

DOCUMENT

PM

- Electronically Filed -

NOT ORIGINAL

COMMONWEALTH OF KENTUCKY
DAVIESS CIRCUIT COURT
CIVIL ACTION NO. 24-CI-01426

12/10/2024 07:01:57

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, and
EQ GROUP REINSURANCE, INC.

DEFENDANTS

-and-

DAVIS AUTO GROUP, LLC

NOMINAL DEFENDANT

* * * * *

ANSWER AND COUNTERCLAIMS OF DAVIS AUTO GROUP, LLC

Defendant/Counterclaim-Plaintiff, Davis Auto Group, LLC (“Davis Auto”), by counsel,
and for its Answer to Plaintiffs/Counterclaim-Defendants’ Complaint, states as follows:

1. Plaintiff Matthew Hayden (“Hayden”) is a citizen of Owensboro, Kentucky.

ANSWER: Davis Auto lacks sufficient information to confirm or deny that 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.

ANSWER: Upon information and belief, admitted.

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.

NOT ORIGINAL

DOCUMENT

PM

12/10/2024 07:01:57

OWENSBOROTIMES

ANSWER: The allegations set forth in Paragraph 3 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto lacks sufficient information to either confirm or deny the same.

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.

ANSWER: Davis Auto admits the allegations set forth in Paragraph 4 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto admits the allegations set forth in Paragraph 5 of Plaintiffs' Complaint.

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.

ANSWER: Upon information and belief, admitted.

7. EQ Business conducts business in Owensboro, Kentucky.

ANSWER: Upon information and belief, admitted.

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

ANSWER: The allegation set forth in Paragraph 8 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto lacks sufficient information to confirm or deny the same.

9. Davis is the sole member of EQ Business.

NOT ORIGINAL

DOCUMENT

PM

12/10/2024 07:01:57

OWENSBOROTIMES

ANSWER: The allegation set forth in Paragraph 9 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto lacks sufficient information to confirm or deny the same.

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

ANSWER: Upon information and belief, admitted.

11. EQ Reinsurance conducts business in Owensboro, Kentucky.

ANSWER: Upon information and belief, admitted.

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

ANSWER: The allegation set forth in Paragraph 12 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto lacks sufficient information to confirm or deny the same.

13. Davis is the sole shareholder of EQ Reinsurance.

ANSWER: The allegation set forth in Paragraph 13 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto lacks sufficient information to confirm or deny the same.

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.

ANSWER: The allegations set forth in Paragraph 14 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis

NOT ORIGINAL

DOCUMENT

PM

Auto denies that this Court may properly exercise subject matter jurisdiction over Plaintiffs' claims.

OWENSBOROTIMES

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.

ANSWER: The allegations set forth in Paragraph 15 of Plaintiffs' Complaint constitute legal conclusions to which no response is required.

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

ANSWER: Davis Auto admits the allegation set forth in Paragraph 16 of Plaintiffs' Complaint.

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").

ANSWER: The "Original Operating Agreement" referenced in Paragraph 17 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

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

ANSWER: Denied. Exhibit A to Plaintiffs' Complaint is the operating agreement of "OWB CDJP, LLC."

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

NOT ORIGINAL

DOCUMENT

PM

ANSWER: Davis Auto admits the allegation set forth in Paragraph 19 of Plaintiffs' Complaint, with the caveat that Hayden R. Hayden ("Hayden") and Jack T. Wells ("Wells") never became members of Davis Auto due to their respective failures to make certain capital contributions as required by the Operating Agreement.

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.

ANSWER: Davis Auto admits the allegations set forth in Paragraph 20 of Plaintiffs' Complaint.

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

ANSWER: To the extent a response is required, Exhibit B to Plaintiffs' Complaint purports to be a copy of the "Membership Restriction and Buy-Sell Agreement" entered into between Davis Auto, Jerald Ray Davis ("Jerry Ray Davis"), Matthew R. Hayden, and Jack T. Wells ("Wells") on February 24, 2020.

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

ANSWER: Davis Auto expressly denies that the June 3, 2020 "AMENDMENT TO OPERATING AGREEMENT" is enforceable.

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

ANSWER: To the extent a response is required, Exhibit C to Plaintiffs' Complaint purports to be a copy of the June 2, 2020 Amendment to Davis Auto's Operating Agreement.

NOT ORIGINAL

DOCUMENT

PM

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

ANSWER: Denied on the basis that Hayden failed to make certain capital contributions required under Davis Auto's Operating Agreement, and thus never became a member of Davis Auto.

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

ANSWER: The allegation set forth in Paragraph 25 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto denies that the Estate of Jack T. Wells ("Estate") is 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.

ANSWER: The allegation set forth in Paragraph 26 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto denies that Hayden, Wells, and the Estate are or were members of Davis Auto.

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

ANSWER: Davis Auto admits the allegation set forth in Paragraph 27 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto admits the allegation set forth in Paragraph 28 of Plaintiffs' Complaint.

NOT ORIGINAL

DOCUMENT

PM

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

ANSWER: Davis Auto admits the allegation set forth in Paragraph 29 of Plaintiffs' Complaint.

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.

ANSWER: The allegations set forth in Paragraph 30 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto's Operating Agreement speaks for itself.

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

ANSWER: Davis Auto admits the allegation set forth in Paragraph 31 of Plaintiffs' Complaint.

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

ANSWER: Denied on the basis that Hayden failed to make certain capital contributions required under Davis Auto's Operating Agreement and thus has never held a membership interest in Davis Auto.

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

ANSWER: Denied.

NOT ORIGINAL

DOCUMENT

PM

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

ANSWER: Davis Auto admits the allegation set forth in Paragraph 34 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto denies the allegation set forth in Paragraph 35 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto denies the allegation set forth in Paragraph 36 of Plaintiffs' Complaint.

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.

ANSWER: Davis Auto denies the allegation set forth in Paragraph 37 of Plaintiffs' Complaint.

38. Davis is the sole shareholder of EQ Reinsurance.

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 38 of Plaintiffs' Complaint.

39. Hayden has never been a shareholder of EQ Reinsurance.

NOT ORIGINAL

DOCUMENT

PM

11/19/2024 07:01:57

OWENSBOROTIMES

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 39 of Plaintiffs' Complaint.

40. Wells has never been a shareholder of EQ Reinsurance.

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 40 of Plaintiffs' Complaint.

41. The Estate has never been a shareholder of EQ Reinsurance.

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 41 of Plaintiffs' Complaint.

42. While manager of Davis Auto, Davis directed Davis Auto to conduct business with EQ Reinsurance.

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 42 of Plaintiffs' Complaint.

43. EQ Reinsurance received benefits from Davis Auto.

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 43 of Plaintiffs' Complaint, and therefore must deny the same. Moreover, the term "benefits" is vague and undefined. Without further clarification, Davis Auto must deny that it conferred "benefits" to EQ Reinsurance.

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.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegations set forth in Paragraph 44 of Plaintiffs' Complaint, and therefore must deny the same.

NOT ORIGINAL

DOCUMENT

PM

Moreover, because neither Hayden, Wells, nor the Estate are or were qualifying members of Davis

Auto, none are or were entitled to notification regarding Davis Auto business.

OWENSBOROTIMES

45. Hayden, Wells, or the Estate never consented to EQ Reinsurance conducting business with and/or receiving a benefit from Davis Auto.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegations set forth in Paragraph 45 of Plaintiffs' Complaint, and therefore must deny the same. Moreover, because neither Hayden, Wells, nor the Estate are qualifying members of Davis Auto, their consent is not and was not required for Davis Auto to conduct business.

46. Davis is the sole member of EQ Business.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegation set forth in Paragraph 46 of Plaintiffs' Complaint, and therefore must deny the same.

47. Hayden has never been a member of EQ Business.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegation set forth in Paragraph 47 of Plaintiffs' Complaint, and therefore must deny the same.

48. Wells has never been a member of EQ Business.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegation set forth in Paragraph 48 of Plaintiffs' Complaint, and therefore must deny the same.

49. The Estate has never been a member of EQ Business.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegation set forth in Paragraph 49 of Plaintiffs' Complaint, and therefore must deny the same.

50. While manager of Davis Auto, Davis directed Davis Auto to conduct business with EQ Business.

NOT ORIGINAL

DOCUMENT

PM

ANSWER: Davis Auto admits it leased certain equipment from EQ Business, but denies the existence of an ongoing business relationship as Paragraph 50 of Plaintiffs' Complaint suggests.

51. EQ Business received benefits from Davis Auto.

ANSWER: Davis Auto lacks sufficient knowledge and information to confirm or deny the allegation set forth in Paragraph 51 of Plaintiffs' Complaint, and therefore must deny the same. Moreover, the term "benefits" is vague and undefined. Without further clarification, Davis Auto must deny that it conferred "benefits" to EQ Business.

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.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegations set forth in Paragraph 52 of Plaintiffs' Complaint, and therefore must deny the same. Moreover, because neither Hayden, Wells, nor the Estate are or were qualifying members of Davis Auto, none are or were entitled to notification regarding Davis Auto business.

53. Hayden, Wells, or the Estate never consented to EQ Business conducting business with and/or receiving a benefit from Davis Auto.

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegations set forth in Paragraph 53 of Plaintiffs' Complaint, and therefore must deny the same. Moreover, because neither Hayden, Wells, nor the Estate are qualifying members of Davis Auto, their consent is not required for Davis Auto to conduct business.

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;

NOT ORIGINAL

DOCUMENT

PM

12/10/2024 07:01:57

OWENSBOROTIMES

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

ANSWER: Davis Auto denies the allegations set forth in Paragraph 54 of Plaintiffs' Complaint.

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.

ANSWER: Davis Auto denies the allegations set forth in Paragraph 55 of Plaintiffs' Complaint.

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.

ANSWER: Davis Auto denies the allegations set forth in Paragraph 56 of Plaintiffs' Complaint.

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").

ANSWER: The June 6, 2024 correspondence referenced in Paragraph 57 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

58. A true and accurate copy of the correspondence is attached as Exhibit D.

NOT ORIGINAL

DOCUMENT

PM

ANSWER: To the extent a response is required, Exhibit D to Plaintiffs' Complaint purports to be a copy of formal correspondence from counsel for Plaintiffs' to Davis Auto and Ray Davis, dated June 6, 2024.

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);
- 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."

ANSWER: The July 5, 2024 correspondence referenced in Paragraph 59 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

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

ANSWER: To the extent a response is required, Exhibit E to Plaintiffs' Complaint purports to be formal correspondence from counsel for Ray Davis to counsel for Plaintiffs, dated July 5, 2024.

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."

NOT ORIGINAL

DOCUMENT

PM

ANSWER: Davis Auto denies the allegation set forth in Paragraph 61 of Plaintiffs' Complaint. 12/10/2024 07:01:57

OWENSBOROTIMES

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.

ANSWER: Davis Auto denies the allegations set forth in Paragraph 62 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto lacks sufficient knowledge and information regarding the allegation set forth in Paragraph 63 of Plaintiffs' Complaint, and therefore must deny the same.

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").

ANSWER: The October 9, 2024 correspondence referenced in Paragraph 64 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

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

ANSWER: To the extent a response is required, Exhibit F to Plaintiffs' Complaint purports to be a copy of correspondence from counsel for Plaintiffs' to counsel for Ray Davis, dated October 9, 2024.

AACO : 000014 of 000029

NOT ORIGINAL

DOCUMENT

PM

12/10/2024 07:01:57

OWENSBOROTIMES

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").

ANSWER: The October 9, 2024 correspondence referenced in Paragraph 66 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

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

ANSWER: To the extent a response is required, Exhibit G to Plaintiffs' Complaint purports to be a copy of correspondence from counsel for Plaintiffs to counsel for Ray Davis, dated October 9, 2024.

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

ANSWER: The October 18, 2024 correspondence referenced in Paragraph 68 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

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

ANSWER: To the extent a response is required, Exhibit H to Plaintiffs' Complaint purports to be a copy of formal correspondence from counsel for Ray Davis to counsel for Plaintiffs, dated October 18, 2024.

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.

ANSWER: The October 18, 2024 correspondence referenced in Paragraph 70 of Plaintiffs' Complaint speaks for itself, and thus no response is required.

NOT ORIGINAL

DOCUMENT

PM

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

ANSWER: Davis Auto denies the allegations set forth in Paragraph 71 of Plaintiffs' Complaint.

72. Hayden and the 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.

ANSWER: The allegations set forth in Paragraph 72 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: Davis Auto denies the allegations set forth in Paragraph 73 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto denies the allegations set forth in Paragraph 74 of Plaintiffs' Complaint.

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

DOCUMENT

PM

12/10/2024 07:01:57

OWENSBOROTIMES

ANSWER: Davis Auto's Operating Agreement speaks itself, and thus no response is required. Davis Auto denies that there are any valid amendments to the original Operating Agreement.

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.

ANSWER: Davis Auto denies the allegations set forth in Paragraph 76 of Plaintiffs' Complaint.

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

ANSWER: Davis Auto incorporates its Answers to all preceding Paragraphs as if set forth fully 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, faire dealing, loyalty, and due care.

ANSWER: The allegations set forth in Paragraph 78 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies that Hayden and the Estate are among its members.

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.

ANSWER: The allegations set forth in Paragraph 79 of Plaintiffs' Complaint constitute legal conclusions to which no response is required.

NOT ORIGINAL

DOCUMENT

PM

12/10/2024 07:01:57

80. Davis breached his fiduciary duties.

ANSWER: The allegation set forth in Paragraph 80 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto denies that Ray 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.

ANSWER: The allegations set forth in Paragraph 81 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. The extent a response is required, Davis Auto denies the same.

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

ANSWER: Davis Auto incorporates its Answers to all preceding Paragraphs as if set forth fully herein.

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

ANSWER: The allegations set forth in Paragraph 83 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: The allegations set forth in Paragraph 84 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

AAO : 000018 of 000029

NOT ORIGINAL

DOCUMENT

PM

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.

ANSWER: The allegations set forth in Paragraph 85 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: Davis Auto incorporates its Answers to all preceding Paragraphs as if set forth fully 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.

ANSWER: The allegation set forth in Paragraph 87 of Plaintiffs' Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: The allegations set forth in Paragraph 88 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

NOT ORIGINAL

DOCUMENT

PM

12/10/2024 07:01:57

OWENSBOROTIMES

ANSWER: The allegations set forth in Paragraph 89 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: Davis Auto incorporates its Answers to all preceding Paragraphs as if set forth fully 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.

ANSWER: The allegations set forth in Paragraph 91 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: The allegations set forth in Paragraph 92 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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.

ANSWER: Davis Auto denies the allegations set forth in Paragraph 93 of Plaintiffs' Complaint.

NOT ORIGINAL

DOCUMENT

PM

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.

ANSWER: Paragraph 94 of Plaintiffs' Complaint contains no factual allegations, and instead constitutes a request directed to the Court. Therefore, no response is required.

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

ANSWER: Davis Auto incorporates its Answers to all preceding Paragraphs as if set forth fully herein.

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

ANSWER: The allegations set forth in Paragraph 96 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

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

ANSWER: The term "benefitted," as used in Paragraph 97 of Plaintiffs' Complaint, is vague and undefined. Without further clarification, Davis Auto must deny that Ray Davis, EQ Business, and EQ Reinsurance "benefitted from Davis Auto."

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

ANSWER: The allegations set forth in Paragraph 98 of Plaintiffs' Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Davis Auto denies the same.

NOT ORIGINAL

DOCUMENT

AFFIRMATIVE AND OTHER DEFENSES

12/10/2024 07:01:57

PM

Until Davis Auto avails itself of discovery, it cannot determine whether certain defenses will be asserted at trial. The foregoing defenses, however, are asserted to preserve Davis Auto's right to assert them at trial, or before, and to give notice of its intention to assert said defenses and to avoid waiver of the same.

1. Plaintiffs' Complaint, in whole or in part, fails to a claim or cause of action upon which relief may be granted.

2. Plaintiffs lack standing to bring their Complaint.

3. Plaintiffs have failed to join all necessary and indispensable parties.

4. Plaintiffs' claims are barred by the equitable doctrines of estoppel, acquiescence, laches, merger, waiver, unclean hands, statute of frauds, misrepresentation, release, payment, accord and satisfaction, acceptance of payment, and failure of consideration.

5. Plaintiffs have suffered no damages.

6. Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations and of repose.

7. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to mitigate damages.

8. Plaintiffs' claims are barred, in whole or in part, because they are not qualifying members of Davis Auto, and thus are not owed fiduciary duties as alleged in Plaintiffs' Complaint.

9. Plaintiffs have failed to allege harm that is individual in nature, separate and distinct from any alleged harm suffered by Davis Auto.

10. Plaintiffs initiated this suit in bad faith, and with a blatant disregard for Davis Auto's best interest.

NOT ORIGINAL

DOCUMENT

PM

12/16/2024 07:01:57

OWENSBOROTIMES

11. Davis Auto pleads each and every defense, including all affirmative defenses, set forth in CR 8.03 as if set forth fully herein.

12. Davis Auto incorporates by reference each and every affirmative defense set forth in CR 12.02 which discovery may reveal to be applicable.

13. Davis Auto reserves the right to assert any and all additional defenses as may be discovered during the court of discovery and investigation.

14. Davis Auto asserts any and all applicable defenses provided by state law.

15. Any allegation of Plaintiffs' Complaint that is not expressly admitted is denied.

PRAYER FOR RELIEF

WHEREFORE, Davis Auto respectfully requests:

- A. That Plaintiffs' Complaint be dismissed in its entirety, with prejudice;
- B. That Plaintiffs are required to pay all costs, expenses, and reasonable attorneys' fees incurred by Davis Auto defending against Plaintiffs' claims, including any post and/or pre-judgment interest thereon;
- C. For a trial by jury on all issues so triable; and
- D. Any and all further relief to which Davis Auto may be entitled.

NOT ORIGINAL

DOCUMENT

COUNTERCLAIMS

12/10/2024 07:01:57

PM

Defendant/Counterclaim-Plaintiff, Davis Auto Group, LLC (“Davis Auto”), states as follows for its Counterclaim against Plaintiffs/Counterclaim-Defendants, Matthew Hayden (“Hayden”) and the Estate of Jack T. Wells (the “Wells Estate”):

1. On February 24, 2020, Jerry Ray Davis, Jr. (“Jerry Ray Davis”), Hayden, and Jack T. Wells, executed the “Operating Agreement of Davis Auto Group LLC – A Kentucky Limited Liability Company” (the “Operating Agreement”). *See* Operating Agreement, dated February 24, 2020 (attached as “Exhibit 1”). Generally, the Operating Agreement sets forth each putative member’s respective obligations and duties owed to Davis Auto.

2. Article IV, Section 4.1, provides that “[e]ach Member agrees to make the following initial capital contributions to [Davis Auto]:

- a. Jerald Ray Davis to contribute \$500,000.00 in exchange for a 60% majority interest in Davis Auto;
- b. Jack T. Wells to contribute \$1,450,000.00 in exchange for a 20% interest; and
- c. Matthew R. Hayden to contribute \$1,450,000.00 in exchange for a 20% interest.

3. Hayden has failed to make a full capital contribution of \$1,450,000.00 as required by Article IV, Section 4.1, of the Operating Agreement.

4. During his lifetime, Jack T. Wells (“Wells”), similarly failed to make a full capital contribution of \$1,450,000.00 as required by Article IV, Section 4.1, of the Operating Agreement.

5. To date, the Wells Estate has not fulfilled Wells’ outstanding financial obligation to Davis Auto.

NOT ORIGINAL

DOCUMENT

PM

11/20/2024 07:01:57

OWENSBOROTIMES

6. On May 28, 2020, Jerry Ray Davis – acting in his capacity as Davis Auto’s Manager – executed a “Floorplan Financing and Security Agreement” with Santander Bank, N.A. (“Santander”). *See* Dealership Financing Agreement (attached as “Exhibit 2”).

7. Per its terms, Santander extended Davis Auto an \$11,000,000 credit facility for the purpose of purchasing new and used vehicles for eventual sale in the normal course of business – repayment personally guaranteed by Jerry Ray Davis.

8. Less than a week later, Hayden and Wells demanded that Jerry Ray Davis execute an amendment to Davis Auto’s Operating Agreement (the “Amendment”). *See* Amendment to Operating Agreement, executed June 3, 2020 (attached as “Exhibit 3”)

9. As reflected in the Amendment, Hayden and Wells unilaterally decided that Davis Auto’s “allocation of ownership [was] disproportionate to the cash contributed” by its purported members, and that Jerry Ray Davis should contribute an additional \$3,850,000 of his own funds “in order for the capitalization and ownership to be proportionate.” *Id.* at 2.

10. Notwithstanding Hayden and Wells’ demand for additional capital investment from Jerry Ray Davis, his obligations to and ownership interest in Davis Auto under the Operating Agreement remained exactly the same.

11. Upon information and belief, Hayden and Wells threatened to breach the Operating Agreement and withdraw their initial capital investments if Jerry Ray Davis did not agree to execute the Amendment.

12. Wishing to avoid a situation in which Davis Auto failed before getting off the ground, and having already personally guaranteed repayment of the \$11,000,000 loan from Santander, Jerry Ray Davis had no choice but to accept the lesser of two evils, even though the demand was based on misrepresentations and made without due consideration.

NOT ORIGINAL

DOCUMENT

12/10/2024 07:01:57

PM

COUNT I
(Breach of Operating Agreement)

OWENSBOROTIMES

13. Davis Auto restates and incorporates by reference the foregoing Paragraphs as if set forth fully herein.

14. By failing to satisfy their respective obligations to capitalize Davis Auto, Hayden and the Wells Estate have breached the Operating Agreement.

15. As a direct and proximate result of Hayden and Wells' breach, Davis Auto has suffered harms for which it is entitled to compensatory damages, the exact amount of which will be determined at trial.

COUNT II
(Declaratory Judgment – Lack of Consideration)

18. Davis Auto restates and incorporates by reference the foregoing Paragraphs as if set forth fully herein.

19. The Operating Agreement is a contract. As such, any amendment to the Operating Agreement must be made with due consideration. *Vinaird v. Bodkin's Adm'x*, 72 S.W.2d 707, 711 (Ky. 1934) (citations omitted) (“[G]enerally a new consideration is required in order for an attempted modification of a contract to be valid.”).

20. Jerry Ray Davis and Davis Auto received no “new consideration” under the purported-Amendment to the Operating Agreement, in exchange for Jerry Ray Davis's promise to provide an additional capital contribution to Davis Auto.

21. Accordingly, Davis Auto respectfully requests that this Court enter a judgment in its favor – pursuant to CR 57 – declaring that the purported Amendment to its Operating Agreement is invalid as a matter of law.

AAO : 000026 of 000029

NOT ORIGINAL

DOCUMENT

12/10/2024 07:01:57

PM

COUNT III
(Declaratory Judgment – Duress in the Inducement)

OWENSBOROTIMES

22. Davis Auto restates and incorporates by reference the foregoing Paragraphs as if set forth fully herein.

23. The Operating Agreement is a contract. Contracts are avoidable when induced under duress. *See Fears v. United Loan & Deposit Bank*, 189 S.W. 226, 232 (Ky. 1916) (holding that duress in the inducement of a contract may be found to exist “where one, by the unlawful act of another, is induced to make a contract or perform some act under circumstances which deprive him of the exercise of his free will.”).

24. As described in Paragraphs 8-12 of this Counterclaim, Jerry Ray Davis was coerced by Hayden and Wells to execute the purported-Amendment to Davis Auto’s Operating Agreement, or suffer the consequences of Hayden and Well’s threat to breach the Operating Agreement by withdrawing their capital investments, effectively crippling Davis Auto and, by extension, causing Jerry Ray Davis to default on scheduled loan repayments to Santander.

25. Accordingly, Davis Auto respectfully requests that this Court enter a judgment – pursuant to CR 57 – declaring that Jerry Ray Davis was coerced to execute the purported-Amendment under duress, and that the purported-Amendment is void, or avoidable, as a matter of law.

WHEREFORE, Davis Auto respectfully requests the following relief:

- A. A judgment in favor of Davis Auto awarding it all compensatory damages prayed for herein, including pre-judgment and post-judgment interest;
- B. Declaratory relief as described herein;
- C. An award of Davis Auto’s costs, including its reasonable attorneys’ fees;
- D. Any and all further relief as the Court may deem just and equitable; and
- E. A jury trial on all issues triable.

NOT ORIGINAL

DOCUMENT

PM

Respectfully submitted,

12/10/2024 07:01:57

/s/ Garret B. Stone

Benjamin J. Lewis (KBA No. 93491)

Garret Stone (KBA No. 99707)

DENTONS BINGHAM GREENEBAUM LLP

3500 PNC Tower

101 South Fifth Street

Louisville, Kentucky 40202

(502) 587-3654

ben.lewis@dentons.comgarret.stone@dentons.com

COUNSEL FOR DEFENDANT/
COUNTERCLAIM-PLAINTIFF,
DAVIS AUTO GROUP LLC

OWENSBOROTIMES

NOT ORIGINAL

DOCUMENT

CERTIFICATE OF SERVICE

12/10/2024 07:01:57

PM

It is hereby certified that a true and correct copy of the foregoing was electronically filed with the Court this 20th day of November, 2024, which will notify the following:

Karey L. Cain
ZIEMER, STAYMAN, WEITZEL & SHOULDERS, LLP
20 N.W. First Street, 9th Floor
P.O. Box 916
Evansville, Indiana 47706-0916
kcain@zsws.com

COUNSEL FOR PLAINTIFFS/
COUNTERCLAIM DEFENDANTS

Kyle G. Bumgarner
Colton W. Givens
KERRICK BACHERT PSC
1411 Scottsville Road
P.O. Box 9547
Bowling Green, Kentucky 42104
Phone: (270) 782-8160
Fax: (270) 782-5856
kbumgarner@kerricklaw.com
cgivens@kerricklaw.com

COUNSEL FOR DEFENDANTS,
JERRY RAY DAVIS,
EQ BUSINESS SERVICES, and
EQ GROUP REINSURANCE, LLC

/s/ Garret B. Stone

COUNSEL FOR DEFENDANT/
COUNTERCLAIM-PLAINTIFF,
DAVIS AUTO GROUP, LLC

AACO : 000029 of 000029