

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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QUATTRO PARENT LLC, :

Plaintiff/Counterclaim Defendant, :

- against - : Index No. 651555/2017

ZAKI RAKIB, :

Defendant/Counterclaim Plaintiff. :

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STATE OF NEW YORK }  
} ss.:  
COUNTY OF NASSAU }

Michael J. Garibaldi, being duly sworn, deposes and states as follows:

1. I am the President of Garibaldi, Inc. (The "Firm"), a firm of certified public accountants and related professionals doing business as The Garibaldi Group, maintaining offices at 990 Stewart Avenue, Garden City, New York 11530. I am a certified public accountant (CPA), and recognized as a Chartered Global Management Accountant (CGMA) by the American Institute of Certified Public Accountants and Association of International Certified Public Accountants (AICPA). I am also an Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF). I am the officer in charge of the Firm's Law Firm Services, Business Valuation and Forensic Accounting Group. A portion of our practice is devoted to providing business valuation and forensic accounting expertise in business matters. A copy of my curriculum vitae is annexed (Exhibit A) hereto setting forth my qualifications as an expert for this type of engagement.

2. I have frequently been called upon to testify and provide expert opinion in matters involving business valuation and forensic accounting. I have been qualified as an expert witness on valuation and accounting matters in the New York State Supreme Courts of Nassau, Suffolk, Kings, Queens, Orange, Richmond, Westchester and New York counties; the New Jersey State Supreme Court of Monmouth County; and have been called-upon by the courts to serve as a neutral Expert. I have lectured extensively on the subjects of business valuation, accounting, fraud, management, and litigation matters, and have taught my specialty to other professionals. I have extensive experience in business valuation and forensic accounting matters, damages, fraud, and fraud audits, including the disposition and whereabouts of hidden assets. I have valued many closely held businesses for the purpose of shareholder litigation, acquisition, sale, estate tax and estate planning, buy/sell agreements, damages, financial planning, arbitration and equitable distribution. I have been retained as an expert to investigate, appraise and value the minority and controlling interests in closely held businesses in the aforementioned counties.

3. Additionally, I am a member of the American Institute of Certified Public Accountants (AICPA), the New York State Society of Certified Public Accountants (NYSSCPA), the NYSSCPA-Nassau Chapter, the Institute of Business Appraisers (IBA) and a candidate member of the American Society of Appraisers (ASA). I am also a past-President and a past-member of the Board of Directors of the NYSSCPA-Nassau Chapter, past-Chairman of the NYSSCPA-Nassau Chapter Litigation Support Committee, and a past-member of the American Institute of Certified Public Accountants Business Valuation and Appraisal Subcommittee. I have been a guest speaker and lecturer at various conferences and seminars on issues pertaining to business valuation, fraud, and forensics including the AICPA Certificate of Educational Achievement in Business Valuation program, where I taught my specialty to other professionals.

I have participated in and attended many seminars and lectures on fraud, forensics and business valuation.

4. I have been informed by counsel for Defendant/Counterclaim Plaintiff Zaki Rakib (“Rakib”) that the Court will conduct a trial beginning on February 18, 2020 on the single issue of the damages, if any, that Plaintiff/Counterclaim Defendant Quattro Parent LLC (“Quattro”) may be entitled to based on the Court’s ruling on summary judgment that Rakib is liable to Quattro for breach of a certain Transaction Agreement Relating to the Third Amended Restated Limited Liability Agreement of Quattro Parent LLC (the “Transaction Agreement”) whereby Rakib would purchase 100,000,000 Series A Units of Quattro for a purchase price of USD\$7,500,000.<sup>1</sup>

5. I have reviewed Quattro’s Pretrial Memorandum and understand that Quattro takes the position that the amount of damages, if any, should be determined by subtracting the fair market value in November 2015 (the alleged time of the breach) of the membership interest in Quattro that Rakib was to purchase through the Transaction Agreement from the purchase price agreed to in the Transaction Agreement (*i.e.*, USD\$7,500,000). I have therefore been asked to provide an opinion whether the fair market value of Quattro in November 2015 was more than the USD\$7,500,000 purchase price. Based on Quattro’s presentation of the issue for trial in their Pretrial Memorandum, if the fair market value in November 2015 was greater than USD\$7,500,000, then Quattro is not entitled to damages. If Quattro presents any other theory of damages in their affirmative affidavit testimony or in any other aspect of the trial, I reserve my right to address such theories. In addition, I have not seen Quattro’s affirmative affidavit testimony

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<sup>1</sup> Instances where this affidavit refers to monetary amounts in Brazilian reals are denoted as “BRL.” Instances where monetary amounts are in U.S. dollars are denoted “USD.”

or any other evidence that may be presented by Quattro at trial. I reserve my right to address any such evidence at trial.

6. My professional opinion is that the value of the membership interests was in excess of USD\$7,500,000 at the time of the alleged breach. The basis for my opinion is set forth below.

**The Value of Quattro Parent LLC As Of December 31, 2015**  
**As Reflected On The Audited Financial Statements**

7. I read and reviewed Quattro Parent LLC's Audited Financial Statements as of December 31, 2015 (the "Audited Financial Statements"). (P0024.)

8. The Audited Financial Statements are the company's management's representations regarding the Assets, Liabilities, Income, Expenses, Cash Flows, and relevant disclosures of the entity.

9. The Financial Statements are audited by the accounting firm BDO.

10. An Audit is the highest level of service an accounting firm can provide.

11. An Audit provides reasonable assurance that the financial statements are free from material misstatement.

12. BDO as the Audit Firm, provides assurance that the Financial Statements are free from material misstatement.

13. The Shareholders Equity section of the Balance Sheet in the Audited Financial Statements (QUATTRO\_0000356) reflects the dollar value of the Equity held by the owners of the company.

14. One measure of value is the Book Value of an Entity.
15. One approach to value is the Cost or Asset Based Approach. Book Value is an Asset Based Approach.
16. Book Value is the value of all the assets of the entity, less all of the liabilities of the entity. Book Value is the value of Equity held by the owners of the company.
17. The Audited Financial Statements state that the Book Value of Quattro at December 31, 2015 was BRL\$61,314,000 as of December 31, 2015. Using the conversion rate to convert Brazilian reals to U.S. dollars at the relevant time set forth in Quattro's Pretrial Memorandum of 3.7961, the Book Value of Quattro in its Audited Financial Statements for the period ending December 31, 2015 is USD\$16,151,840.
18. In its Pretrial Memorandum Quattro takes the position that the value of Quattro in November 2015 was zero. In the Audited Financial Statements, there is a presumption that the entity will continue and exist for at least one year past the Balance Sheet date, in this case December 31, 2015, otherwise the Auditors must indicate in the report, by disclosure, that there is a Going Concern issue.
19. A Going Concern issue is the inability of the entity to exist, or there is serious doubt or question that it will be in existence beyond one year. The audit opinion of the accounting firm of BDO protects the reader of the Audited Financial Statements.
20. The Audited Financial Statements and BDO's audit opinion make no mention of any issue with respect to the ability of the Quattro to continue as a Going Concern. The absence

of a Going Concern statement in the Audited Financial Statements is inconsistent with the claim that the value of Quattro was zero at the time the Audited Financial Statements were prepared.

21. According to the Audited Financial Statements, the Value of Equity held by the owners of Quattro was BRL\$61,314,000 as of December 31, 2015. Using the conversion rate set forth in Quattro's Pretrial Memorandum of 3.796, the value of the Equity held by the owners of Quattro was USD\$16,152,265. Using the USD\$16,152,265 value for the total Equity held by the owners of Quattro (*i.e.*, 100%) in 2015, the value of the 59% interest that Rakib was to purchase for the purchase price of USD\$7,500,000 was USD\$9,529,836 in 2015.

22. It must also be considered that in addition to the value of Quattro set forth in the Audited Financial Statements, if the investment contemplated by the Transaction Agreement closed (*i.e.*, if Quattro had received USD\$7,500,000 from Rakib in exchange for 10,000,000 Series A Unites issued by Quattro) the value of Quattro would be UAD\$7,500,000 greater than the value set forth in the Audited Financial Statements. For this reason, any determination of the value of the Series A Units Rakib agreed to purchase must consider this "post-money" value. When this is taken into account, the value of Quattro based on the Audited Financial Statements was USD\$23,652,265, which means that the value of the 59% ownership Rakib would have received in the transaction would have a value of \$USD13,954,836.

**The Value of Quattro Parent LLC As Of December 31, 2015**  
**As Reflected On The Tax Returns**

23. I read and reviewed Quattro's Tax Returns for the Calendar Year Ended December 31, 2015. (P024.)

24. The Tax Returns report the Assets, Liabilities, Income, and Expenses of Quatro.

25. The Tax Returns were prepared by BDO USA LLP.
26. The Tax Returns are signed, “under penalty of perjury” by an Officer of the Company. The Tax Returns read “Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.”
27. The Tax Returns were filed on or around September 14, 2016.
28. The Tax Returns show the dollar value of the Equity held by the owners of Quattro under the caption Partners’ Capital Accounts on page 5, Line 21, section of the Balance Sheet (QUATTRO\_0002145).
29. One measure of Value is the Book Value of an Entity.
30. One approach to Value is the Cost or Asset Based Approach.
31. Book Value is an Asset Based Approach.
32. Book Value is the value of all the assets of the entity less all the liabilities of the entity. Book Value is the value of Equity held by the owners of the company.
33. The Tax Returns state that the Book Value is \$15,479,227 as of December 31, 2015.
34. Therefore, based on Quattro’s own Tax Return filed under penalty of perjury the Value of the Equity held by the owners of Quattro was \$15,479,227, the Book Value of the Equity, as of December 31, 2015. Thus, using the \$15,479,227 value for the total Equity held by the

owners of Quattro (*i.e.*, 100%) in 2015, the value of the 59% interest that Rakib was to purchase for the purchase price of \$7,500,000 was \$9,132,744 in 2015.

35. It must also be considered that in addition to the value of Quattro set forth in the Tax Return, if the investment contemplated by the Transaction Agreement closed (*i.e.*, if Quattro had received USD\$7,500,000 from Rakib in exchange for 10,000,000 Series A Unites issued by Quattro) the value of Quattro would be UAD\$7,500,000 greater than the value set forth in the Tax Return. For this reason, any determination of the value of the Series A Units Rakib agreed to purchase must consider this “post-money” value. When this is taken into account, the value of Quattro based on the Tax Return was USD\$22,979,227, which means that the value of the 59% ownership Rakib would have received in the transaction would have a value of \$USD13,557,743.

#### **The Value Of Quattro Parent LLC Based Upon A Discounted Future Earnings Model**

36. Quattro Parent LLC is the Parent Company of On Telecommunicacoes Ltda. (“On Telecom”).

37. I am told that the Project Wave Confidential Memorandum dated July 2015 (the “Project Wave Presentation”) (D002) was prepared for Quattro by its investment bankers and used by Quattro to solicit potential investors in the second half of 2015 contained Operating and Financial Projections for the subsidiary of Quattro Parent LLC, namely On Telecom.

38. On page 13 of the Project Wave Presentation (ZR0088) there are projections for On Telecom’s Earnings Before Interest Taxes Depreciation and Amortization (“EBITDA”) from 2015 through 2019.

39. EBITDA is a measure of earnings, namely, Earnings Before Interest Taxes Depreciation and Amortization.

40. I ran a Discounted Future Earnings model to calculate the value On Telecom as of 2015, using the EBITDA projections contained in the document.

41. Discounted Future Earnings is an acceptable appraisal methodology that derives a value for a company based on anticipated future earnings of the company. It typically creates a valuation based on the present value as of a specific date – 2015 in this instance – of all the future earnings of the company.

42. Discounted Future Earnings is an accepted appraisal methodology that falls under the category of the Income Approach to value.

43. Discounted Future Earnings is widely used in the investment world.

44. I discounted the EBITDA projections contained in the Project Wave Presentation back to 2015 using a 50% discount rate. This assumes that an investor in Quattro would achieve a 50% return on their investment under this analysis.

45. At ZR0069, an On Telecom New Investor Returns Sensitivity analysis presentation states that the range of returns that investors could expect from an investment in Quattro were from approximately 26% to 44%.

46. By using a 50% investor rate of return, I used a rate greater than the range of rates contained at ZR0069. When conducting a discounted future earnings analysis, the use of a higher

rate of return results in a lower valuation if all other factors remain the same. In other words, the higher the rate the lower the value.

47. To conduct an EBITDA-based discounted cashflow analysis one must determine (or estimate) EBITDA for certain future periods and then estimate the value of the company for all remaining future periods. These figures are then totaled, and discounted back to present value as of a specific point in time (in this case 2015) using an assumed rate of return on investment.

48. In this case, the On Telecom Presentation (ZR0068) indicates that there was a plan to operate On Telecom for a period of 5 years to allow it to become profitable, and then exit the investment (D019). The Project Wave Presentation contains EBITDA projections for the five-year period 2015 through 2019 (D002). The On Telecom Presentation states (ZR0070) that an appropriate sale price for Quattro would be a 10 times multiple of current EBITDA. (D0019). The On Telecom Presentation also states (ZR0019) that investors could expect a return on investment of approximately 26% to 44% (D019). Therefore, to perform my discounted cash flow analysis I used the EBITDA projections contained in the Project Wave Presentation and assumed that the company would be sold at the end of the fifth year for a multiple of 10 times the fifth-year EBITDA. I then totaled those amounts and discounted the total back to its present value as of 2015, using an assumed 50% return on investment.

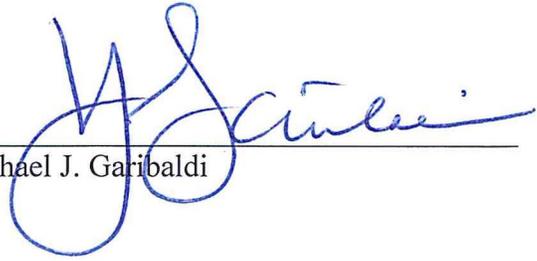
49. The discounted Future Earnings analysis arrived at a value of On Telecom in 2015 is BRL\$98,454,000. Using the conversion rate set forth in Quattro's Pretrial Memorandum of 3.796, the value of the Equity held by the owners of Quattro was USD\$25,936,248. Using the USD\$25,936,248 value for the total Equity held by the owners of Quattro (*i.e.*, 100%) in 2015, the

value of the 59% interest that Rakib was to purchase for the purchase price of USD\$7,500,000 was USD\$15,302,386 in 2015.

50. In Quattro's 2015 tax return, Quattro represented under penalty of perjury that the total value of its equity in 2015 was equal to USD\$818,014 less than the value of its subsidiaries in 2015. Using this same calculation as applied to the discounted Future Earnings value of On Telecom, the value of Quattro (*i.e.*, the value of the total Equity held by the owners of Quattro) in 2015 would be USD\$14,484,372. Thus, using the USD \$14,484,372 value for the total Equity held by the owners of Quattro (*i.e.*, 100%) in 2015, the value of the 59% interest that Rakib was supposed to purchase for the purchase price of USD\$7,500,000 was USD\$8,545,779 in 2015.

51. It must also be considered that in addition to the value of Quattro set forth in the Discounted Future Earnings Analysis, if the investment contemplated by the Transaction Agreement closed (*i.e.*, if Quattro had received USD\$7,500,000 from Rakib in exchange for 10,000,000 Series A Units issued by Quattro) the value of Quattro would be USD\$7,500,000 greater than the value set forth in the Discounted Future Earnings Analysis. For this reason, any determination of the value of the Series A Units Rakib agreed to purchase must consider this "post-money" value. When this is taken into account, the value of Quattro based on the Discounted Future Earnings Analysis was USD\$14,484,372, which means that the value of the 59% ownership Rakib would have received in the transaction would have a value of USD\$12,970,779.

52. The standard when performing a valuation of an entity is to only use information that is known or knowable at the time of the appraisal. The use of information subsequent to the valuation date is inappropriate.



Michael J. Garibaldi

Sworn and subscribed to before me  
this 31st day of January 31, 2020.



Notary Public

**FILOMENA ALBANESE**  
Notary Public, State of New York  
No. 01AL6136110  
Qualified in Nassau County  
Commission Expires October 31, 2021