

ESTTA Tracking number: **ESTTA546866**

Filing date: **07/03/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209647
Party	Defendant Middleburg Real Estate, LLC
Correspondence Address	MICHAEL T MURPHY K & L GATES LLP PO BOX 1135 CHICAGO, IL 60690 UNITED STATES chicago.trademarks@klgates.com, michael.murphy@klgates.com, daniel.hwang@klgates.com
Submission	Other Motions/Papers
Filer's Name	Daniel Hwang
Filer's e-mail	chicago.trademarks@klgates.com, michael.murphy@klgates.com, daniel.hwang@klgates.com
Signature	/Daniel Hwang/
Date	07/03/2013
Attachments	Exhibit_A-Emergency_Motion_Opp_No_91209647.pdf(643399 bytes ) Exhibit_B-Emergency_Motion_Opp_No_91209647.pdf(2159281 bytes ) Exhibit_C-Emergency_Motion_Opp_No_91209647.pdf(285417 bytes ) Emergency_Motion-Opp_No_91209647.pdf(20640 bytes )

# Exhibit A

UNITED STATES DISTRICT COURT
for the
Eastern District of Virginia

Jorge J. Carnicero, Opposer
Plaintiff
v.

Middleburg Real Estate, LLC, Applicant
Defendant

Civil Action No. 91209647

(If the action is pending in another district, state where:
Trademark Trial and Appeal Board)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:
Natalia Pejacevich, an individual

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

N/A

Table with 2 columns: Place (Holland & Knight LLP, 1600 Tysons Boulevard, Suite 700, Tysons Corner, VA 22102) and Date and Time (Thursday, July 11, 2013 @ 3:30 pm)

The deposition will be recorded by this method: Stenographic and audio visual means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

N/A

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 6/28/2013

CLERK OF COURT

N/A

Signature of Clerk or Deputy Clerk

N/A

OR

Handwritten signature of Theresa W. Middlebrook

Attorney's signature

Theresa W. Middlebrook (CA Bar No. 89709)

The name, address, e-mail, and telephone number of the attorney representing (name of party) Jorge J. Carnicero, Opposer, who issues or requests this subpoena, are: Theresa W. Middlebrook, Holland & Knight LLP, 400 South Hope Street, 8th Floor | Los Angeles CA 90071 Email Theresa.Middlebrook@hklaw.com | Phone 213.896.2400 | Fax 213.896.2450

Civil Action No. 91209647 (Trademark Trial and Appeal Board)

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* Natalia Pejacsevich, an individual  
was received by me on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

### Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

#### (c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

##### (2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

##### (3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

#### (d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

##### (2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) *Contempt.* The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

DTA PROCESS SERVICE, INC  
7665 HELMSDALE PL  
MANASSAS, VA 20109

1063  
68-54/514  
BRANCH 77851

June 28, 2013  
Date

Pay to the  
order of

NATALIA PEJACSEVICH

\$ 89.00

eighty nine dollars

.00  
XX

Dollars



Security  
Features  
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**WACHOVIA**

Wachovia Bank, a division of Wells Fargo Bank, N.A.

For

WITNESS/TRAVEL FEES

Melissa Jones

MP

⑆05⑆400549⑆20000534565⑆5⑆ 1063

# Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Serial No.: 85/629,450  
For the Mark: ATOKA PROPERTIES

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Jorge J. Carnicero,

Opposer,

v.

Opposition No. 91/209647

Middleburg Real Estate, LLC

Applicant.

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**MOTION TO STAY THE OPPOSITION AND SUSPEND PROCEEDING PENDING  
OUTCOME OF CIVIL ACTION**

Applicant, Middleburg Real Estate, LLC (“Applicant”), by its undersigned counsel, K&L Gates LLP, respectfully asks that this Opposition be suspended under 37 CFR § 2.117; TMBP § 510.02(a) because the parties to this case are involved in a civil action that may have bearing on the Board case. In particular, disputed ownership of trademark rights in the mark ATOKA PROPERTIES are involved in a case filed by Opposer in the Superior Court of the District of Columbia (“DC Superior Court”).

In support of its motion, Applicant states as follows:

**I.  
INTRODUCTION**

Jorge J. Carnicero (“Opposer”) filed a complaint in DC Superior Court captioned Jorge J. Carnicero vs. Jacqueline C. Duchange, Chevy Chase Trust Company (as Trustee of the Jorge E. Carnicero 2008 Trust), Natalia Pejacsevich, Peter Pejacsevich (an owner and principal of Applicant) and Inter-Properties, Inc., Trans- American Aeronautical Corporation, Case No. 2013-001400 B (“DC Superior Court Case”) on February 19, 2013 (“Carnicero Complaint”). A

copy of the Carnicero Complaint is enclosed as **Exhibit A**. Opposer acknowledges that defendant Peter Pejacsevich is an owner and principal of Applicant Middleburg Real Estate, LLC.

102. On or about August 24, 2012, counsel for Mrs. Carnicero and Jorge informed CCT that Peter had filed applications to register the names “Atoka,” “Atoka Farms,” and, through his real estate company, Middleburg Real Estate, LLC, the name “Atoka Properties,” with the United States Patent and Trademark Office (the “Trademark Applications”). Counsel for Jorge provided a detailed outline of facts and legal arguments in opposition to the Trademark Applications. Carnicero Compl. ¶102.

Hereinafter, “Applicant” will refer to either Middleburg Real Estate, LLC or Peter Pejacsevich.

Opposer requests, among other things, that the DC Superior Court enjoin Applicant from registering ATOKA PROPERTIES with the U.S. Patent and Trademark Office due to Applicant’s alleged breach of contract. See below paragraphs from the Carnicero Complaint:

127. [Applicant] has also breached the Consent by, among other things:

...

e. Improperly and unlawfully seeking to register the names Atoka, Atoka Farm, and Atoka Properties in the Trademark Applications, and then failing and refusing to abandon the Trademark Applications, in violation of the Consent in that [Applicant] is required to “execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement.” Carnicero Compl. ¶127.e.

WHEREFORE, Plaintiff Jorge J. Carnicero [Opposer] requests that the Court declare [Applicant] to be in material breach of the Consent, enjoin him from registering either “Atoka,” “Atoka Farm,” or “Atoka Properties” with the U.S. Patent and Trademark Office.... Carnicero Compl. p. 30, Count III.

Opposer has also filed Opposition No. 91209647 (the “Carnicero Opposition”) against U.S. App. Ser. No. 85/629,450 ATOKA PROPERTIES with the Trademark Trial and Appeal Board (“Board”) asserting the same rights as in the Carnicero Complaint and seeking the same relief against Applicant. A copy of the Notice of Opposition for the Carnicero Opposition is attached as **Exhibit B**. Specifically, Opposer contends that Applicant has “adopted the name ATOKA PROPERTIES and taken other actions to falsely suggest a connection between

Applicant and Atoka Farm, and thus to improperly and misleadingly trade on the fame, prestige, cache, and history of the historic country property Atoka Farm and the surrounding village of Atoka.” Carnicero Opposition ¶14. Because the outcome of the DC Court Case may be dispositive of the issues in the Opposition, granting Applicant’s Motion to Stay the Opposition and suspension of the opposition proceeding is appropriate.

## **II.** **ARGUMENT**

If it comes to the attention of the Board that a party or parties to a case pending before the Board are involved in a civil action that may have bearing on the Board case, the Board has the authority to suspend the proceeding until the final determination of the civil action. 37 CFR § 2.117; TMBP § 510.02(a); *General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992) (granting motion for stay because civil action will be dispositive of issues presented in board proceeding). The rationale is that to the extent that a state court action involves issues in common with those in a proceeding before the Board, its determination would have a direct bearing on the rights at issue in the proceeding or at least be persuasive authority for the Board. TMBP § 510.02(a); *see e.g., Argo & Co. v. Carpetsheen Manufacturing, Inc.*, 187 USPQ 366, 367 (TTAB 1979) (granting applicant’s motion for stay citing that the outcome of the civil suit may have “a direct bearing on applicant’s right of registration.”); *see also, Professional Economics Incorporated v Professional Economic Services, Inc.*, 205 USPQ 368, 376 (TTAB 1979) (decision of state court, although not binding on the Board, was considered persuasive on the question of likelihood of confusion).

The issues, parties, and contested ownership rights, as well as the relief sought by Opposer, are identical in the ongoing DC Superior Court Case and in this Opposition Proceeding. The same parties appear in the DC Superior Court Case. The DC Superior Court Case was filed

weeks prior to the Carnicero Opposition and both involve the identical mark ATOKA PROPERTIES. Opposer asks the DC Superior Court to grant the same relief in its Carnicero Complaint as it asks the Board to grant in the Carnicero Opposition – to prevent Applicant from registering its ATOKA PROPERTIES trademark application. Opposer’s requests are based upon its alleged ownership rights in the ATOKA PROPERTIES trademark. Accordingly, the rulings and findings in the DC Superior Court may be dispositive of the issues involved in this Opposition.

Suspension of a Board case is appropriate even if the civil case may not be dispositive of the Board case, so long as the ruling may have a bearing on the rights of the parties in the Board case. TMBP § 510.02(a). In this instance, the District Court’s rulings in the DC Superior Court Case are dispositive of the issues in the Carnicero Opposition. Applicant asks that the Opposition be suspended to avoid an unnecessary burden on the Board and to the parties who would otherwise be litigating in parallel proceedings. As such, it is in the interest of judicial economy that the Board suspend this proceeding until the final determination of the DC Superior Court Case.

Opposer will not be prejudiced by the stay, particularly as it is in its early stages, and no discovery has commenced. Moreover, in the event the issue is not resolved in the Carnicero Opposition, opposition dates in the Carnicero Opposition may be reset upon resumption of proceedings.

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**III.**  
**CONCLUSION**

WHEREFORE, Applicant respectfully requests that the Board suspend the Carnicero Opposition pending disposition of the DC Superior Court Case.

Respectfully submitted,

K&L Gates, LLP  
Counsel for Applicant

By: Michael T. Murphy/  
Michael T. Murphy  
K&L Gates, LLP  
P. O. Box 1135  
Chicago, Illinois 60690  
(202) 778-9176  
(312) 827-8185 (fax)  
Date: June 27, 2013



# Exhibit A



Superior Court of the District of Columbia  
 CIVIL DIVISION  
 500 Indiana Avenue, N.W., Suite 5000  
 Washington, D.C. 20001 Telephone: (202) 879-1133

13-0001400

JORGE J. CARNICERO

3235 Foxvale Dr.  
 Oakton, Virginia 22124

Plaintiff

vs.

Case Number \_\_\_\_\_

PETER PEJACSEVICH

1696 Aloka Road  
 Marshall, VA 20115

Defendant

**SUMMONS**

To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Suite 5000 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Thomas M. Brownell DC Bar 401124

*Clerk of the Court*

Name of Plaintiff's Attorney  
 Holland & Knight LLP  
 1600 Tysons Blvd., Ste. 700

Address  
 McLean, VA 22102

703-720-8690

Telephone

By Ashlee J. Marsh  
 Deputy Clerk

Date 2/19/2013

如蒙翻译, 请拨打 (202) 879-4828      Veuillez appeler au (202) 879-4828 pour une traduction      Té có một hời dịch, hãy gọi (202) 879-4828  
 번역을 원하시면, (202) 879-4828 로 전화하십시오      የተገናኙ ትርጉሙ ለማግኘት (202) 879-4828 ይደውሉ

**IMPORTANT: IF YOU FAIL TO FILE AN ANSWER WITHIN THE TIME STATED ABOVE, OR IF, AFTER YOU ANSWER, YOU FAIL TO APPEAR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT. IF THIS OCCURS, YOUR WAGES MAY BE ATTACHED OR WITHHELD OR PERSONAL PROPERTY OR REAL ESTATE YOU OWN MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. IF YOU INTEND TO OPPOSE THIS ACTION, DO NOT FAIL TO ANSWER WITHIN THE REQUIRED TIME.**

If you wish to talk to a lawyer and feel that you cannot afford to pay a fee to a lawyer, promptly contact one of the offices of the Legal Aid Society (202-628-1161) or the Neighborhood Legal Services (202-279-5100) for help or come to Suite 5000 at 500 Indiana Avenue, N.W., for more information concerning places where you may ask for such help.

See reverse side for Spanish translation  
 Vea al dorso la traducción al español



**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

JORGE J. CARCINERO

Vs.

C.A. No. 2013 CA 001400 B

JACQUELINE C. DUCHANGE et al

**INITIAL ORDER AND ADDENDUM**

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-1, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients prior to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference once, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each Judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website <http://www.dccourts.gov/>.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge BRIAN F HOLEMAN

Date: February 19, 2013

Initial Conference: 9:30 am, Friday, May 24, 2013

Location: Courtroom 214

500 Indiana Avenue N.W.

WASHINGTON, DC 20001

## ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at <https://www.dccourts.gov/pa/>. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. Two separate Early Mediation Forms are available. Both forms may be obtained at [www.dccourts.gov/medmalmediation](http://www.dccourts.gov/medmalmediation). One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 105, 515 5th Street, N.W. (enter at Police Memorial Plaza entrance). Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to [earlymedmal@desc.gov](mailto:earlymedmal@desc.gov). *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at [www.dccourts.gov/medmalmediation/mediatorprofiles](http://www.dccourts.gov/medmalmediation/mediatorprofiles). All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Clerk's Office. The forms to be used for early mediation reports are available at [www.dccourts.gov/medmalmediation](http://www.dccourts.gov/medmalmediation).

Chief Judge Lee F. Satterfield



## INTRODUCTION

This case involves the breach of a Settlement Agreement that should have, once and for all, resolved a series of contentious intra-family lawsuits and disputes involving a will contest and allegations of breaches of fiduciary duty and wrongdoing concerning multiple trusts and family corporations. Plaintiff, Jorge J. Carnicero ("Jorge"), is the beneficiary of family trusts who, with his mother ("Mrs. Carnicero"), sought relief against his sister, Defendant Jacqueline C. Duchange ("Jacqueline"), for actions, taken over several years, in converting to herself and to her immediate family the benefit of family-held property owned by various trusts and closely-held family corporations.

The key element of the Settlement Agreement, entered into with the approval of this Court in 2011, was to remove Jacqueline from the management of the trusts and the corporations, and to replace her with a supposedly neutral corporate trustee, Defendant Chevy Chase Trust Company. The corporate trustee was to manage the corporations and the other properties held in trust, competently, and for the benefit of all beneficiaries.

Since the date of the Settlement Agreement, however, Jacqueline and her family have brazenly and repeatedly breached both the letter and the spirit of the Settlement Agreement. Chevy Chase Trust, whether through malfeasance or neglect, has failed and refused to honor and comply with the Settlement Agreement by allowing Jacqueline and her family, both directly and indirectly, to continue to manage certain assets of the trusts, the corporations and the property, for their sole benefit, to the exclusion of Jorge and the other beneficiaries.

Plaintiff brings this action for injunctive relief and for damages, seeking to compel the corporate trustee to comply with the terms of the Settlement Agreement and seeking damages, on

his own behalf and on behalf of all of the beneficiaries of the 2008 Trust, for the breaches of the Settlement Agreement and of the trust instrument that have occurred.

### **PARTIES AND JURISDICTION**

1. Plaintiff Jorge J. Carnicero is an individual residing at 3235 Foxvale Drive, Oakton, Virginia 22124. Jorge is the son of the late Jorge E. Carnicero ("Mr. Carnicero") and Jacqueline J. Carnicero ("Mrs. Carnicero"). Jorge is a beneficiary of the Jorge E. Carnicero 2008 Trust (the "2008 Trust").<sup>1</sup> He is also a party to the Settlement Agreement dated June 16, 2011, which settled several lawsuits and disputes among the parties, include Civil Action Nos. 2008-CA-8461 B and 2009 LIT 59 before this Court.

2. Defendant Jacqueline C. Duchange is an individual residing at 4735 Rodman Street, N.W., Washington, D.C. 20016. Jacqueline is the sister of Jorge and the daughter of Mr. and Mrs. Carnicero. Jacqueline also is a beneficiary of the 2008 Trust and a party to the Settlement Agreement. For a number of years prior to the execution of the Settlement Agreement, Jacqueline was the sole trustee of the 2008 Trust.

3. Defendant Chevy Chase Trust Company ("CCT") is a Maryland corporation, with offices at 7501 Wisconsin Avenue #14, Bethesda, MD 20814. CCT, in its capacity as successor trustee of the 2008 Trust, is a party to the Settlement Agreement.

4. Defendant Natalia Pejaesevich ("Natalia") is the daughter of Jacqueline and is a beneficiary of the 2008 Trust. Natalia is a party to a certain Consent to Settlement Agreement (the "Consent") by which, for consideration, she and other beneficiaries of the 2008 Trust consented to, and became bound by, the terms of the Settlement Agreement which is the subject

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<sup>1</sup> The Jorge E. Carnicero 2008 Trust was modified by the Order of this Court dated June 21, 2011, and, in its current form, is sometimes also called the "Modified 2008 Trust."

of this Complaint. Natalia is also the trustee of a certain Generation-Skipping Trust (the "GST"), which owns real estate relevant to the matters set forth herein.

5. Defendant Peter Pejacsevich ("Peter") is Natalia's husband and is also a party, with Natalia, to the Consent.

6. Defendant Inter-Properties, Inc. is a Delaware corporation owned by the 2008 Trust. Inter-Properties is a party to the Settlement Agreement.

7. Defendant Trans-American Aeronautical Corporation ("TAAC") is a Delaware corporation also owned by the 2008 Trust. TAAC is a party to the Settlement Agreement.

8. This Court has subject matter jurisdiction under D.C. Code § 11-921(a)(6). This Court has personal jurisdiction over the defendants under D.C. Code §§ 13-422, 13-423 and 19-1302.02.

#### **BACKGROUND**

9. Jorge E. Carnicero ("Mr. Carnicero") was one of the founders of Dynalectron, Inc., the corporate ancestor of the major U.S. government contractor currently known as DynCorp International, Inc. (Dyn-Corp is publicly traded through its current corporate parent, Delta Tucker Holdings, Inc.)

10. Prior to his death on October 28, 2009, Mr. Carnicero accumulated considerable wealth, which he invested and maintained in various trusts and corporate entities. Two of the entities owned by Mr. Carnicero were Defendants Inter-Properties and TAAC, both Delaware corporations incorporated in the 1970s. Mr. Carnicero owned 93% of the shares of Inter-Properties and 100% of the shares of TAAC.

11. The single most valuable asset of Inter-Properties is the historic estate in Fauquier County, Virginia, known as Atoka Farm (circa 1816). Atoka Farm is part of Virginia's horse

country, where the custom of naming estates and significant homes has been followed since at least the late 1600s. Atoka Farm was known by that name long before it was acquired, in 1994, by Mr. and Mrs. Carnicero. The "Atoka Farm" name has been used continuously by the owners of the property for many years, and the estate is expected to continue to be known as such in the future.

12. TAAC owns controlling stock interests in two additional corporate entities, an Argentine company known as Sobrado, S.A. ("Sobrado") and Blue Cove, Inc. ("Blue Cove"). Sobrado owns a luxury property in Round Hill, Jamaica known as Cottage #4, as set forth in greater detail below.

13. From their inception until approximately 2002, Jorge, Jacqueline, Mr. Carnicero, and Mrs. Carnicero were all directors of Inter-Properties and TAAC.

14. All of the companies referred to above, including Inter-Properties, TAAC, Sobrado and Blue Cove, were referred to in the Settlement Agreement and will be referred to herein as the "Carnicero Companies."

15. Prior to 2003, all of Mr. Carnicero's and Mrs. Carnicero's estate plans consistently evidenced their intent to treat Jorge and Jacqueline equally after the deaths of Mr. and Mrs. Carnicero.

16. In particular, prior to 2003, Mr. Carnicero was open and forthcoming with Jorge, Mrs. Carnicero and Jacqueline regarding his detailed intentions for his estate and the ultimate equal division of property between Jorge and Jacqueline.

17. On September 11, 2000, Mr. Carnicero executed a Last Will and Testament (the "2000 Will"). On April 7, 2003, Mr. Carnicero executed another Last Will and Testament

("2003 Will"). Both the 2000 Will and the 2003 Will show Mr. Carnicero's clear intent to provide Jorge and Jacqueline with inheritances of approximately equal value.

18. On or about December 4, 2001, Mr. Carnicero was referred to a medical specialist and received a diagnosis of mild cognitive impairment. Mr. Carnicero continued with treatment, for what later was diagnosed as Alzheimer's Disease, until his death on October 28, 2009.

19. Beginning in or about June, 2004, Jacqueline began to exercise undue influence over Mr. Carnicero and improperly induced him to make a series of modifications to the 2003 Will and other estate planning instruments, for the benefit of Jacqueline and her daughter, Natalia, and at the expense of Jorge and Mr. Carnicero's other heirs and beneficiaries.

20. Among other things, Jacqueline:
- a. succeeded in causing Mr. Carnicero to materially modify his long-held estate planning principle of dividing the family estate equally between Jorge and Jacqueline;
  - b. improperly removed Jorge from his position as an officer and director of TAAC and Inter-Properties, in order to permit Jacqueline to benefit financially, at Jorge's expense, from that removal. Those benefits included improper distributions of assets to Jacqueline and Natalia, improper charging of personal expenses to those entities, and improper use of entity assets for personal, not business, reasons;
  - c. induced Mr. Carnicero to break his long-repeated promise to sell Jorge an attractive tract of "Atoka Farm," an asset of Inter-Properties, and instead caused him to resubdivide the much of that property into a new fifty-acre parcel (the "GST Parcel") and then transfer the GST Parcel to Natalia's children through Mr. Carnicero's separate Generation Skipping Trust (the "GST");

d. improperly induced Mr. Carnicero to change the beneficiary on a retirement account with a value of approximately \$1.5 million. Prior to the change, Mrs. Carnicero was the primary beneficiary of the account. The change made Jacqueline the primary beneficiary of the account and Natalia the contingent beneficiary;

e. improperly induced Mr. Carnicero to permit Natalia and Peter to live, rent free, with all utilities and many personal expenses paid, in a tenant house, and, later, in the main house at Atoka Farm;

f. improperly used assets of the Carnicero Companies to subsidize the personal living expenses of Natalia, Peter and their family;

g. unduly induced Mr. Carnicero to make changes in his 2003 Will by executing a new will in 2008 (the "2008 Will"); and

h. induced Mr. Carnicero to make changes in his marital trust which owned the corporations and most of his other property (the "2008 Trust").

21. Following the death of Mr. Carnicero, Jacqueline continued her pattern of improper conduct, using the 2008 Trust to pay for her personal litigation expenses, and otherwise appropriating to herself corporate and trust assets, both for her own benefit, and for the benefit of her daughter, Natalia, Natalia's husband, Peter, and their family.

### **THE LAWSUITS**

22. Frustrated with Jacqueline's abuse of her influence over Mr. Carnicero, and her interference with Mr. and Mrs. Carnicero's consistently held estate plan to treat Jorge and Jacqueline and their issue equally, on December 3, 2008, Jorge filed a seven-count complaint in the Superior Court of the District of Columbia, Civil Division, captioned 2008 CA 8461 B, against Mr. Carnicero and Jacqueline seeking to set aside the 2008 Trust and raising breach of

contract counts against Mr. Carnicero and tortious interference counts against Jacqueline (the "Initial Action"). Mr. Carnicero and Jacqueline filed counterclaims and defenses in the Initial Action.

23. On November 6, 2009, Jacqueline filed a petition for probate in the Superior Court of the District of Columbia seeking to be appointed as personal representative of the Estate and requesting unsupervised and abbreviated probate of Mr. Carnicero's 2008 Will.

24. On December 23, 2009, Jorge and Mrs. Carnicero joined to institute a separate action in the Superior Court of the District of Columbia, captioned 2009 LIT 51 (the "Will Contest"), challenging the validity of the 2008 Will and the 2008 Trust and seeking to have Jacqueline removed as trustee and personal representative of the Estate. Jacqueline, individually, as trustee of the 2008 Trust, and as personal representative of the Estate, filed counterclaims and defenses in connection with the Will Contest.

25. On March 26, 2010, the Court entered an order consolidating the Initial Action and the Will Contest (collectively, as so consolidated, the "DC Lawsuit").

26. Finally, on October 29, 2010, Mrs. Carnicero and Jorge filed a Verified Derivative Complaint in the Court of Chancery for the State of Delaware (the "Delaware Complaint") against Jacqueline, TAAC and Inter-Properties, asserting various derivative claims against Jacqueline, as director of TAAC and Inter-Properties, for breaches of fiduciary duty and waste of corporate assets.

#### **THE SETTLEMENT AGREEMENT**

27. After more than two years of contentious litigation, and as a result of extended negotiations, on or about June 16, 2011, the parties to the DC Lawsuit and the Delaware Complaint entered into a comprehensive Settlement Agreement ("Settlement Agreement") that

purported to resolve all of the disputes among them involving Mr. Carnicero's Estate, the trust property and Mrs. Carnicero's separate property. A true copy of the Settlement Agreement is attached as Exhibit 1 to this Complaint.

28. As part of the Settlement Agreement, the 2008 Trust was modified in numerous respects, including, specifically, the return of the ultimate division of family assets to a proportion closer to the 50/50 allocation which Mr. and Mrs. Carnicero had long desired and planned; the removal of Jacqueline as Trustee; and the appointment of CCT as an independent corporate trustee (the "Modified 2008 Trust"). A true copy of the Modified 2008 Trust is attached as Exhibit B to Exhibit 1.

29. This Court approved the Settlement Agreement and the Modified 2008 Trust (hereinafter, unless otherwise indicated, the "2008 Trust") by Order dated June 21, 2011.

30. Among other things, the Settlement Agreement required:

a. That Jacqueline be removed as Trustee of the 2008 Trust and as personal representative of Mr. Carnicero's Estate (the "Estate");

b. That CCT, a supposedly neutral corporate fiduciary, replace Jacqueline as Trustee of the 2008 Trust and as personal representative of the Estate;

c. That, with the exception of several specific, required initial payments to Jacqueline in consideration of her prior service as trustee of the 2008 Trust, personal representative of the Estate and director and officer of the Carnicero Companies, no further payments be made to any of the parties to the Settlement Agreement out of property of the 2008 Trust, the Carnicero Companies or the Estate;

d. That, with the exception of the right of Natalia and Peter to live in the main house of Atoka Farm for a limited period of time (which right was expressly subject to

specific limitations set forth in the Settlement Agreement and the Consent to Settlement Agreement executed by Natalia and Peter), no preferential treatment was to be accorded to any family members with respect to the property of the 2008 Trust, the Carnicero Companies or the Estate;

e. That a boundary line adjustment be made to a subdivided parcel of Atoka Farm, which was then to be sold, at fair market value, to the 2008 Trust;

f. That Mrs. Carnicero's tangible personal property be safeguarded; and

g. That Inter-Properties and TAAC be liquidated and that their assets be transferred to the 2008 Trust.

#### **BREACHES OF SETTLEMENT AGREEMENT**

31. Although the Settlement Agreement and the Order of this Court appointed CCT as the independent corporate trustee for the 2008 Trust, CCT, whether by negligence and/or through active cooperation with Jacqueline, has breached its duties under the Settlement Agreement and the 2008 Trust instrument by allowing Jacqueline's influence and interference to continue and permitting a pattern of decisions and actions that have benefitted Jacqueline, Natalia, Peter, and the Pejaesevich family, at the expense of the other beneficiaries of the Trust, including Jorge and Mrs. Carnicero.

32. In most cases, CCT acted at the request of Jacqueline and without notice to or the approval of Jorge or the other beneficiaries. In other cases, Jacqueline acted alone, but CCT failed or refused to exercise its duties and obligations as trustee to stop breaches of the Settlement Agreement or waste of trust property.

33. CCT repeatedly rebuffed complaints by Jorge and others concerning these and other violations of the Settlement Agreement and/or the 2008 Trust Agreement.

34. The violations of the Settlement Agreement by Jacqueline, CCT, and/or the Carnicero Companies, include at least the following:

**A. Continued Services of Jacqueline After The Effective Date**

35. Article 10 of the Settlement Agreement required Jacqueline to resign as trustee of the 2008 Trust and as personal representative of the Estate on the Effective Date of the Settlement Agreement, June 21, 2011, and to be replaced by CCT as a corporate trustee.

36. However, without the knowledge or approval of Jorge or the other beneficiaries, CCT, for a period of at least three months after the Settlement Date, engaged Jacqueline, in a broad capacity, to manage the day-to-day affairs of Inter-Properties, TAAC and Blue Cove. Upon information and belief, during that three-month period, CCT granted Jacqueline unlimited and unsupervised access to corporate records, as well as the authority to sign checks on behalf of the Carnicero Companies.

37. CCT likewise failed to appoint new officers and directors for the Carnicero Companies until several months after the Settlement Date, permitting Jacqueline and Natalia to remain in place as officers and directors of those entities.

38. CCT failed and refused to investigate or remedy these breaches of the Settlement Agreement, despite repeated demands by Jorge that it do so.

**B. Personal Payments to or on behalf of Jacqueline, Natalia and Peter**

39. Article II, paragraph 12 of the Settlement Agreement provided that Jacqueline should receive her "current salary of \$11,666.66 per month from Inter-Properties or Trans-American *until the earlier of* the liquidation of the companies or 60 days after the Effective Date. The same article continues that, "[e]xcept as otherwise provided for in this Settlement

Agreement, after the Effective Date the Carnicero companies will not pay any salary to, or any personal bills or expenses of, any family member or Party to this Settlement Agreement.”

40. Notwithstanding that prohibition, CCT continued Jacqueline’s salary for a period of at least three (3) months after the Settlement Date, at a cost to the 2008 Trust of at least \$11,666.66, not including employment taxes paid by Inter-Properties on that salary.

41. In addition, for many months after the Effective Date, Inter-Properties continued to pay the wages of Bertha Correa, a personal nanny/maid of Natalia and Peter. Between the end of June 2011 and at least October 2011, Ms. Correa continued to be employed by Inter-Properties, but served solely as a personal nanny/maid for Peter and Natalia.

42. During this same period of time, Jacqueline and Natalia both continued to serve as officers and directors of Inter-Properties.

43. In response to complaints by Jorge, CCT belatedly acknowledged that Bertha Correa served the Pejaesevich family personally and then finally terminated Ms. Correa’s employment with Inter-Properties. However, neither Inter-Properties, the 2008 Modified Trust nor CCT has ever made any attempt to recoup from Natalia or Peter the compensation paid by Inter-Properties to Ms. Correa.

**C. Preferential Use of Trust Property**

44. Sobrado, S.A. is an Argentine corporation owned by TAAC, which in turn is owned by the 2008 Trust. Sobrado is one of the “Carnicero Companies” pursuant to the Settlement Agreement.

45. Sobrado owns certain real property identified as “Cottage #4 on John Pringle Drive in Round Hill, Montego Bay, Jamaica” (herein referred to as “Cottage #4”). Round Hill is an exclusive Jamaican beach resort with numerous luxury amenities.

46. Subsequent to the execution of the Settlement Agreement, Jacqueline, Natalia and Peter frequently utilized Cottage #4 for their own personal benefit, in high season, without paying rents (market or otherwise) or associated personal expenses to Sobrado or to the 2008 Trust for the use of the property.

47. Upon information and belief, Jacqueline, Natalia and Peter utilized Cottage #4 in at least the following months: August 2011, November 2011, December 2011, December 2012 and January 2013.

48. The market value of the rental fees for Cottage #4 during these periods of time is estimated to be at least U.S. \$1,600.00 per day or \$48,000.00 per month.

49. Moreover, since the Effective Date, TAAC has paid fees to the Round Hill resort in excess of U.S. \$20,000.00, for and in consideration of services provided to the users of Cottage #4, including, most specifically, Jacqueline, Natalia and Peter.

50. Indeed, upon information and belief, Jacqueline authorized this payment herself, only two days after the Effective Date, despite the fact that her authority to do so had already been terminated under the Settlement Agreement.

51. Upon information and belief, neither the 2008 Trust, TAAC, Sobrado nor CCT has sought to obtain reimbursement from Jacqueline, Natalia or Peter for their use of Cottage #4, either as to fair market rental, or as to the personal expenses paid on their behalf by TAAC after the execution of the Settlement Agreement.

52. CCT advised Jorge and Jacqueline, by letter dated February 27, 2012, that "[U]se by family members other than Mrs. Carnicero at a discounted rental rate or free of charge, beyond that necessary to help us ensure proper upkeep of the property, is inconsistent with the tax rules that apply to the marital trust. No one other than the surviving spouse is allowed to

benefit from the assets in the trust; free or below market rental of the cottage could be construed as providing a benefit to someone other than the surviving spouse.”

53. At no time during 2011 or 2012 did the surviving spouse, Mrs. Carnicero, ever use Cottage #4, whether with Jacqueline, Natalia and Peter, or otherwise.

54. Although CCT acknowledged that the use by Jacqueline, Natalia, Peter and the Pejacsevich family of Cottage #4 is inconsistent with the tax rules that apply to the marital trust, CCT nevertheless permitted that use to continue, over the objections of Jorge and other beneficiaries, without seeking payment of rent or reimbursement of expenses from Jacqueline, Natalia and/or Peter.

**D. Natalia and Peter’s Residence at Atoka**

55. Atoka Farm is owned by Inter-Properties, which in turn is owned by the 2008 Trust. Atoka Farm had been the country home of Mr. and Mrs. Carnicero, and contained, and still contains, much of their tangible personal property, which is now the tangible personal property of Mrs. Carnicero, held in trust for her sole benefit during her lifetime.

56. Prior to the execution of the Settlement Agreement, Natalia, Peter and their children had, for several years, resided, rent-free, in a tenant house on the Atoka property. Subsequent to a fire that purportedly rendered the tenant house uninhabitable, Natalia, Peter and their children moved into the main house at Atoka, as a temporary measure. That “temporary” measure extended for several years, up to and beyond the date of the Settlement Agreement.

57. Article II, paragraph 11 of the Settlement Agreement permitted Natalia, Peter and their children “to reside in the main house at Atoka Farm, rent-free and with all utilities paid by the 2008 Trust, until the earlier of (a) December 31, 2012, or (b) the sale of Atoka Farm by the Trustee of the 2008 Trust.”

58. Pursuant to Article II, paragraph 5 of the Settlement Agreement, the furniture, art, crystal, books and other personal effects of Mrs. Carnicero located at Atoka are the tangible personal property of Mrs. Carnicero and are the express responsibility of CCT, as trustee of the 2008 Trust and/or of Mrs. Carnicero's personal trust.

59. From the Effective Date of the Settlement Agreement through and including December 31, 2012, the 2008 Modified Trust, Inter-Properties, and Natalia and Peter kept all other beneficiaries of the 2008 Trust, including Jorge, away from the main residence at Atoka Farm. They even refused to permit Mrs. Carnicero, the primary beneficiary of the Trust, to stay at the main residence on Atoka Farm when her home in the District of Columbia was threatened by a storm.

60. While Mrs. Carnicero and Jorge were both excluded from entering onto the property, CCT failed to protect and safeguard Mrs. Carnicero's tangible personal property stored at Atoka Farm, both in the main residence and in the various outbuildings.

61. Jorge advised CCT of his concerns about the status and security of his mother's tangible personal property on numerous occasions, as evidenced, among other things, by electronic mails from his wife, Rima Carnicero, dated June 28, 2012, June 29, 2012, and July 9, 2012. However, CCT was unresponsive to these requests, and refused until January 3, 2013 to permit Jorge to so much as enter the main house at Atoka to check on these items.

62. On December 28, 2012, Jorge notified CCT that he believed that the main house at Atoka was vacant, and that it was not secure.

63. Even then, CCT was dismissive of these concerns, as shown by the statements of CCT's Leslie Smith who, in a December 28 electronic mail, recklessly and incorrectly stated: "We have been assured that every stick of Mrs. Carnicero's furniture, as well as every single

piece of china, decoration, etc. that belonged to Mrs. Carnicero is in the house -- every single item on the Hagen appraisal.”

64. However, as Jorge discovered on January 3, 2013, many valuable items of Mrs. Carnicero’s tangible personal property included in the Hagen appraisal (an attachment to the Settlement Agreement which served as a non-exclusive list of the tangible personal property of Mrs. Carnicero) were and remain missing from the main house and other buildings at Atoka. Thousands of dollars worth of tools and equipment from the machine sheds at Atoka are also missing.

65. CCT has failed and refused to pursue the issue of missing and damaged items of Mrs. Carnicero’s tangible personal property, or to secure the return of the tangible personal property removed from Atoka Farm.

**E. Atoka Boundary Line Adjustment**

66. When the Carnicero family purchased Atoka Farm, in 1994, the Estate comprised approximately 550 acres of land, subdivided into five separate parcels, including the historic main residence, several tenant houses and numerous associated outbuildings.

67. As noted above, the GST Parcel, consisting of approximately 50 acres, was created in 2005 out of land that Mr. Carnicero originally had intended to give to Jorge, but which was then conveyed to the Generation Skipping Trust (GST), for the ultimate benefit of Jacqueline’s daughter, Natalia, and her family. Natalia is the trustee of the GST and thus had and continues to have effective control over the GST Parcel.

68. At the time of the effective date of the Settlement Agreement, the rest of the land associated with Atoka Farm, containing the main residence and all structures, was the property of Inter-Properties, and was held for the benefit of the beneficiaries of the 2008 Trust.

69. The GST Parcel was created by means of a "large lot subdivision," in accordance with Section 2-310 of the Fauquier County Zoning Ordinance (the "Zoning Ordinance"), instead of a "sliding scale subdivision" under Section 2-308 of the Zoning Ordinance or a boundary line adjustment.

70. The large lot subdivision process results in fewer "development rights" as compared with a subdivision or boundary line adjustment that relies on the sliding scale density provisions of Section 2-308 of the Zoning Ordinance.

71. The use of large lot subdivision in creating the GST Parcel unfortunately removed the potential for seven (7) development rights for the entirety of Atoka Farm and resulted in the assignment of only one development right to each of the 50 acre GST Parcel and the remainder tract of approximately 111 acres.

72. Article II, paragraph 6 of the Settlement Agreement states that "Inter-Properties shall complete a boundary line adjustment to establish an approximately 100-acre parcel of Atoka Farm as shown on the attached Exhibit G, to Exhibit 1 (the 'Atoka Parcel')." This 100-acre parcel of Atoka Farm is hereinafter described as it is in the Settlement Agreement, as the "Atoka Parcel."

73. The boundary line adjustment specified by the Settlement Agreement modified the boundaries of the 111 acre remainder tract that resulted from the large lot subdivision for the GST Parcel in order to create the approximately 100-acre Atoka Parcel with one development right. In other words, the parties to the Settlement Agreement agreed and stipulated that the 100-acre Atoka Parcel would bear a permanent deed restriction prohibiting further subdivision of that parcel.

74. The Settlement Agreement provides that the Atoka Parcel was to be sold to the 2008 Modified Trust at fair market value; then transferred to a sub-trust defined as the "Atoka-Bolinvar Marital Trust;" and ultimately conveyed to Jacqueline.

75. On or about May 2011, at the time that the parties to the Settlement Agreement were evaluating the options for creating the Atoka Parcel, counsel for Mrs. Carnicero and Jorge alerted the 2008 Trust's land use counsel to the possibility of regaining some of the lost development rights by including the GST Parcel in a new plat of resubdivision or boundary line adjustment.

76. Any of the possible avenues to regaining these rights would have required the joinder of the owners of the GST Parcel, as it would have been, in essence, a revision of the 2005 subdivision which had not fully preserved all possible development value.

77. The 2008 Trust's land use counsel advised Jorge's counsel that Natalia, the trustee for the GST Parcel, was not willing to enter into such a new plat of resubdivision or boundary line adjustment.

78. When the owner of the GST Parcel declined to agree to recapture this value for Inter-Properties, that owner - Natalia, as Trustee of the GST - was an officer and director of Inter-Properties.

79. Had Natalia cooperated, in compliance with her fiduciary duties to Inter-Properties and to the Trust, the number of development rights available to Inter-Properties (and thus, to the 2008 Trust) would have substantially increased.

80. Lacking agreement, counsel for Inter-Properties proceeded with a "boundary line adjustment" application, which would result in the creation of the Atoka Parcel, but which would not support recapture of any of the additional development rights lost in the 2005 subdivision.

81. Inter-Properties was required by the Settlement Agreement to complete the boundary line adjustment “to establish an approximately 100-acre parcel of Atoka Farm as shown on the attached Exhibit G.” Thus, the Settlement Agreement required Inter-Properties to secure approval strictly as shown on Exhibit G, and to record the approved boundary line adjustment plat in the land records of Fauquier County, Virginia.

82. On or about June 3, 2011, the contemplated boundary line adjustment, which created the Atoka Parcel defined by the Settlement Agreement (the “First BLA”), was approved; however, unbeknownst to Jorge, the First BLA was never recorded among the land records of Fauquier County, Virginia.

83. The approved First BLA provided that the Atoka Parcel was limited to one “development right,” consistent with Exhibit G of the Settlement Agreement.

84. Despite the fact that the recordation of the First BLA would have fully satisfied the Settlement Agreement requirements for the creation of the Atoka Parcel, during the second half of 2011 (after CCT had taken over as Trustee), the 2008 Modified Trust and Inter-Properties spent 2008 Modified Trust funds in making changes to the development rights on the Atoka Parcel, for the sole benefit of Jacqueline.

85. These changes to the development rights at Atoka Farm had the result of conferring one (1) extra “development right” upon the Atoka Parcel, but no additional rights on the remaining parcels (the “Main Parcels”). Indeed the Main Parcels were disadvantaged because of the additional development rights granted to the adjoining Atoka Parcel.

86. The “development right” so conferred has significant value; so much so that the Fauquier County government has a program under which landowners may “sell” these

development rights for tens of thousands of dollars, even though the market value of the development rights usually far exceeds the price that the County will pay.

87. Although the owner of the GST Parcel – Natalia, as Trustee of the GST – had refused to enter into the First BLA, Natalia apparently changed her position, and agreed to cooperate, but only when the sole person to be benefitted was her mother, Jacqueline.

88. Natalia's cooperation permitted a Plat of Correction and associated Deed of Correction to be recorded on September 21, 2011, reserving an additional development right for the Atoka Parcel.

89. On or about September 21, 2011, a boundary line adjustment that used this additional development right to provide for a total of two development rights for the Atoka Parcel (the Second BLA) was approved; on September 22, 2011, the Second BLA was recorded.

90. Upon information and belief, the Atoka Parcel, as created by the Second BLA, has been conveyed to Jacqueline.

91. The 2008 Modified Trust, and Inter-Properties, spent at least \$33,000.00 in legal and consulting fees in processing the Second BLA, which cost has not, upon information and belief, been reimbursed by Jacqueline, even though the benefit of the Second BLA redounded solely to her.

92. The processing and approval of the Second BLA was not required in order to comply with the Settlement Agreement.

93. In fact, the processing and approval of the Second BLA is prohibited by the Settlement Agreement, which defined the Atoka Parcel as bearing permanent deed restrictions which the Second BLA significantly modified.

94. The Second BLA creates a different, and substantially more valuable, 100-acre parcel than the defined Atoka Parcel in the Settlement Agreement, by doubling the permitted development density of that parcel.

95. Neither the Main Parcels, Inter-Properties, nor the 2008 Modified Trust derived any benefit from the Second BLA, as any increase in property value was already allocated, by the Settlement Agreement, to Jacqueline.

96. Without a requirement for Jacqueline to pay fair market value for the Atoka Parcel, the Second BLA produced an unanticipated, and unpermitted, windfall for Jacqueline, at the expense of the 2008 Modified Trust.

97. At the time of the Second BLA, Jacqueline remained in place as an officer and director of Inter-Properties, and the BLA conferred a benefit directly upon Jacqueline, at the expense of, and to the exclusion of, Inter-Properties.

98. At the time of the Second BLA, Natalia remained in place as an officer and director of Inter-Properties, and the Second BLA conferred a benefit directly upon Jacqueline, at the expense of, and to the exclusion of, Inter-Properties.

99. Inter-Properties has made no attempt to sell the additional "development right," or to otherwise recapture the value of the Second BLA for the benefit of Inter-Properties, or even to recoup the expenses incurred in processing the Second BLA from Jacqueline.

100. Natalia and Jacqueline, with the cooperation of the 2008 Modified Trust and its corporate Trustee, Chevy Chase Trust, conferred a benefit upon Jacqueline, an officer and director of Inter-Properties, while failing and refusing to do so in a manner which benefited Inter-Properties and the 2008 Modified Trust generally.

101. In addition, the creation of an additional "development right" on the Atoka Parcel allocated to Jacqueline impairs the value, marketability and caché of the main Atoka holding, as it permits the construction of another residence, and related outbuildings, in closer proximity to the main house at Atoka (still owned by the Trust) than would otherwise be permitted, and without the protection of any privately enforceable covenants or restrictions on the placement or other aspects of such structures and uses.

**F. Peter's Application to Register the Trademark "Atoka"**

102. On or about August 24, 2012, counsel for Mrs. Carnicero and Jorge informed CCT that Peter had filed applications to register the names "Atoka," "Atoka Farms," and, through his real estate company, Middleburg Real Estate, LLC, the name "Atoka Properties," with the United States Patent and Trademark Office (the "Trademark Applications"). Counsel for Jorge provided a detailed outline of facts and legal arguments in opposition to the Trademark Applications.

103. In response to this communication, also on or about August 24, 2012, CCT informed counsel for Mrs. Carnicero and Jorge that CCT had been unaware of the Trademark Applications.

104. By electronic mail on or about October 24, 2012, counsel for CCT indicated that CCT was inclined to permit Peter, by express agreement, to register the name "Atoka Properties." Counsel for CCT did not provide any reason why Peter should be entitled to register the name "Atoka Properties," a name which belongs to and is the intellectual property of the 2008 Trust.

105. While CCT has apparently filed an opposition to the application for registering the name "Atoka Properties," all three Trademark Applications remain pending.

106. To date, upon information and belief, neither Inter-Properties, the 2008 Modified Trust nor CCT has sought reimbursement or other compensation from Peter for their expenses generated in response to Peter's filing of the Trademark Applications, nor have Inter-Properties, the 2008 Modified Trust or CCT prohibited Peter from pursuing any or all of the Trademark Applications.

**G. The Trust's Failure to Pay Jorge's Attorneys' Fees**

107. Article II, paragraph 15 of the Settlement Agreement provides that the 2008 Trust shall bear the costs and attorneys' fees of the litigation and proceedings between the parties and of the negotiation and consummation of the Settlement Agreement.

108. Upon information and belief, the 2008 Trust has paid the attorneys' fees of Jacqueline.

109. The 2008 Trust has failed to pay the attorneys' fees of Jorge or Mrs. Carnicero, in breach of its obligations under the Settlement Agreement.

**CURRENT STATUS AND NEED FOR RELIEF**

110. As detailed above, since the Effective Date of the Settlement Agreement, Jacqueline, Natalia and Peter have engaged in a series of actions in express or implied violation of the Settlement Agreement.

111. The corporate trustee, CCT, has either: (a) authorized these actions, in violation of its obligations under the Settlement Agreement or in breach of its fiduciary duties to the beneficiaries of the 2008 Trust, or (b) failed and refused, despite demand, to remedy violations by Jacqueline, Natalia or Peter, even when expressly brought to its attention.

112. The breaches of the Settlement Agreement by CCT, Jacqueline, Natalia and/or Peter, both individually and cumulatively, have caused material losses to Jorge, both individually

and as a beneficiary of the 2008 Trust. Moreover, continued inaction by CCT will result in further significant losses to the 2008 Trust.

113. Article III, paragraph 10 of the Settlement Agreement provides:

Judicial Enforcement. This Settlement Agreement shall be construed in accordance with the laws of District of Columbia (sic). Each Party consents to the jurisdiction of the Superior Court of the District of Columbia with respect to any issue concerning enforcement, interpretation or breach of this Settlement Agreement. The Superior Court of the District of Columbia shall retain continuing jurisdiction over the subject matter of the parties for those purposes. Nothing herein confers personal or subject matter jurisdiction in the District of Columbia with respect to any issue relating to real property located outside of the District of Columbia that extends beyond enforcement, interpretation or breach of the terms of this Settlement Agreement.

114. In bringing this action, Jorge seeks to enforce the terms of the Settlement Agreement and, pursuant to the D.C. Uniform Trust Act, to compel CCT to comply with its fiduciary duties to the 2008 Trust and its beneficiaries, and to collect damages, on behalf of the 2008 Trust and its beneficiaries, for the losses that have been suffered to date.

**COUNT I**  
**Breach of Contract (Settlement Agreement)**

115. Plaintiff restates the allegations of paragraphs 1 through 114 of his Complaint as if fully set forth herein.

116. Jacqueline, Inter-Properties and the 2008 Modified Trust, all parties to the Settlement Agreement, have breached the Settlement Agreement by taking actions which materially affected the assets of Inter-Properties, a "Carnicero Company," in violation of the Settlement Agreement. These actions include, but are not limited to:

- a. Payment of salary and benefits to Jacqueline, beyond the sixty-day period expressly provided for in Article II, paragraph 12 of the Settlement Agreement;
- b. Payment of Bertha Correa for acting as the personal nanny/maid of Peter and Natalia's family in violation of Article II, paragraph 12 of the Settlement Agreement;

c. Permitting the personal use of Cottage #4 by Jacqueline, Natalia and Peter, without obtaining payment of full market value and/or reimbursement of expenses incurred by the 2008 Trust;

d. Converting to their own use and/or failing to safeguard the tangible personal property of Mrs. Carnicero at Atoka Farm;

e. Using 2008 Trust assets to effect the Second BLA for the Atoka Parcel;

f. Permitting Peter, both personally and through Middleburg Real Estate, LLC, to appropriate to his own use and benefit the trade name "Atoka," without justification or authorization and without accounting to the 2008 Trust for the value of that asset; and

g. Failing to pay attorneys' fees owed to Jorge and Mrs. Carnicero pursuant to the terms of the Settlement Agreement.

117. With respect to all of these obligations contemplated by or arising under the Settlement Agreement, CCT has breached its duties, either by expressly authorizing actions which are not permitted, approving such actions after the fact, or failing or refusing to remedy such actions for the benefit of the 2008 Trust.

**WHEREFORE**, Plaintiff Jorge J. Carnicero requests that the Court declare Jacqueline, Inter-Properties, TAAC, the 2008 Modified Trust and CCT in breach of the Settlement Agreement, order Jacqueline, Inter-Properties, TAAC, the 2008 Modified Trust and CCT to pay damages to Plaintiff in the amount(s) to be proven at trial, award Plaintiff attorneys' fees pursuant to *D.C. Code* § 1310.04, and to grant such other and further relief as may be required so that justice may be done.

**COUNT II**  
**Breach of Contract (Consent)**

118. Plaintiff restates the allegations of paragraphs 1 through 117 of this Complaint as if fully set forth herein.

119. Natalia resided in the main house at Atoka, both before and after the execution of the Settlement Agreement, and therefore has received valuable consideration for entering into the Consent.

120. Natalia, as a signatory of the Consent, expressly consented to the terms of the 2008 Modified Trust.

121. Natalia has breached the Consent, as her failure and refusal to reimburse the 2008 Modified Trust for her personal expenses is a failure to "execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement".

122. Natalia has breached the Consent by, among other things:

a. Combining with Jacqueline and CCT to change the "Atoka Parcel" to one which was different from, and more valuable than, the "Atoka Parcel" defined in the Settlement Agreement and the 2008 Modified Trust, has improperly diverted an asset of the Marital Trust or of the 2008 Modified Trust to the A-B Trust, for the sole benefit of Jacqueline;

b. Failing and refusing to consent to join the First BLA, in a way which would have resulted in payment, by Jacqueline, of full market value for the Atoka Parcel, as it has now been enhanced by the additional development right, in violation of her fiduciary duties as an officer and director of Inter-Properties, the owner of Atoka at the time, until she was certain that the benefit of doing so would fall solely on her mother, Jacqueline, as opposed to being distributed to the other beneficiaries according to the 2008 Modified Trust Agreement;

c. Executing a document which did not "effectuate the provisions of the Settlement Agreement," but which frustrated and violated the provisions of the Settlement Agreement, in diverting assets from the 2008 Modified Trust and/or the Marital Trust to Jacqueline;

d. Enabling the expenditure of 2008 Modified Trust resources for the purpose of diverting the benefit of the Second BLA to Jacqueline, at the expense of the other 2008 Modified Trust beneficiaries;

e. Failing and refusing to reimburse the 2008 Modified Trust for her personal expenses in breach of her duty to "execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement;"

f. Converting the services of Bertha Correa, and the use of Cottage #4, subsequent to the execution of the Settlement Agreement, to her own personal benefit, in violation of the terms of the Settlement Agreement;

g. "Failing to acknowledge the rights and limitations of [her] future occupancy of Atoka Farm under Article II, Paragraph 11 of the Settlement Agreement," as required by the Consent, by, among other things, excluding Jorge and other 2008 Modified Trust beneficiaries, and including even Mrs. Carnicero, from the main house at Atoka, although the Settlement Agreement did not grant Natalia or her immediate family exclusive use thereof.

h. Improperly utilizing the tangible personal property of Mrs. Carnicero, which is property of Mrs. Carnicero's Irrevocable Trust, and seeking to prohibit other family members from using or even performing an inventory of said tangible personal property;

i. Converting numerous items of the tangible personal property of Mrs. Carnicero, removing them from the main house at Atoka, and refusing to return them;

j. Improperly utilizing personalty – including various tools and other construction equipment – of Inter-Properties, and, thus, of the 2008 Modified Trust, in constructing a home for herself and her immediate family on the GST Parcel; and

k. Consenting to and assisting Peter in his improper expropriation of the name “Atoka,” “Atoka Farm,” and “Atoka Properties,” in breach of the boundaries of her joint right to reside in the main house at Atoka with Peter, her husband.

123. Upon information and belief, Natalia and Peter have continued to utilize employees of Inter-Properties and other Trust entities for performing work related to their own new home, and their own property, without reimbursing the Trust or the Trust entities for such work.

**WHEREFORE,** Plaintiff Jorge J. Carnicero requests that the Court declare Natalia Pejacsevich to be in material breach of the Consent, enjoin her from diverting or converting any personalty owned by Inter-Properties, the 2008 Trust or Mrs. Carnicero’s Irrevocable Trust, as such personalty is located at Atoka, order her to pay damages to Plaintiff in an amount to be proven at trial, award Plaintiff attorneys’ fees, and to grant such other and further relief as may be required so that justice may be done.

**COUNT III**  
**Breach of Consent – Peter**

124. Plaintiff restates the allegations of paragraphs 1 through 123 of his Complaint as if fully set forth herein.

125. Peter resided in the main house at Atoka both before and after the execution of the Settlement Agreement and therefore has received valuable consideration for entering into the Consent.

126. Peter has breached the Consent, as his failure and refusal to reimburse the 2008 Modified Trust for his personal expenses is a failure to “execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement.”

127. Peter has also breached the Consent by, among other things:

a. Using the services of Bertha Correa, and of Cottage #4, subsequent to the execution of the Settlement Agreement, in violation of the Settlement Agreement’s prohibition on the use of such services without reimbursement of the 2008 Trust;

b. “Failing to acknowledge the rights and limitations of [his] future occupancy of Atoka Farm under Article II, Paragraph II of the Settlement Agreement,” including by excluding other 2008 Modified Trust beneficiaries, including Jorge, and including even Mrs. Carnicero, from the main house at Atoka, although the Settlement Agreement did not grant Peter or his immediate family exclusive use thereof;

c. Improperly utilizing the tangible personal property of Mrs. Carnicero, which is property of Mrs. Carnicero’s Irrevocable Trust, and seeking to prohibit other family members from using or even performing an inventory of said tangible personal property;

d. Improperly utilizing the personalty – including various tools and other construction equipment – of Inter-Properties, and, thus, of the 2008 Modified Trust, in constructing a home for herself and her immediate family on the GST Parcel; and

e. Improperly and unlawfully seeking to register the names Atoka, Atoka Farm, and Atoka Properties in the Trademark Applications, and then failing and refusing to abandon the Trademark Applications, in violation of the Consent in that Peter is required to “execute such further documents as may be reasonably required or appropriate to effectuate the provisions of the Settlement Agreement;”

**WHEREFORE**, Plaintiff Jorge J. Carnicero requests that the Court declare Peter Pejacevich to be in material breach of the Consent, enjoin him from registering either "Atoka," "Atoka Farm" or "Atoka Properties" with the U.S. Patent and Trademark Office, enjoin him from diverting or converting any personalty owned by Inter-Properties, the 2008 Trust or Mrs. Carnicero's Irrevocable Trust, as such personalty is located at Atoka, order him to pay damages to Plaintiff in an amount to be proven at trial, award Plaintiff attorneys' fees, and to grant such other and further relief as may be required so that justice may be done.

#### **COUNT IV**

##### **(Injunction to prohibit CCT from further breaches of the Settlement Agreement and from using Trust Funds to Pay for Defense Of This Action Pursuant to D.C. Code Section 19-1310.01)**

128. Plaintiff restates the allegations of paragraphs 1 through 127 of his Complaint as if fully set forth herein.

129. CCT has a duty, as a successor party to the Settlement Agreement, and as the Trustee of the 2008 Modified Trust, a party to the Settlement Agreement, to comply strictly with the terms of the Settlement Agreement and with the Modified Trust instrument.

130. No argument in favor of "discretion" on behalf of a trustee, or, indeed, of CCT, permits such a trustee to violate the terms of a contract to which it is a party.

131. While Jorge and Mrs. Carnicero entered into the Settlement Agreement with the reasonable and contractually assured expectation that CCT would act as a fair, transparent and impartial Trustee, in contrast with the tenure of Jacqueline as Trustee, CCT has continued, by its actions; and by its failure to act, to permit Jacqueline, Natalia and Peter to reap unintended and unlawful advantages, to expropriate Trust funds and Trust assets, and to continue the untenable pre-Settlement Agreement course of conduct.

132. CCT, as trustee of the 2008 Modified Trust, has violated the duties it owes to Jorge and to the other beneficiaries of the Trust by, among other things:

a. Failing promptly to remove Jacqueline and the other officers and directors of the Carnicero Companies, as required by the terms of the Settlement Agreement and the protection of the interests of the beneficiaries of the Trust;

b. Paying Jacqueline out of Trust funds salary and other benefits in excess of amounts permitted by the Settlement Agreement;

c. Allowing the payment of Bertha Correa out of Trust funds for personal services provided to Natalia and Peter;

d. Permitting Jacqueline, Natalia and Peter to use Cottage #4 for their own personal benefit without requiring them to pay the Trust market rents or reimbursing the Trust expenditures made as a result of their use of Cottage #4;

e. Permitting Natalia and Peter to use Atoka Farm in excess of the terms and conditions permitted by the Settlement Agreement and then failing to provide for the safeguarding of the personal property of Mrs. Carnicero at Atoka Farm;

f. Failing to comply with the provisions of the Settlement Agreement with respect to the Boundary Line Adjustment for Atoka Farm and then permitting the use of Trust funds to pay for changes to the subdivision plan which benefitted Jacqueline at the expense of Jorge and the other beneficiaries of the Trust;

g. Failing to protect the trade name of "Atoka Farm" by enforcement of the Trust's rights against the Trademark Applications initiated by Peter; and

h. Failing to pay Jorge's attorneys fees due under the terms of the Settlement Agreement.

133. These and other breaches by CCT constitute breaches of trust by CCT pursuant to D.C. Code Section 19-1310.01.

**WHEREFORE**, Plaintiff Jorge J. Carnicero requests that the Court declare CCT to be in breach of the Settlement Agreement and of the 2008 Modified Trust, and that it:

a. Enjoin CCT from further breaching the Settlement Agreement or committing breaches of trust under the 2008 Modified Trust;

b. Compel CCT to perform its duties under the Settlement Agreement and the 2008 Modified Trust;

c. Compel CCT to redress its breaches of trust by recovering from Jacqueline, Natalia and/or Peter monies paid to them or benefits conveyed upon them in violation of the Settlement Agreement and/or the 2008 Modified Trust; and that it

d. Order CCT to account for its use of 2008 Modified Trust funds in violation of the Settlement Agreement, or otherwise.

Pursuant to D.C. Code Section 19-1310.01(b)(8), Plaintiff further prays that the Court enter an Order prohibiting CCT from using funds from the 2008 Modified Trust to pay for its legal expenses in defending this action and granting Plaintiff's attorneys' fees under *D.C. Code* § 19-1310.04.

**COUNT V**  
**(Claim for Damages against CCT Under D.C. Code § 19-1310.02)**

134. Plaintiff restates the allegations of paragraphs 1 through 133 of this Complaint as if fully set forth herein.

135. CCT has breached at least the following duties to the beneficiaries of the 2008 Modified Trust:

a. the duty to administer the 2008 Modified Trust impartially by allowing certain family members to use an asset of the 2008 Modified Trust without requiring them to pay rent, and to continue an improper pattern of utilizing trust assets for personal use, in direct conflict with and violation of the Settlement Agreement and the 2008 Modified Trust itself, and, as CCT itself has acknowledged, of applicable tax law.

b. the duty to administer the 2008 Modified Trust solely for the benefit of the beneficiaries and the duty of loyalty to all beneficiaries by using corporate funds, now part of the 2008 Modified Trust, to pay personal expenses of certain family members, in direct conflict with and violation of the Settlement Agreement.

c. the duty to administer the 2008 Modified Trust solely for the benefit of the beneficiaries and the duty of loyalty to all beneficiaries by using funds and assets of the 2008 Modified Trust to fund its own legal defense costs, where those costs are incurred due to the conduct of CCT in managing the 2008 Modified Trust, the Carnicero Companies and the assets of the Carnicero family.

d. the duty to administer the 2008 Modified Trust solely for the benefit of the beneficiaries and the duty of loyalty to all beneficiaries by engaging, and failing to promptly replace, family members in management and corporate officer and director roles, in some cases without even informing the other beneficiaries that they were doing so.

e. the duty to administer the 2008 Modified Trust solely for the benefit of the beneficiaries and the duty of loyalty to all beneficiaries by failing to safeguard the tangible personal property of Mrs. Carnicero, in violation of the applicable Trust documents and the Settlement Agreement.

f. the duty to administer the 2008 Modified Trust solely for the benefit of the beneficiaries and the duty of loyalty to all beneficiaries by permitting Peter and Natalia to remain in the main house at Atoka, despite their failure to comply with the terms of the Consent, and to otherwise comply with the Settlement Agreement.

g. the duty to administer the 2008 Modified Trust solely for the benefit of the beneficiaries and the duty of loyalty to all beneficiaries by processing the Second BLA, in direct violation of the Settlement Agreement – an act which reduced the value of the main Atoka holding while constituting a gift not permitted or authorized by the Settlement Agreement.

136. CCT has, in summary, continued the very pattern of conduct which led to the DC Lawsuit and Delaware Complaint, and which prompted the Settlement Agreement – the misuse of the family's assets for the benefit of Jacqueline and her family, at the expense of the other beneficiaries. Despite countless expressions of concern, and requests for information, by Jorge, this pattern of bias has continued to the date of this Complaint, thus defeating the terms and the entire underlying purpose of the Settlement Agreement and the related Trust documents.

137. CCT's breaches have caused Plaintiffs damages by reducing the total value of the property and assets held by the 2008 Modified Trust.

**WHEREFORE**, Plaintiff Jorge J. Carnicero seeks damages against CCT, in an amount to be proven at trial, including his legal costs incurred to date, and to be incurred, to the extent to which such costs have not been paid or reimbursed by the 2008 Modified Trust, and grant Plaintiff attorneys' fees under *D.C. Code* § 19-1310.04.

**COUNT VI**  
**(Removal of Chevy Chase Trust as Trustee**  
**Under D.C. Code §§ 19-1307.06 and 19-1310.01)**

138. Plaintiff restates the allegations of paragraphs 1 through 137 of his Complaint as if fully set forth herein.

139. Chevy Chase Trust should be removed as Trustee of the 2008 Trust and Mrs. Camicero's Irrevocable Trust, as it has committed repeated, significant breaches of trust, has mismanaged the Trust assets, has failed to manage the Trust assets fairly, impartially, transparently, and in compliance with the Settlement Agreement, to the overwhelming benefit of some parties at the expense and to the detriment of others.

140. Chevy Chase Trust has failed and refused to pursue claims against Jacqueline, Peter and Natalia for their respective breaches, abuses and incursions into Trust assets, at the expense of Mrs. Camicero and the Trust generally.

141. Chevy Chase Trust has taken an increasingly adversarial tone with beneficiaries, and has made its activities increasingly opaque, despite repeated requests for information by those beneficiaries, including Jorge.

142. Chevy Chase Trust has failed to properly safeguard Trust assets, even after repeated warnings and requests for care and caution by Jorge and other beneficiaries.

143. Chevy Chase Trust has, in summary, permitted and even condoned repeated abuses by Jacqueline and her family, without adequately seeking compensation or reimbursement therefor, despite the fact that the appointment of Chevy Chase Trust was made for the very purpose of prohibiting and curtailing such abuses.

144. Under *D.C. Code* §§ 19-1307.06 and 19-1310.01, Chevy Chase Trust's mismanagement of Trust property, its clear bias and lack of transparency, and its refusal to acknowledge and correct its errors, warrant removing it as Trustee.

**WHEREFORE,** Plaintiff requests that the Court remove Chevy Chase Trust as Trustee for the Revocable Trust, as well as for Mrs. Camicero's Irrevocable Trust, appoint a neutral and

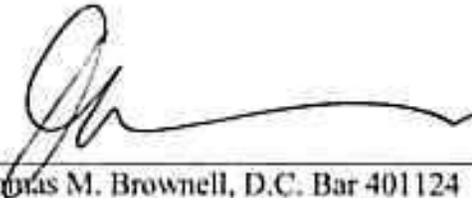
qualified third party to serve as Trustee, and award Plaintiff its attorney's fees in bringing and prosecuting this action pursuant to *D.C. Code* § 19-1310.04.

**JURY DEMAND**

Plaintiffs hereby request a trial by Jury on all matters so triable.

Respectfully submitted,

HOLLAND & KNIGHT LLP



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Thomas M. Brownell, D.C. Bar 401124

Andrew R. Oja, D.C. Bar 1003794

Bruce S. Ross (of Counsel)

Michelle A. Rosati (of Counsel)

Holland & Knight LLP

1600 Tysons Blvd, Suite 700

McLean, VA 22102

703-720-8690

703-720-8610 (fax)

thomas.brownell@hklaw.com

# Exhibit B

ESTTA Tracking number: **ESTTA525289**

Filing date: **03/06/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Mr.JorgeJ.Carnicero
Granted to Date of previous extension	03/06/2013
Address	3235 Foxvale Drive Oakton, VA 22124 UNITED STATES

Correspondence information	Theresa W. Middlebrook Counsel of record HOLLAND & KNIGHT LLP 400 South Hope Street Suite 800 Los Angeles, CA 90071 UNITED STATES theresa.middlebrook@hklaw.com Phone:213 896 2586
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**Applicant Information**

Application No	85629450	Publication date	11/06/2012
Opposition Filing Date	03/06/2013	Opposition Period Ends	03/06/2013
Applicant	Middleburg Real Estate, LLC 611 S 32nd Street Purcellville, VA 20132 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 036. All goods and services in the class are opposed, namely: real estate brokerage services and real property management services
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	ATOKA FARM
Goods/Services	Rights as an institution are claimed

Attachments	Opposition.pdf ( 6 pages )(225005 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/twm/
Name	Theresa W. Middlebrook
Date	03/06/2013

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

Jorge J. Carnicero,

Opposer,

v.

Middleburg Real Estate, LLC,

Applicant.

:  
:  
:  
: Opposition No.  
:  
: **ATOKA PROPERTIES**  
: Application Serial No. 85/629,450  
:  
:  
:

Attorney Docket No. 117964-00001

**NOTICE OF OPPOSITION**

In the matter of application Serial No. 85/629450, for the mark **ATOKA PROPERTIES** ("**Applicant's Mark**"), covering "real estate brokerage services and real property management" in Intl. Class 36, filed on May 18, 2012 by Middleburg Farms, LLC ("**Applicant**"), and published in the *Official Gazette* of November 6, 2012; Jorge J. Carnicero, an individual with an address of 3235 Foxvale Drive, Oakton, Virginia 22124 ("**Opposer**") believes he will be damaged by the registration of Applicant's Mark and hereby opposes the registration of same.

As grounds for the opposition Opposer declares as follows:

1. Opposer is a beneficiary of a trust ("**Trust**") which was established with the assets of the successful American industrialist, Jorge E. Carnicero, now deceased. In 1994, Mr. Carnicero and his wife acquired "Atoka Farm", in Fauquier County, Virginia, a historic property consisting of several residences, equestrian facilities, barns, other outbuildings, and huge tracts of land. Atoka Farm was used as the country home of the Carniceros. The Trust now owns Atoka Farm, as well as other assets, for the benefit of certain heirs of Jorge E. Carnicero, including Opposer.

2. Atoka Farm is within Virginia's original horse country, where the custom of naming estates and significant residences has been followed since at least the late 1600s. Atoka Farm's first buildings were built around 1816 when the unincorporated rural area has very few residents. Atoka Farm has been known by that name for many years and has retained that name through many changes of ownership of the property. Atoka Farm is currently known by that name, and is identified by that name by its owners, past and present, adjacent residents, within the surrounding areas, and by the members of the general public.

3. Over time, the rural area immediately adjacent to Atoka Farm became known as, and is currently known as, the village of Atoka, having been named after Atoka Farm, one of the area's original and most famous country estate properties.

4. Atoka Farm and the village of Atoka are within the Cromwell's Run Rural Historic District. The District is characterized by open, contiguous and pastoral land and is well known as an area for foxhunting, historic buildings, and prestigious historic estate properties and residences, specifically including Atoka Farm.

5. The village of Atoka has played an important role in Virginia and U.S. history. Its strategic location made it an important meeting place for John S. Mosby's Confederate Rangers during the Civil War and has been an important crossroads since the 1800's.

6. When John F. Kennedy was President of the United States, he and immediate family kept a residence in the village of Atoka known as Wexford.

7. Ronald Reagan leased Wexford from its then owners during the 1980 Presidential election. He used the home to prepare for debates and to meet with advisors.

8. Atoka Farm is the former country home of U.S. Senator John Warner, and for a time, his then wife, the actress Elizabeth Taylor.

9. Atoka Farm is famous and historic estate residential property long owned by powerful, famous, and/or wealthy persons, has been called by that name for many years, and has retained that name through many changes of ownership. The longstanding use and fame of the name Atoka Farm is a significant asset of the Atoka Farm property.

10. By any standard, Atoka Farm is a famous institution under Section 2(a) of the Federal Trademark Statute, 15 U.S.C. Section 1052(a).

11. Applicant is a limited liability company organized under the laws of the Commonwealth of Virginia, with an address of 611 South 32<sup>nd</sup> Street, Purcellville, Virginia 20132. Applicant filed an application to register the mark **ATOKA PROPERTIES** on May 18, 2012 at the U.S. Patent and Trademark Office and the application was subsequently published in the Official Gazette of the Trademark Office on November 6, 2012.

12. Upon information and belief, Applicant is owned by Peter Pejacsevich, an Austrian citizen. Applicant is not located in the village of Atoka, and conducts no business in, around, or relating to the village of Atoka.

13. Neither Mr. Pejacsevich nor Applicant have or have ever had any ownership rights or other property interest in Atoka Farm. Applicant's owner is married to a grand-daughter of Mr. Carnicero. This grand-daughter, along with her husband and children, were permitted to reside temporarily, under a limited and conditional right, in a residence at Atoka Farm under agreements with the Trust, which limited and conditional right has terminated and ended.

14. Applicant has adopted the name **ATOKA PROPERTIES** and taken other actions to falsely suggest a connection between Applicant and Atoka Farm, and thus to improperly and misleadingly trade on the fame, prestige, cache, and history of the historic country property Atoka Farm and the surrounding village of Atoka.

15. As the beneficiary of the Trust that owns Atoka Farm, Opposer has the right and duty to protect the name and integrity of Atoka Farm and prevent third parties with no ownership interest from creating confusion with the public by implying a false connection between that party and Atoka Farm, thereby lessening and harming the value of Atoka Farm and its name and causing damage to Opposer.

16. Atoka Farm is a famous institution. There is no connection between Atoka Farm and Applicant. Applicant's registration of the mark **ATOKA PROPERTIES** would disparagingly and/or falsely suggest a connection with Atoka Farm, and is barred by Section 2(a) of the Trademark Act, 15 U.S.C. Section 1052(a) which provides that:

*No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it— (a) Consists of or comprises ... matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols ....*

17. Atoka is a place name inextricably linked to the historic country property Atoka Farm and the surrounding area known as Atoka. Applicant's registration of the mark **ATOKA PROPERTIES** would be improper as the mark **ATOKA PROPERTIES** includes a descriptive term "properties" that has no distinctive characteristic, and "Atoka", the name of a well known place, thus is primarily geographically descriptive and/or primarily geographically deceptively mis-descriptive, and barred from registration by Section 2(e)(2) of the Trademark Act, 15 U.S.C. Section 1052(e)(2).

18. It would be improper to allow any party not located in the area of Atoka to own a registration that conceivably would allow the Applicant to bar others located in the area of Atoka from using Atoka as an accurate geographic indicator of the location of their businesses.

19. It would be further improper to allow any party not located within the area of Atoka to own a registration that would falsely imply that an area outside Atoka, namely Purcellville, actually is part of the area of Atoka, and/or that the geographic boundaries or meaning of Atoka is expanding or changing.

WHEREOF, Opposer prays that this Notice of Opposition be sustained and registration of application Serial No. 85/629,450 be refused.

Respectfully submitted,

Jorge J. Carnicero

Dated: Mar 6, 2013

By: 

Theresa W. Middlebrook

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Los Angeles, California 90071

213 896 2586

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(202) 663-7271

thomas.brooke@hklaw.com

Counsel for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was furnished by electronic mail

and U.S. Mail to:

Kevin Oliviera, Esq.  
Odin Feldman & Pittleman PC  
1775 Wiehle Avenue  
Reston, Virginia 20190-5159  
kto@ofplaw.com

Michael T. Murphy, Esq.  
K&L Gates, LLP  
P.O. Box 1135  
Chicago, Illinois 60690  
michael.murphy@klgates.com

  
March 6,  
2013

#12586732\_v1

# Exhibit C

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**TRADEMARK TRIAL AND APPEAL BOARD**

Jorge J. Carnicero,	:	
	:	<b>OPPOSITION NO. 91209647</b>
Opposer,	:	ATOKA PROPERTIES
	:	Appl. Serial no. 85/629,450
v.	:	
	:	
	:	
Middleburg Real Estate, LLC,	:	
	:	
Applicant.	:	
	:	
	:	

**REQUEST FOR PRODUCTION OF DOCUMENTS - SET NO. 1**

From: Opposer Jorge J. Carnicero

To: Applicant Middleburg Real Estate, LLC

Nos. 1 through 18

Production Due: Thursday, August 1, 2013

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, opposer Jorge J. Carnicero hereby requests that applicant Middleburg Real Estate, LLC to respond, within thirty (30) days after service of this request, separately as to each of the requests below in one of the two following ways:

- (a) by producing all documents responsive to the request or agreeing to make such documents available to Defendant for inspection and copying at the law offices of Holland & Knight LLP, 1600 Tysons Boulevard, Suite 700, Tysons Corner, VA 22102 on Thursday, August 1, 2013, at 10:00 a.m. or
- (b) by stating, in writing, there are no documents responsive to this request.

## GENERAL & SPECIFIC DEFINITIONS

1. "**Application**" means US Trademark Application Serial No. 85/629,450.
2. "**Atoka Farm**" means that certain real property located in Fauquier County, Virginia, comprising approximately 400 acres of land and associated historic structures, and any property or development rights properly pertaining or attaching thereto, which real property formerly consisted of PIN Numbers 6073-68-5135, 6073-48-4243, 6073-45-7956 and 6073-88-4395; however, not including PIN 6073-65-6063.
3. "**Middleburg Community**" means Middleburg, Virginia, and its surrounding crossroads, hamlets and villages, generally bordered by Route 7 at the north, Highway 17 to the west, Highway 15 to the east, and Interstate 66 to the south.
4. "**Documents**" is synonymous in meaning and equal in scope to the use of those terms in Fed. R. Civ. P. 34(a), applicable case law, as defined in Federal Rule of Evidence 1001, and includes without limitation, things, handwritten, printed, typed, electronic, e-mailed, tele-faxed, telexed, photographed, phone or tape recorded, or stored electronically, however otherwise produced or reproduced writings, graphic matters, or other media upon which intelligence or information is recorded or placed, including but not limited to correspondence, notes, interoffice and intra-office communications, electronic messages or e-mails, memoranda, financial records, corporate records and reports, circulars, announcements, directories, declarations, evaluations, filings, agreements, contracts, subcontracts, legal instruments, notes, notebooks, concept boards, fabric swatches, samples, visual references, garments, scrapbooks, diaries, calendars, schedules, projections, plans, drawings, specifications, designs, sketches, pictures, photographs, photocopies, charts, graphs, curves, descriptions, tangible objects, newspapers, magazines, books, publications, and any non-identical copy of any of the foregoing, whether a draft or final version, different from the original because of any alteration, notices, comments, initials, underscoring, indication of routing or other material contained thereon or attached thereto, and whether or not sent to or received by any person.
4. "**MRE**" "**you**" and/or "**your**" mean applicant, and includes its officers, directors, agents, employees, servants and attorneys and all other persons acting for or on its behalf, including any predecessors thereof that transferred any goods, business, goodwill or any other assets to MRE or its current owners.

5. The terms "**Reputation**" and "**Custom**" have the meanings attributed to them under Rule 802(20) of the Federal Rules of Evidence.

6. "**Trust**" means all trust or trusts for which Chevy Chase Trust acts, has acted, or will act in the capacity of a trustee for Atoka Farm, as those rights and powers may lay.

### INSTRUCTIONS

1. In accordance with the applicable Federal Rules of Civil Procedure, these document requests call for the production of all responsive Documents and Things within your custody or control, even if those are not within your actual possession or the possession of your agents or attorneys.

2. The singular form of a word should be interpreted in the plural as well, and the present tense shall always include the past tense, and vice versa. The words "**and**" and "**or**" shall be construed conjunctively or disjunctively, whichever makes the request more inclusive. The term "**any**" or "**each**" should be understood to include and encompass "**all**."

3. If a request calls for Documents that are no longer in your possession, custody or control, please state:

- a) When such Documents were most recently in your possession, custody or control;
- b) What disposition you made of them;
- c) The identity of the person or persons presently in possession, custody or control of such Documents;
- d) The identity of any persons referred to in the Documents, or sent a copy of the Documents; and
- e) If the Documents have been destroyed, identify the person who destroyed the Documents, and the person who directed that the Documents be destroyed, state when they were destroyed, and state the reasons the Documents were destroyed.

4. If you object to a request on the ground that it seeks privileged Documents, please produce all Documents, or portions thereof, that are not privileged or to which you do not object. For each Document, or portion thereof that you withhold from production on the ground that it is privileged, state the following:

- a) The nature of the Document in sufficient detail so that it may be identified;

- b) The date, if any, appearing on the Document;
- c) The number of pages, if applicable, comprising the Document;
- d) The identity of each person who wrote or otherwise participated in the preparation or creation of the Document;
- e) The identity of each person who received or reviewed the Document;
- f) The identity of each person having custody of the Document; and
- g) The specific nature of the privilege which you claim applies to the Document, and the basis for the claim.

5. These requests shall be deemed continuing to the fullest extent permitted by Rule 26(e) of the Federal Rules of Civil Procedure, so that you are required to make further and supplemental production if you obtain additional responsive documents between the time of initial production and the time of trial.

**DOCUMENTS REQUESTED:**

1. All Documents constituting, discussing, or referring to MRE's corporate structure and governance as of March 1, 2010 and to date, including, without limitation, current ownership, management, and control.

2. All Documents constituting, discussing, or referring to MRE's formation, organization, or legal creation, whether those relating to the current Applicant or to any Predecessor-In-Interest to the business now operated by the Applicant.

3. All Documents reflecting MRE's ownership since the time MRE first commenced use of the term ATOKA in providing services to the public.

4. All Documents by and between any of the owners, officers, agents, employees of MRE discussing or referring to MRE's adoption of the term ATOKA in connection with providing services to the public.

5. All Documents by and between any member of the Carnicero family and any of the owners, officers, agents, and/or employees of MRE discussing or referring to MRE's adoption of the term ATOKA in connection with providing services to the public.

6. All Documents that reflect that the Trust consented to the use of the term ATOKA by MRE as a trademark, trade name, or any other indicator or origin for its services.

7. All Documents that reflect that the Trust consented to the use of the term ATOKA by a MRE Predecessor-In Interest as a trademark for its services.

8. All Documents constituting, discussing, or referring to the business relationship(s) between MRE and Atoka Conservancy Exchange LLC.

9. All Documents reflecting any investigation conducted by or on behalf of MRE concerning the availability of the term ATOKA as a trademark for real estate brokerage services.

10. All Documents reflecting MRE's bona fide intent to the term ATOKA as a trademark or service mark for any goods and/or services as of the time it filed the Application.

11. All Documents reflecting consent by the Trust of MRE's use of the term ATOKA as a trademark.

12. All Documents reflecting actual knowledge by the Trust of MRE's use of the term ATOKA as a trademark at any time.

12. All Documents reflecting consent by any of the beneficiaries of the Trust to MRE's use of the term ATOKA as a trademark.

13. All Documents reflecting actual knowledge by Opposer of MRE's use of the term ATOKA as a trademark at any time, other than in connection with this Opposition.

14. All Documents relating to or affecting a real property interest in Atoka Farm that refer to Atoka Farm by the name "Atoka", whether alone or in combination with the term "Farm."

15. All Documents reflecting the listing of Atoka Farm for sale at any time in the past.

16. All Documents reflecting the Reputation within the Middleburg Community of the Custom of referring to Atoka Farm by the name "Atoka", whether alone or in combination with the term "Farm."

17. Documents reflecting the actual use by others within the Middleburg Community of the term ATOKA as a trademark or service mark in commerce.

18. Documents reflecting past, current and/or potential trademark disputes between MRE, or any of its officers, agents, owners or representatives, relating to rights to use the term ATOKA and any third parties.

Respectfully submitted,  
Jorge J. Carnicero

Dated: June 28, 2013

By:   
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **REQUEST FOR PRODUCTION OF DOCUMENTS - SET No. 1** was served by first class mail, postage prepaid, on this 28<sup>th</sup> day of June, 2013 upon counsel for applicant addressed as follows:

Michael T. Murphy, Esq.  
K&L Gates, LLP  
P.O. Box 1135  
Chicago, Illinois 60690



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Theresa W. Middlebrook

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Serial No.: 85/629,450  
For the Mark: ATOKA PROPERTIES

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Jorge J. Carnicero,

Opposer,

v.

Opposition No. 91/209647

Middleburg Real Estate, LLC

Applicant.

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**EMERGENCY MOTION FOR PROTECTIVE ORDER AND TO STAY DISCOVERY**

Applicant, Middleburg Real Estate, LLC (“Applicant”), by its undersigned counsel, K&L Gates LLP, respectfully moves for a protective order and suspension of all discovery under 37 CFR § 2.120(f); TBMP § 412.06. Even though Applicant filed a well founded Motion to Stay on June 27, 2013, Opposer’s counsel (“Opposer”) is pursuing a “scorched earth” litigation strategy by pressing for discovery, including by issuing a subpoena two days later for the deposition of Natalia Pejacsevich, the wife of one of the owners of Applicant. Because Ms. Pejacsevich is not involved in the business of Applicant, Opposer’s subpoena can only have been issued in bad faith to harass Applicant. The aggressive rush for discovery is even more pointless as the parties are actively discussing settlement.

Applicant requests that the Board suspend discovery until the Motion to Stay is decided, and that the Board order Opposer to withdraw its subpoena to Natalia Pejacsevich (attached hereto as **Exhibit A**) or any other subpoenas that it may have issued.

Applicant requests an emergency telephonic conference as soon as possible such that a decision on this dispute can be reached before the July 11, 2013 deposition date.

In support of its motion, Applicant states as follows:

## **I. LEGAL STANDARD**

Applicant may ask for a protective order limiting discovery when justice requires it due to “annoyance, embarrassment, oppression, or undue burden or expense.” 37 CFR § 2.120(f); TBMP § 412.06. In cases “where a request for discovery constitutes clear harassment,” the Board allows a party to properly respond to a request for discovery by filing a motion responding to it. See TBMP § 410. In such cases, the motion may seek a protective order that “discovery not be had, or be had only on specified terms and conditions.” See TBMP § 526.

## **II. FACTS**

### **A. Applicant’s June 27, 2013 Motion to Stay is Well Founded**

Applicant filed its Motion to Stay the Opposition and Suspend Proceeding Pending Outcome of Civil Action on June 27, 2013 (“Motion to Stay”). See Motion for Stay, attached hereto as **Exhibit B**. As described in further detail in Applicant’s Motion to Stay, the civil action between Applicant and Opposer and this Opposition both involve trademark ownership rights in the mark ATOKA PROPERTIES, such that a stay is appropriate.

In fact, Opposer’s First Set of Requests for Production of Documents served on June 28, 2013 (“Opposer’s Doc Requests”, attached as **Exhibit C**), show that even Opposer believes that the civil action and Opposition involve the same trademark issues. Rather than seek discovery regarding the mark at issue, ATOKA PROPERTIES, Opposer’s Doc Requests seek discovery about issues involved in the associated civil action relating to the Chevy Chase Trust, the Atoka Conservatory Exchange LLC, and the marks ATOKA and ATOKA FARMS. See **Exhibit C**. Tellingly, Opposer’s Doc Requests fail to seek *any* information about the mark at issue, ATOKA PROPERTIES. Opposer is attempting to misuse the Board proceeding by seeking discovery available in the civil action, and thereby harass Applicant.

Further, Opposer will not be prejudiced by the stay, particularly as the case is in its early stages, and no discovery even occurred before the Motion to Stay was filed.

**B. Opposer's Escalation of Discovery After Filing of Motion to Stay**

One day prior to Applicant's filing of its Motion to Stay, Opposer requested of Applicant seven deponents which included uninvolved third parties such as Natalia Pejacsevich and Jacqueline Duchange, wife and mother-in-law, respectively, of one of the owners of Applicant. As discussed above, Opposer has no good faith reason to depose these individuals - except to harass and annoy Applicant. Given the posture of the case, there is no practical reason to proceed even with reasonable discovery as the Board may stay the case, and the parties are actively negotiating a settlement. In fact, opposing counsel has promised to send a revised draft of the settlement agreement to counsel for Applicant today.

Two days after the Motion to Stay was filed and served, Opposer served a subpoena on Saturday, June 29, 2013 on Natalia Pejacsevich at her home. See **Exhibit A**. The subpoena commanded Ms. Pejacsevich to appear at the offices of Opposer's counsel on July 11, 2013. Ms. Pejacsevich is not involved in the business of Applicant, so the issuance of the subpoena can only be intended to intimidate or harass. In an effort to resolve this matter without having to contact the Board, Applicant contacted Opposer on July 1, 2013 and asked it to withdraw the subpoena on Ms. Pejacsevich. Opposer refused.

Even so, the other discovery intended by Opposer is overly aggressive and is again, a "bull rush" for no good reason, particularly while the case has been dormant for months. Opposer suggested an intense and unduly burdensome deposition schedule – Opposer's schedule includes seven depositions taken in two days. Finally, Opposer is willing to rush to take these depositions before Applicant's document production arrives – Applicant's documents in

response would be due August 1, 2013, see below. Applicant did not and cannot agree to a deposition schedule that is unduly burdensome and includes uninvolved deponents, nor will it agree to repeat depositions after Opposer has reviewed the documents.

Applicant's Motion to Stay makes a prima facie showing that the issues in the Opposition and the earlier filed civil action may be dispositive of the Opposition. See **Exhibit B**. Opposer is well aware that the Board's policy in such cases is to suspend. Rather than focus on the appropriateness of a stay, one day after the Motion to Stay was filed, Opposer served its first set of requests for production on Applicant. See **Exhibit C**. Opposer requested a response within thirty days and under the Federal Rules of Civil Procedure, these responses would be due August 1, 2013. Further, many of these requests are irrelevant and are only intended to harass. As discussed above, some request information that discusses issues linked to this matter only by the civil action such as requests for documents on the Chevy Chase Trust, the Atoka Conservatory Exchange LLC, and the marks ATOKA and ATOKA FARMS. See **Exhibit C**. Also, as mentioned above, none of Opposer's nineteen requests ask for documents concerning the mark ATOKA PROPERTIES, the mark at issue in this Opposition.

Opposer's actions are unduly burdensome and clearly harassing, and are made in bad faith. Opposer's behavior is especially counterproductive given the ongoing settlement negotiations between Applicant, Opposer and the Chevy Chase Trust. Opposer seeks discovery for no other reason than to harass, annoy, and unduly burden Applicant.

### **III. CONCLUSION**

WHEREFORE, Applicant respectfully requests that the Board schedule an emergency telephonic conference as soon as possible to discuss the emergency motion, suspend the

proceedings including all discovery pending a decision on the Motion to Stay and order that Opposer immediately withdraw its subpoena for Natalia Pejacsevich's July 11, 2013 deposition.

Respectfully submitted,

K&L Gates, LLP  
Counsel for Applicant

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Date: July 3, 2013

