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Filing date: **07/09/2013**

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

| | |
|------------------------|---|
| Proceeding | 91209647 |
| Party | Plaintiff Jorge J. Carnicero |
| Correspondence Address | THERESA W MIDDLEBROOK HOLLAND & KNIGHT LLP 400 SOUTH HOPE STREET, SUITE 800 LOS ANGELES, CA 90071 UNITED STATES theresa.middlebrook@hklaw.com, thomas.brooke@hklaw.com |
| Submission | Motion to Suspend for Civil Action |
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| Filer's e-mail | theresa.middlebrook@hklaw.com |
| Signature | /twm/ |
| Date | 07/09/2013 |
| Attachments | TTAB Opposition to Motion to Stay Proceeding.pdf(3099753 bytes) |

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Jorge J. Carnicero,

Opposer,

v.

Middleburg Real Estate, LLC,

Applicant.

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:
OPPOSITION NO. 91209647
:
ATOKA PROPERTIES
:
Appl. Serial no. 85/629,450
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OPPOSITION TO MOTION TO STAY PROCEEDING

Opposer Jorge J. Carnicero opposes Applicant's pending Motion to Stay the Opposition and Suspend Proceeding Pending Outcome of Civil Action, served on June 27, 2013, on the following grounds.

1. Summary of Arguments

Applicant's Motion repeatedly states that this Opposition involves the same parties, asserts the same rights, and involves the same issues in the action pending in the Superior Court of the District of Columbia, Case No. 2013-001499B (hereafter, the D.C. Action), so much so that the rulings in the D.C. Action "are dispositive" of the issues in the Opposition.¹ To the contrary: a simple review of the Complaint in the D.C. Action and the Opposition shows that the Applicant is not even a party in the D.C. Action. This, in and of itself, refutes the position take by the Applicant in its motion. There are six defendants in the D.C. Action, and none of them are parties in this proceeding.

Furthermore, each proceeding deals with completely unrelated legal rights. The D.C. Action deals with breach of contract and the violation of statutory fiduciary duties of a court

¹ See, *(emphasis added)*, "asserting the same rights as in the [D.C. Action] and seeking the same relief" [Motion 2]; "[t]he issues, parties, and contested ownership rights, as well as the relief sought by Opposer are identical in the ongoing D.C. Superior Court Case and in this Opposition Proceeding." [Motion 3]; "The same parties appear..." [Motion 3]; "...same relief..." [Motion 4]; "... the District Court's rulings in the DC Superior Case are dispositive of the issues" in this Opposition [Motion 4, emphasis added]; "...litigating in parallel proceedings...." [Motion 4].

appointed trustee. The Opposition claims the mark in issue is simply not registerable, by anyone, under certain provisions of Sections 2(a) and 2(e) of the Lanham Act. Whether a non-party to this Opposition breached a contract has no bearing on registerability of the Applicant's mark under the Lanham Act.

2. Controlling Law

A stay is appropriate if a party or parties are involved in a civil action which "may have a bearing on the Board case." TMEP Sec. 510.02(a). The concept that there should be an automatic suspension of a Board proceeding even if the same parties are involved in a civil litigation "is manifestly incorrect. Suspension under such circumstances is granted only after both parties have been heard on the question and the Board has carefully reviewed the pleadings in the civil suit to determine if the outcome thereof will have a bearing on the question of the rights of the parties in the Patent Office proceeding." *Martin Beverage Co., Inc. v Colita Beverage Corp.*, 169 USPQ 568, 570 (TTAB 1971). "If the parties to an opposition are involved in a district court action involving the same mark or the opposed application, the Board will scrutinize the pleadings in the civil action to determine if the issues before the court may have a bearing on the Board's decision in the opposition." *New Orleans Louisiana Saints LLC & NFL Properties LLC v Who Dat?, Inc.*, 99 U.S.P.Q.2d 1550, 1552 (TTAB 2011), citing *Forest Laboratories Inc. v. G.D. Searle & Co.*, 52 USPQ2d 1058, 1061 (TTAB 1999). As the Applicant in this Opposition is not a party to the D.C. Action, not much scrutiny is needed to see the parties in this Opposition are not "involved" in an action which could allow for a stay.

3. The Parties In The Position of Defendant Are Different

The Motion for Stay claims that "The same parties appear...", at Motion 3, but that is not correct. The opposing parties in the Opposition and in the D.C. Action are different legal entities completely; there is not even any overlap of the defendants.

A. Defendant in the Opposition

In this Opposition, the only Applicant seeking to register the right to the mark ATOKA PROPERTIES for real estate services is **Middleburg Real Estate LLC**, a Virginia limited liability company.² According to the Virginia Secretary of State's Office, Daniel M. Kaseman is Middleburg Real Estate LLC's agent for service of process (note - not Peter Pejacevich). Decl.

² Middleburg Real Estate LLC was established on December 9, 2009, SCC ID No. S3110436. Its principal office is located at 611 South 32nd Street, Purcellville, Virginia 20132.

Rosati, Records of the Virginia Secretary of State, Ex. A. According to Applicant's February 11, 2010 press release published at the on-line website for the *Chronicle of the Horse* magazine, the Applicant entity is composed of three members, Daniel Kaseman, Scott Buzzelli, and Peter Pejacsevich. The Loudoun Times' newspaper website, per a press release by the Town of Purcellville published on January 21, 2011, states that Middleburg Real Estate is "owned and operated by Scott Buzzelli, Daniel Kaseman and Peter Pejacsevich." Decl. Rosati, Ex. B. According to Applicant's website, Daniel Kaseman is Middleburg Real Estate LLC's Managing Partner (note, again, not Peter Pejacsevich). Decl. Rosati, Ex. C. At best, Pejacsevich is just one of three members of the Applicant, and even then, Peter Pejacsevich is not the same as Middleburg Real Estate LLC.

B. Defendants in the D.C. Action

Turning to the D.C. Action, there are six defendants. Those defendants include three juristic persons, Chevy Chase Trust Company, Inter-Properties, Inc., a Delaware corporation, and Trans-American Aeronautical Corporation, a Delaware corporation, and three individuals, Jacqueline Duchange, Natalia Pejacsevich, and Peter Pejacsevich. The sole Applicant in the pending application, Middleburg Real Estate LLC is not a named party to the D.C. Action. Therefore, the Applicant in the Opposition, Middleburg Real Estate LLC is not even a party to the D.C. Action. Thus, there is no ruling or decision from the Superior Court of the District of Columbia that would have any effect upon or be binding on Middleburg Real Estate LLC.³

Middleburg Real Estate, LLC and Mr. Pejacsevich are not one and the same. Applicant is party that filed the pending trademark application that is being opposed, and that is Middleburg Real Estate LLC, and not Peter Pejacsevich. The issue in this Motion is whether the same parties are involved in two proceedings, and one would impact upon the other. Clearly the same parties are not involved.

³ If the information in the press releases is correct, Peter Pejacsevich is not even the sole owner of Applicant; nor is he even the Managing Partner of Middleburg Real Estate LLC; he is just one of three partners. See Va Code §13.1-1019 and D.C. Code §29-803.4. Neither the Applicant Middleburg Real Estate LLC nor Mr. Pejacsevich can even truthfully take the position that there is such unity of control over the mark ATOKA PROPERTIES, even for trademark purposes, under TMEP Section 1201.07(b)(1).

4. Misidentification of the Term "Applicant" in the Motion

There is a basic logical flaw underlying many of Applicant's arguments in its Motion for Stay. On page two of its Motion, almost as an aside, Applicant states that in its Motion, "Applicant" will thereafter refer to **either Middleburg Real Estate , LLC, or Peter Pejacsevich.**" (See, Motion, page 2, immediately after the quotation of Paragraph 102, emphasis added.) Applicant refers to the party filing a trademark application (TMEP Sec. 803.01), which, in this proceeding, is only Middleburg Real Estate LLC. Peter Pejacsevich is not the Applicant under the rules of the Trademark Office. Peter Pejacsevich is, however, a named defendant in the D.C. Action.

Nevertheless, because of this off-handed definition, the Motion sets up the assumption that the Applicant Middleburg Real Estate LLC and Peter Pejacsevich are one and the same, using the same defined term, "Applicant," for both, creating a confusing and misleading pleading. Thus, every time the Motion for Stay states that relief sought, issues or parties are the "same" in the D.C. Action and Opposition, that representation should not be taken at face value. Are the parties really the same because of the text of the Complaint, or because the Motion uses the same legal word of art for the real Applicant on the trademark application in issue and for another party? Each time, to make the determination required by this Motion, the actual operative words in the D.C. Action Complaint must be examined. This is nothing short of playing "fast and loose with the courts," which the TTAB and the Court of Appeals for the Federal Circuit have prohibited in trademark matters. See *Boston Chicken Inc., v. Boston Pizza International Inc.*, 53 U.S.P. Q. 2d 1053 (TTAB 1999) (citing *Data General Corp. v. GSA*, 78 F.3d 1556, 1565 (Fed. Cir. 1995).

5. The D.C. Action has NO bearing on this Opposition

Coupling the fact that the Applicant is not a party to the D.C. action with the legal inability of any ruling of the D.C. Action to have a binding effect on a non-party, a Stay is not appropriate. However, even if a ruling of the D.C. Court were binding on a non-party, any ruling in the D.C. Action would not have "any bearing" on this Opposition. Therefore the actual claims in the Opposition and in the D.C. Action must also be examined and scrutinized.

A. The Claim in the D.C. Action

Applicant's Motion claims that "disputed ownership of the trademark rights in the mark ATOKA PROPERTIES are involved in" the D.C. Action. Motion, page 1, first paragraph. That

is simply not true. The D.C. Action is a contract dispute with the six defendants. The first lines of the Complaint in the D.C. Action state: "This case involves the breach of a Settlement Agreement that should have, once and for all, resolved a series of contention intra-family lawsuits and disputes involving a will contest and allegations of breaches of fiduciary duty and wrongdoing...." *See*, Complaint, page 2, attached to Decl. Rosati, Exhibit E.

The titles of and defendants under each of the six Counts in the D.C. Action are as follows: Count 1, "Breach of Contract (Settlement Agreement), against the individual Jacqueline Duchange, Chevy Chase, Inter-properties, and Trans-American (p. 24); Count 2, "Breach of Contract (Consent)" against Natalia Pejacevich (p 26); Count 3, "Breach of Consent (Peter)" against Peter Pejacevich p. 28; and Counts 4, 5 and 6 "For An Injunction," violation of a trustee's statutory obligations, and for removal of trustee, (pps. 30, 32, and 34, respectively) all against Chevy Chase Trust only. Middleburg Real Estate LLC, as a non-party to the D.C. Action, is obviously not named. The Motion does not point to, and cannot point to, any count that charges trademark infringement, or unfair competition, or any other quasi-trademark cause of action; it sues for breach of contract and related trustee statutory duties.

As pointed out above, Applicant has used the term "Applicant" in its Motion to Stay to refer to both or either the actual Applicant, Middleburg Real Estate LLC, and Peter Pejacevich. Using this mis-definition, the Motion mis-argues the substance of the D.C. Action at page 2 as follows: "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." Immediately following, the Motion quotes from Paragraph 127 in the D.C. Action Complaint, but deletes the actual name in the Complaint, which is Peter Pejacevich; the Motion replaces that actual name with "[Applicant]". Reproduce on the next page are the pertinent portions of the actual Paragraph 127 from the Complaint, and to the right, the substitutions made in the Motion:

(Image on next page)

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

c. Improperly and unlawfully seeking to register the names Atoka, Atoka Farm, and Atoka Properties in the Trademark Applications, and then filing and seeking 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." Carricero Compl. ¶127 a.

WHEREFORE, Plaintiff Jorge J. Carricero (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.... Carricero Compl. p. 20, Count III.

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

a. Improperly and unlawfully seeking to register the names Atoka, Atoka Farm, and Atoka Properties in the Trademark Applications, and then filing and seeking to abandon the Trademark Applications, in violation of the Consent in that [Petitioner] 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. Carricero requests that the Court declare [Petitioner] 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 personally owned by Inzer-Properties, the 2005 Trust or Mrs. Carricero's Irrevocable Trust, as such personally 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.

This is completely inappropriate and misleading to any readers of the Motion. In short, opposing counsel should not have to double check each quotation for accuracy, discover such substitutions, and then be placed in the position of bring "artful pleading" to the attention of the Panel. Attached to the Declaration of Rosati, Ex E. herewith is a true and correct copy of pages 31 and 32 of the D.C. Action Complaint, showing the original text, seeking relief against Peter Pejacsevich, not the Applicant in this proceeding, Middleburg Real Estate LLC.

In short, contrary to the Motion's argument, the DC Action does not seek any injunction against Applicant Middleburg Real Estate LLC. Looking at the one claim against Peter Pejacsevich, it charges that Peter Pejacsevich breached his contractual duties under the Consent portion of the Settlement Agreement by diverting assets from the Trust to himself, including (a) charging the Trust for the costs of his household help and using a Trust asset vacation home without authority; (b) excluding others from the use of another Trust asset residence; (c) improperly utilizing personal tangible property belonging to another family member; (d) improperly using personalty belonging to the Trust in order to build himself a home; and finally (e) attempting to take control over the name of the Trust's historic property, Atoka Farm, through a series of trademark application filings. These are all instances of breach of contract; there is no trademark infringement charge; it is a charge of an attempt to steal trust assets, including the name of Atoka Farm through improper filings at the Trademark Office in conflict with his contractual responsibilities.

B. The Issues in the Trademark Trial & Appeal Board

This Opposition deals with the objection by Opposer to Applicant Middleburg Real Estate LLC's application to register ATOKA PROPERTIES based upon the Lanham Act, Section 2(a), as a false association with an institution, and upon Section 2(e)(2) and 2(e)(3), as primarily geographically descriptive and primarily geographically deceptively mis-descriptive because the mark is used outside Atoka.

On the false association claim, Atoka Farm is a well known historic estate property located in Virginia's old horse country, known by that name for many years. *See*, Oppo. Paragraphs 1, 2, attached to Decl. Rosati as Exhibit D. On the primarily geographic claim, Atoka Farm sits in a small enclave known as the village of Atoka; Atoka is in the federally recognized Cromwell's Run Rural Historic District. [*Id.* at 3, 4] On the primarily geographically deceptively mis-descriptive claim, Applicant Middleburg Real Estate LLC is not even located in

Atoka. Geographically deceptively misdescriptive marks are barred from the Principal Register. The Opposition includes no Section 2(d) challenge⁴ claiming that Opposer owns rights in ATOKA PROPERTIES and that registration by Applicant Middleburg Real Estate LLC could conflict with those rights.

The Opposition seeks a ruling that based upon unique provisions of the Lanham Act controlling appropriateness of registration of certain types of marks, this particular Applicant is barred from registering the mark on these particular grounds. Note that any other applicant in another trademark application seeking registration of the same or a confusingly similar mark would also be barred as well.

The issues in the Opposition do not even uniquely apply to this specific Applicant, Middleburg Real Estate LLC. Likewise, Opposer, who is also the Plaintiff in the D.C. Action, is not the only entity that could have filed such an Opposition based upon these grounds. Any person with an interest in the real Atoka Farm, even a new owner of Atoka Farm, could have brought this improper association case against Middleburg Real Estate LLC under Section 2(a) and/or Section 2(e), whether as an opposition or a cancellation. Any local historical society, the village Atoka, or any concerned citizen infuriated by the attempt to register that historic village's name as a trademark exclusively owned by a commercial operation not even located in Atoka could have brought an opposition or even a cancellation based upon Section 2(e). These are basic statutory limitations prohibiting improper registrations from being issues. The Settlement Agreement, which gives rise to the D.C. Action, does not form the basis of this Opposition; the Lanham Act does.

C. The D.C. Action and this Opposition are separate and distinct

The most basic point here is that there is no ruling that could be made in the D.C. Action that would have any bearing on the decision here at the Trademark Trial and Appeal Board. A stay of a proceeding before the Board is appropriate where a district court action between the same parties seeks cancellation of a registration, since the outcome of that proceeding will truly be dispositive of the only claim before the Trademark Trial and Appeal Board. *General Motors Corp. v Cadillac Club Fashions Inc.*, 22 USPQ 2d 1933, 1936 (TTAB 1992). Likewise, where a district court complaint claims trademark infringement of a mark and seeks an injunction based

⁴ The standard for a violation of Section 2(a) is not even the same as a likelihood of confusion 2(d) challenge. *Association Pour la Defense et la Promotion de L'Oeuvre de Marc Chagal v Bondarchuk*, 82 USPQ 2d 1838 (TTAB 2007)

upon infringement, ownership and priority of the rights in the mark will be decided, that will have a bearing on a Board proceeding seeking cancellation by one party as against the other, and a stay is appropriate. *New Orleans Louisiana Saints LLC v Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011). The Complaint in the D.C. Action neither does not seek a cancellation; nor does it charge trademark infringement. Most significantly, there is no request in the D.C. Action Complaint for a finding that Atoka is primarily geographic, or that the use by Applicant Middleburg Real Estate LLC, of ATOKA PROPERTIES would be an improper association with Atoka Farm. The D.C. Action seeks an order that Peter Pejacsevich, who is not even the Applicant here, must cease diverting assets of the Trust to himself, pursuant to certain contractual duties which bind him, and included in those trust assets are, of course, the actual name of the most significant asset still held by the Trust, the historic property Atoka Farm, in Atoka Virginia.

6. A Stay is Inappropriate

Lanham Act Section 2(a) and (e) deals with statutory prohibition binding on all Applicants and which may be brought by any interested party with standing to prevent inappropriate registration of certain trademarks. Breach of contract cases deal with determining whether individual promises made by specific parties to other specific parties have been breached. The outcome of the D.C. Action dealing with whether there was any breach of contract by any of the named defendants or a violation of fiduciary duties by Chevy Chase Trust will have **no bearing** on whether Atoka is primarily geographic or whether ATOKA PROPERTIES constitutes a unregisterable false suggestion of a connection with Atoka Farm. Thus, according to TEMP Sec. 510.02(a) and under the rules of *Martin Beverage Co., Inc.*, *New Orleans Louisiana Saints LLC v NFL Properties LLC*, and *Forest Laboratories Inc. v. G.D. Searle & Co.*, 52 USPQ2d 1058, 1061 (TTAB 1999), the stay sought should not be granted.

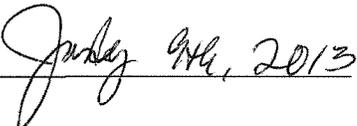
This Motion for Stay is sought solely for the purposes of delay. The TTAB and Court of Appeals for the Federal Circuit try to prevent a "risk of inconsistent results" and consider the "effect of the pleading party's action on the integrity of the judicial process. See *Boston Chicken Inc., v. Boston Pizza International Inc.*, 53 U.S.P. Q. 2d 1053 (TTAB 1999) (citing *Water Technologies Corp v. Calco Ltd.*, 850 F.2d 665-66, 7 USPQ2d 1907, 1101 (Fed. Cir. 1988). The D.C. Action Complaint contains 36 pages, 144 paragraphs of allegations, against six defendants (**none** of them being Applicant Middleburg Real Estate LLC), and all counts relate to whether

those six defendants breached a contract, or for Chevy Chase Trust, a violation of its statutory duties as a court appointed trustee. The D.C. Action is contentious, heavily fact driven, can be expected to take years to work its way through the system, and Peter Pejacsevich seeks to delay that proceeding as well.⁵ The only references in the D.C. Action to the trademark ATOKA PROPERTY relate to whether that filing constitutes a violation of contract by Peter Pejacsevich because it is yet another attempted diversion of assets from the Trust to his personal benefit, even though indirectly in violation of the Settlement Agreement, and his written consent.

In the Opposition, we have a relatively simple case. As the Interlocutory Attorney said July 8, 2013 conference call, there are no pending settlement discussions that would warrant any stay. It deals only with the right to register a trademark under Section 2(a) and 2(e), not with any contract issues. There is no reason to delay the Opposition from going forward pending the resolution of the six breach of contract causes of actions and breach of fiduciary duty claims, as they have absolutely no bearing on whether Atoka is a geographic term, or whether a real estate company outside of Atoka, Virginia, would falsely suggest a connection with Atoka Farm.

Respectfully submitted,

Jorge J. Carnicero

Dated:  9th, 2013

By: 

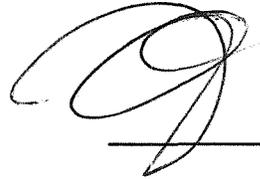
Theresa W. Middlebrook
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400 South Hope Street, Suite 800
Los Angeles, California 90071
213 896 2586
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⁵ The fact that Peter Pejacsevich has a motion pending in the D.C. Action seeking the exact same stay but in the reverse direction has already been brought to the attention of the Interlocutory Attorney. Seeking contradictory relief in two forums at the same time shows that the goal is simply delay and driving up expenses in all forums for the Opposer.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition to Motion to Stay proceeding was furnished by electronic mail and U.S. Mail on July 9, 2013 as follows:

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



5. Attached hereto as Exhibit D and for the convenience of the Panel are pages 1 and 2 of the Opposition in this matter.

6. Attached hereto as Exhibit E and for the convenience of the Panel are true and correct reproductions of page 2 of the Complaint in the D.C. Action, as well as pages 24, 26, and 28 through 34 which show the causes of action in that Complaint, and the actual text in Paragraph 127 of the Complaint.

I declare under penalty of perjury that the foregoing is true and correct, and that I executed this Declaration on this 9th day of July, 2013, at Tysons Corner, Virginia.



Michelle A. Rosati

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DECLARATION OF MICHELLE ROSATI IN OPPOSITION TO MOTION FOR STAY** was furnished by electronic mail and U.S. Mail on July 9, 2013 addressed as follows:

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



Theresa W. Middlebrook

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Middleburg Real Estate, LLC

General

SCC ID: S3110436
 Entity Type: Limited Liability Company
 Jurisdiction of Formation: VA
 Date of Formation/Registration: 12/9/2009
 Status: Active

Principal Office

611 S 32ND ST
 PURCELLVILLE VA20132

Registered Agent/Registered Office

DANIEL M KASEMAN
 611 S 32ND ST
 PURCELLVILLE VA 20132
 LOUDOUN COUNTY 153
 Status: Active
 Effective Date: 12/9/2009

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EXHIBIT A to Declaration of Rosati

**Webpages from
Chronofhorse.com & loudountimes.com**

**EXHIBIT B
to Declaration of Rosati**



February 11, 2010

Buzzelli, Kaseman and Pejacevich Complete Acquisition of Middleburg Real Estate

By: Press Release

PRINT SHARE

Middleburg, Virginia - February 9, 2010 - Scott Buzzelli, Daniel Kaseman and Peter Pejacevich , a team with over 65 years of experience growing companies and Middleburg Real Estate, Inc., a leading real estate service provider since 1943, today announce the completion of the team's acquisition of Middleburg Real Estate.

"Bringing together a powerful combination of energy, management, technology and knowledge of the markets while maintaining the staff, history, confidentiality, integrity and expertise of the existing firm will allow us to create one of the most responsive, comprehensive and highest quality real estate firms in the region," said Daniel M. Kaseman, Managing Partner.

As a result of the acquisition, the company will continue as Middleburg Real Estate, LLC and develop a subsidiary known as Atoka Properties to significantly increase the depth and breath of market coverage and services offered.

About Middleburg Real Estate, LLC

Middleburg Real Estate, located in the heart of the Virginia Hunt Country specializes in country and village properties, from luxury residences to working farms to raw land in Loudoun, Fauquier, Clarke and Rappahannock Counties.

About Atoka Properties

Atoka Properties personnel are geographically based and have a thorough working knowledge of local markets in Arlington, Alexandria, Fairfax, Loudoun, Fauquier, Prince William and Clarke Counties specializing in townhomes, single family homes, luxury homes and commercial/residential investment properties.

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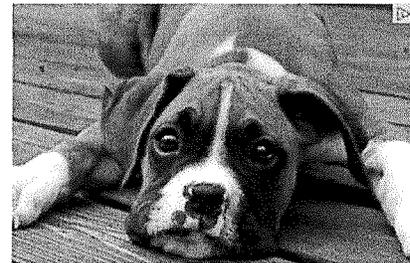
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Purcellville sells Town Hall

Friday, Jan. 21, 2011 by Jana Wagoner | 1 comments | Email this story

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The Town of Purcellville has signed a contract selling Town Hall to Atoka Properties for \$1.62 million.

According to a press release put out by town officials, the deal, which has been negotiated for a month, was finalized by the Purcellville Town Council Jan. 11 and signed Jan. 19.

Atoka Properties is a division of Middleburg Real Estate, which is owned and operated by Scott Buzzelli, Daniel Kaseman and Peter Pejacsevich. Purcellville's new town hall is scheduled to be ready for use this fall.

"The sale was structured to allow the buyer to enter into the purchase agreement while still giving the Town the maximum flexibility to maintain operations at the current site until the new Town Hall is available in the fall of 2011," stated the press release. "The deal had a net value of \$1,620,000 to the Town. This included a cash component of \$1.45 million along with the Town retaining \$170,000 of value in the generator, trailer and a donation of waived commission."

Atoka Properties had a presence in Purcellville prior to the deal. It has an investment in the Pancost building on downtown 21st Street.

The deal on Town Hall is expected to close Nov. 31.

o

Comments

Mon, Jan 24 at 10:35 PM by KW | Report this comment

So with a closing date of November 31st, I guess it will never come to pass...

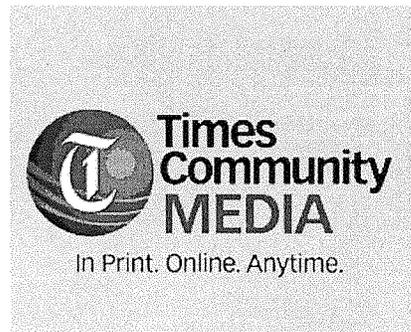
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DAN KASEMAN



Daniel M. Kaseman is the Managing Partner of Middleburg Real Estate/Atoka Properties. With over 30 years of management experience, he is helping to guide the growth, professionalism, and team spirit of the firm.

He is proud of taking that role in the community as well. serving on the Boards of The Northern Virginia Regional Park Authority, Burton Blatt Institute for People with Disabilities and the Syracuse University DC Regional Council.

On the Coaching Staff of Loudoun Valley High School Men's Soccer Program, Dan also enjoys being a member of Loudoun Golf & Country Club and lives in Purcellville with his wife and two children.

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EXHIBIT C
to Declaration of Rosati

Pages 1 and 2 of Opposition

**EXHIBIT D
to Declaration of Rosati**

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 an 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.

**D.C. Action Complaint
Pages 2, 24, 26, 28, and 30-34**

**EXHIBIT E
to Declaration of Rosati**

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

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;

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;

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 11 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 Pejacsevich 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 Bertlia 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. Carricero 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, Nutulia 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.