continue to adversely and materially affect, Davis Auto's activities.

92. Davis has willfully and persistently committed, and continues to willfully and persistently commit, a material breach of the Operating Agreement as well as his obligations under K.R.S. § 275.170.

93. Davis's conduct relating to Davis Auto's activities make it not reasonably practical for him to carry on with the activities of Davis Auto as a member.

94. Based on the foregoing, Hayden and the Estate, pursuant to K.R.S. § 275.172(1) seek a judicial order expelling Davis as a member of Davis Auto.

County VI – Unjust Enrichment

95. Plaintiffs hereby reallege and incorporate by reference all paragraphs of this Complaint as if fully stated herein.

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12/10/2024 06:43:28

OWENSBOROTIMES

96. At Davis Auto's expense, Davis Auto conferred a benefit on Davis, EQ Business, and EQ Reinsurance.

97. Davis, EQ Business, and EQ Reinsurance benefited from Davis Auto.

98. It would be inequitable for Davis, EQ Business, and EQ Reinsurance to retain those benefits without payment for their value.

WHEREFORE, Plaintiffs Hayden and the Estate, in their capacity as members acting derivatively on behalf of Davis Auto and in their individual capacities, demand:

- A. Damages from Davis in an amount determined by the trier of fact;
- B. An accounting of Davis Auto's records;
- C. Disgorgement of all profits, benefits, and other compensation obtained by Davis, EQ Reinsurance, and EQ Business from Davis's wrongful conduct and fiduciary breaches;
- D. Injunctive relief removing Davis as manager of Davis Auto;
- E. Injunctive relief enjoining Davis from taking any action on behalf of Davis Auto;
- F. Expulsion of Davis as a member of Davis Auto pursuant to K.R.S. § 275.172;
- G. Punitive damages against Davis;
- H. Pre-judgment and post-judgment interest;
- I. Reasonable legal fees, including all costs and expenses of bringing and prosecuting this matter; and
- J. All common law and statutory damages and other remedies available under Kentucky law.

DEMAND OF JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

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12/10/2024 06:43:28

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Respectfully submitted,

Ziemer, Stayman, Weitzel & Shoulders, LLP

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