

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

GREGORY KLEIN, D.M.D., derivatively as shareholder of
GALLOWAY DENTAL, P.C.,

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

EDWIN WILEY, D.M.D., individually and as shareholder
of GALLOWAY DENTAL, P.C., and SALLY WILEY,
individually.

Defendants.

Plaintiff GREGORY KLEIN, D.M.D. ("KLEIN"), derivatively as shareholder of
GALLOWAY DENTAL, P.C. ("GALLOWAY") by and through his attorney, LAW OFFICE
OF NICOLE DINOS GERACE, hereby alleges as follows:

PARTIES

1. Plaintiff KLEIN is an individual residing at 128 Hillside Drive, Hamburg, New Jersey 07419. KLEIN is a fifteen percent (15%) shareholder in GALLOWAY and was a 15% shareholder at all times during the transactions complained of herein.

2. Upon information and belief, Defendant EDWIN WILEY, D.M.D. ("WILEY") is an individual residing at 10 Dekay Road, Vernon, New Jersey 07462 and is an eighty-five percent (85%) shareholder in GALLOWAY.

3. Upon information and belief, GALLOWAY is a New York domestic professional corporation formed by WILEY on August 3, 2007 for the purpose of operating a dental practice at 66 Galloway Road, Warwick, New York.

4. Defendant SALLY WILEY (“SALLY”) is an individual residing at 10 Dekay Road, Vernon, New Jersey 07462. SALLY is the wife of WILEY and an employee and authorized agent of GALLOWAY.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

5. At all times hereinafter mentioned, the board of directors of GALLOWAY consisted solely of WILEY.

6. Upon information and belief, from its inception, the affairs of GALLOWAY and/or the disposition of its income and assets were solely under the dominion and control of and conducted by Defendants WILEY and SALLY.

7. At all times hereinafter mentioned, WILEY was the sole officer of GALLOWAY.

8. On January 1, 2008 KLEIN entered into an Employment Agreement (“Employment Agreement”) and a Stock Option Plan Agreement (“Stock Option”) with GALLOWAY.

9. The Stock Option provided KLEIN the right to purchase 150 shares of GALLOWAY at \$709.50 per share on September 1, 2008.

10. On September 1, 2008 KLEIN exercised his option to purchase 150 shares in GALLOWAY and tendered the required sum required by the Stock Option, thereby becoming a fifteen percent (15%) owner in GALLOWAY.

11. On September 1, 2018 KLEIN also entered into a Shareholder’s Agreement (“Shareholder’s Agreement”) with GALLOWAY and WILEY.

12. Paragraph 2(c) of the Shareholder’s Agreement provided that “[t]he corporation shall not have any debt on the date of execution of this Agreement. In the event the Corporation

has debt on the date of execution of this Agreement such debt shall be satisfied by WILEY at no cost to KLEIN.”

13. Throughout the course of his employment with GALLOWAY, KLEIN was a dedicated employee and always put the interest of GALLOWAY ahead of his own interests.

14. KLEIN often worked without compensation and in 2012 when WILEY became disabled and ceased practicing, KLEIN carried the practice alone, although WILEY and SALLY continued to manage GALLOWAY’s business and financial affairs.

15. KLEIN became very suspicious of excessive expenditures being made from the GALLOWAY and requested on numerous occasions to inspect the books and records of GALLOWAY, which requests were repeatedly denied.

16. Although not provided full access to the books and records, what KLEIN did discover from the limited information and documentation accessible to him was shocking and revealed that Defendants committed various wrongful acts of company mismanagement; wasted company assets and/or converted and/or wrongfully taken company assets to their own benefit, squandered company assets and/or opportunities and, in some instances, have conveyed the assets of the company to another company wholly owned and operated by WILEY and SALLY; refused to act in the company's best interest; committed acts of misfeasance and nonfeasance; engaged in acts of self-dealing with company assets; and have otherwise acted negligently and in a grossly negligent manner with respect to the discharge of their individual and collective duties to the company and plaintiff, individually, thereby reducing its income, increasing its actual and/or contingent liabilities and devaluing its assets and thereby damaging the company and the plaintiff, individually.

17. In short, it became clear that WILEY and SALLY were using corporate funds as their personal piggy bank and incurring substantial personal debt in the name of the corporation and had been doing so for years.

18. The limited records obtained demonstrated that WILEY and SALLY:

- a. Regularly paid personal expenses with GALLOWAY funds;
- b. Paid excess compensation to family members;
- c. Paid compensation in the form of wages to family members that were not actually working for GALLOWAY;
- d. Paid excess rental payments to Warwick Gardens, LLC, a company wholly owned by WILEY;
- e. Incurred excessive personal debt in the name of the corporation;
- f. Mismanaged corporate affairs thereby plunging GALLOWAY into substantial debt;
- g. Filed fraudulent tax returns;
- h. Authorized employees to pay personal expenses with Corporate funds.

19. For example, a brief review of the limited financial records obtained indicate that for a two-and-a-half-year period, from January 1, 2016 through July 31, 2018, GALLOWAY paid nearly \$400,000 in credit card bills incurred for personal use and made payments to family members categorized as “payroll” totaling nearly \$350,000.

20. On September 4, 2018 WILEY sold GALLOWAY for the purchase price of \$800,000. To date, WILEY has failed to account for the sale proceeds and KLEIN has only received a small portion of the proceeds due to him in the amount of \$30,000.

21. It is imperative that WILEY and SALLY account for the funds improperly expended for personal use, return funds improperly diverted to WILEY and his family for personal use to GALLOWAY, and pay KLEIN the value of his 15% shareholder interest.

22. Demand for the relief sought herein was not made upon the corporation as such demand would clearly be futile in light of the extensive self-dealing conducted by WILEY who is the sole officer and sole member of the board of directors of GALLOWAY.

FIRST CAUSE OF ACTION
(Accounting)

23. Plaintiff repeats and realleges each allegation set forth above.

24. Defendant, as majority shareholder, sole director and sole officer of GALLOWAY, owes Plaintiff and GALLOWAY a fiduciary duty with respect to the business affairs and operations.

25. As a result of the fiduciary duty owed to Plaintiff, Plaintiff as shareholder of GALLOWAY is entitled to an accounting with respect to GALLOWAY.

26. Plaintiff has previously demanded such an accounting, but Defendant has refused to provide same.

27. Upon information and belief, Defendant has refused to turn over business records and failed to provide an accounting so as to conceal Defendant's wrongful acts in derogation of Plaintiff's rights.

28. An accounting is necessary to determine Plaintiff's monetary damages and in order to determine the true full information account the financial affairs of GALLOWAY.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

29. Plaintiff repeats the allegations set forth above herein.

30. Defendant, as majority shareholder, sole director, and sole officer, owes Plaintiff a fiduciary duty with respect to the business operations and affairs. Defendant has committed misconduct with respect to the fiduciary duty owed to Plaintiff by inter alia, engaging in self-dealing, using corporate funds for personal expenditures, causing GALLOWAY to incur excessive debt, mismanaging and failing to properly oversee the operations and affairs of GALLOWAY, and paying excess compensation to Defendant WILEY's family members.

31. Such misconduct by Defendant includes violation of Defendant's duty of care, duty of loyalty, duty of honest and by self-dealing with respect to his management of GALLOWAY.

32. Plaintiff has been directly damaged as a result of such misconduct by Defendant in an amount to be determined at trial.

THIRD CAUSE OF ACTION
(Aiding and Abetting Breach of Fiduciary Duty)

33. Plaintiff repeats every allegation set forth above herein.

34. Defendant, as majority shareholder, sole director, and sole officer, owes Plaintiff a fiduciary duty with respect to the business operations and affairs.

35. Defendant, with the assistance of and enabling by Defendant SALLY, has committed misconduct with respect to the fiduciary duty owed to Plaintiff by inter alia, engaging in self-dealing, using corporate funds for personal expenditures, causing GALLOWAY to incur excessive debt, mismanaging and failing to properly oversee the operations and affairs of

GALLOWAY, and paying excess compensation to Defendant WILEY's family members, including SALLY.

36. SALLY's actions in aiding and abetting WILEY's breach of fiduciary duty resulted in substantial damages to Plaintiff in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
(Fraud)

37. Plaintiff repeats every allegation set forth above herein.

38. On information and belief, WILEY has filed fraudulent tax returns or made fraudulent filings with respect to Federal, State and/or local taxes with respect to GALLOWAY.

39. On information and belief, in making or filing these fraudulent tax returns or tax filings, Defendant KLEIN has presented the governmental entities with false representations of material facts regarding the financial affairs of GALLOWAY.

40. On information and belief, WILEY had knowledge that such representations were false.

41. Plaintiff reasonably relied on Defendant WILEY as majority shareholder and president of the corporation to provide reasonably and materially accurate information in connection with the filing of tax returns and/or other tax filings.

42. Said reasonable reliance by Plaintiff was justified in that Defendants had a fiduciary relationship and superior knowledge with respect to the management of GALLOWAY and the filing of appropriate tax returns and/or other filings.

43. As shareholder of GALLOWAY, Plaintiff is damaged by the filing of fraudulent tax returns and/or other fraudulent tax filings with respect to GALLOWAY.

FIFTH CAUSE OF ACTION
(Unjust Enrichment)

44. Plaintiff repeats each allegation set forth above herein.

45. By engaging in self-dealing and misappropriating corporate funds for personal use, Defendants were enriched at the expense of Plaintiff.

46. It would be against equity and good conscience to permit Defendants to retain the fruits of their unjust enrichment.

47. As a result of Defendants' unjust enrichment, Plaintiff has been damaged in an amount to be proved at trial, which shall include pre- and post- judgment interest on the sums unjustly obtained by Defendants.

SIXTH CAUSE OF ACTION
(Constructive Trust)

48. Plaintiff repeats each allegation set forth above herein.

49. Plaintiff has sufficiently alleged that Defendant breached his fiduciary duty to GALLOWAY and KLEIN, that Defendants have converted funds, and have been unjustly enriched.

50. The foregoing allegations warrant the imposition of a constructive trust on the assets of Defendants to preserve said funds to satisfy a potential award to Plaintiff.

SEVENTH CAUSE OF ACTION
(Common Law Embezzlement and Misappropriation of Funds)

51. Plaintiff repeats each allegation set forth above herein.

52. As majority shareholder, sole officer, and sole member of the board of directors of GALLOWAY, WILEY was entrusted with care of funds belonging to GALLOWAY.

53. Further, as an employee and authorized agent of GALLOWAY, SALLY was entrusted with funds belonging to GALLOWAY.

54. Defendants' use of corporate funds to pay personal expenses, and expenses unrelated to the operation of GALLOWAY was larcenous.

55. As a result of Defendants' larcenous actions and misappropriation of corporate funds, Plaintiff has been damaged in an amount to be determined at trial.

EIGHTH CAUSE OF ACTION
(Attorney's Fees)

56. Plaintiff repeats each allegation set forth above herein.

57. Paragraph 37 of the Shareholders Agreement provides that "[i]n the event that any dispute arises between the parties, and regardless of whether the dispute is litigated or arbitrated, the prevailing party shall be entitled to receive reasonable attorneys' fees and repayment for all costs incurred in connection with such dispute..."

58. Plaintiff has incurred and continues to incur attorneys' fees and costs in connection with the within dispute.

59. As such, Plaintiff is entitled to an award of reasonable attorneys' fees and repayment of all costs in an amount to be determined at trial.

WHEREFORE, Plaintiff respectfully requests a judgment against Defendants as follows:

- (a) An accounting for any and all monies obtained by Defendants which were rightfully the property of GALLOWAY;
- (b) Judgment in an amount to be determined at trial, including compensatory and punitive damages;
- (c) Pre- and post-judgment interest, to the fullest extent permitted by law;
- (d) Reasonable attorneys' fees, costs, and expenses;

(e) Such other relief as the Court may deem just and proper.

Dated: July 21, 2019

LAW OFFICE OF NICOLE DINOS GERACE, LLC

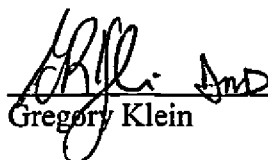


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VERIFICATION

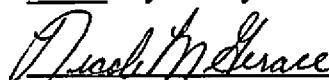
STATE OF NEW YORK)
) ss:
COUNTY OF ORANGE)

GREGORY KLEIN, being duly sworn, deposes and states: I am a Plaintiff in this proceeding. I have read the foregoing Verified Complaint and know the contents thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.



Gregory Klein

Sworn to before me on this
21st day of July 2019



Notary Public

NICOLE MARIE GERACE
NOTARY PUBLIC-STATE OF NEW YORK
No. 02GE6213726 *ORANGE*
Qualified In ~~Westchester~~ County
My Commission Expires January 09, 2022