

ESTTA Tracking number: **ESTTA592609**

Filing date: **03/14/2014**

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

Proceeding	91214117
Party	Defendant LAKE & BAY BOATS, LLC
Correspondence Address	KRISTEN M HOOVER MCCARTHY LEBIT CRYSTAL & LIFFMAN 101 W PROSPECT AVE, STE 1800 CLEVELAND, OH 44115-1088 UNITED STATES kmh@mccarthylebit.com, mwv@mccarthylebit.com
Submission	Opposition/Response to Motion
Filer's Name	Kristen M. Hoover, Esq.
Filer's e-mail	kmh@mccarthylebit.com, mwv@mccarthylebit.com
Signature	/kmh/
Date	03/14/2014
Attachments	LAB.T002.USA.OPP - Response to Opposer's Motion for Extension.pdf(2337505 bytes )

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

ISLAMORADA BOATWORKS, LLC

Opposer,

v.

LAKE & BAY BOATS, LLC.

Applicant.

Opposition No.: 91214117

Application No.:

Mark: LAKE & BAY

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**APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR EXTENSION**

Lake & Bay Boats, LLC, by and through its undersigned counsel, hereby submits this paper in Opposition to Opposer's, Islamorada Boatworks, LLC's request for an extension of time filed March 13, 2014. As demonstrated below, Opposer's Motion for Extension of Time should be denied and Opposer's Opposition should be stayed pending resolution of the copending state court proceeding for all the following reasons:

1. During the parties' telephone discovery conference, attended by Interlocutory Attorney George C. Pologeorgis, Esq., the issue was raised with respect to the impact of the copending state court proceeding involving Islamorada Boatworks, LLC, and whether that proceeding had a bearing on the issues in the instant opposition.
  
2. During that discussion, Attorney Michael Vary, Esq., counsel for Applicant, pointed out that the state court proceeding was filed prior to the instant opposition. Parenthetically, Applicant made reference to that state court proceeding in its Answer to the opposition (Para. 34 of the Answer).

3. In the post-discovery conference order of the TTAB, mailed on March 3, 2014, the Opposer was “allowed until ten (10) days from the mailing day of this Order in which to file and serve a copy of the state action complaint so that the board may make an independent determination as whether the final disposition of the state court action may have a bearing on the issues in this opposition proceeding.”

4. As indicated by the Order, Opposer’s only obligation was to file a copy of the state court action, a document that it had in its possession.

5. While Applicant and its counsel are sympathetic with regards to the medical condition and the issues described for Attorney Sandra Tart, Ms. Tart makes no reference to her co-counsel, J. Michael Pennekamp, nor does she make any effort to explain why Mr. Pennekamp could not have reviewed this issue with the client and submitted the copy of the state court complaint within the time set by the Board.

6. Because the state court complaint is in Opposer’s possession (and no claim is made otherwise), and Opposer was unable to supply it in the ten (10) day period as required by the TTAB order, Applicant maintains that the Board may make a significant adverse inference from that failure.

7. Since the state court proceeding is a public matter, Applicant supplies a copy herewith along with all of its Exhibits, totaling 34 pages. See Exhibit 1.

8. In connection with the Board’s question as to whether the state court proceeding has a bearing on the issues raised in the opposition, Applicant respectfully submits that the answer to that question is “yes”, because ownership of the Lake & Bay trademark is at issue in the state court proceeding. In connection with this point, Applicant respectfully refers the Board to the following Paragraphs of the complaint, *inter alia*:

Paragraph 7(c) (“LAKE & BAY ASSETS” or “ASSETS” defined to include “all rights, title and interest in and to the trademark “Lake & Bay” with Serial No. 76316910”);

Paragraph 30 (allegation that BANK failed to perform its contract for the sale of the LAKE & BAY ASSETS);

Paragraph 33 (allegation that BANK failed to deliver good title for and physical possession to the intangible LAKE & BANK ASSETS); and,

Paragraph 47 (Count I allegation seeking specific performance and transfer of the LAKE & BAY ASSETS).

9. Additionally, Applicant notes that on March 13, 2014, it filed a Motion to Intervene in that state court proceeding. Applicant respectfully supplies a copy from the public record herewith. See Exhibit 2.

For all of the foregoing reasons, Applicant respectfully requests that the requested extension of time be denied and that the pending Opposition be stayed pending resolution of the copending (and earlier filed) state court proceeding.

Dated: March 14, 2014

Respectfully submitted,



Michael W. Vary, Esq.  
Kristen M. Hoover, Esq.  
McCarthy, Lebit, Crystal & Liffman, Co., L.P.A.  
101 W. Prospect Ave, Suite 1800  
Cleveland, Ohio 44115  
(216) 696-1422

*Attorneys for Applicant,*  
Lake & Bay, LLC.

## CERTIFICATE OF ELECTRONIC TRANSMISSION

The undersigned hereby certifies that on this 14th day of March 2014, the foregoing *APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR EXTENSION* was deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through their website at <http://estia.uspto.gov/>.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of March 2014, the foregoing *APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR EXTENSION* was served upon Opposer by delivering a true and correct copy of same to counsel for Opposer via email and first class mail, return receipt requested, as follows:

J. Michael Pennekamp, Esq.  
Sandra I. Tart, Esq.  
[jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com)  
[start@fowler-white.com](mailto:start@fowler-white.com)  
[bhackney@fowler-white.com](mailto:bhackney@fowler-white.com)  
[lparker@fowler-white.com](mailto:lparker@fowler-white.com)

Date: March 14, 2014



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Kristen M. Hoover, Esq.  
*One of the Counsel for Applicant*  
McCarthy, Lebit, Crystal & Liffman, Co., L.P.A.

## EXHIBIT 1



CORPORATION SERVICE COMPANY

## Notice of Service of Process

BHY / ALL  
Transmittal Number: 11639145  
Date Processed: 09/25/2013

**Primary Contact:** Elizabeth Penning 10AT76  
Fifth Third Bank, Cincinnati  
38 Fountain Square Plaza  
Cincinnati, OH 45263

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<b>Entity:</b>	Fifth Third Bank Entity ID Number 2123242
<b>Entity Served:</b>	Fifth Third Bank
<b>Title of Action:</b>	Islamorada Boatworks, LLC vs. Fifth Third Bank
<b>Document(s) Type:</b>	Summons/Complaint
<b>Nature of Action:</b>	Contract
<b>Court/Agency:</b>	Broward County Circuit Court, Florida
<b>Case/Reference No:</b>	CACE-13-020957
<b>Jurisdiction Served:</b>	Florida
<b>Date Served on CSC:</b>	09/24/2013
<b>Answer or Appearance Due:</b>	20 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Personal Service
<b>Sender Information:</b>	Sandra I. Tart 305-789-9200

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC  
CSC is SAS70 Type II certified for its *Litigation Management System*.  
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | [sop@cscinfo.com](mailto:sop@cscinfo.com)

**RUSH**

Electronically Filed 09/18/2013 08:37:06 AM ET

\*\*\* FILED: BROWARD COUNTY, FL HOWARD FORMAN, CLERK 9/18/2013 8:40:47 AM.\*\*\*

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. CACE-13-020957

ISLAMORADA BOATWORKS, LLC,  
a Florida limited liability company,

Plaintiff,

v.

FIFTH THIRD BANK,

Defendant.

**RUSH**

Served  
to 9/24/13 Time 3PM

MCN, No. 111

is a certified process server in the  
Circuit and County Courts

in and for the Second Judicial Circ

SUMMONS

THE STATE OF FLORIDA  
TO EACH SHERIFF OF THE STATE:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint in this action on  
Defendant:

**FIFTH THIRD BANK**

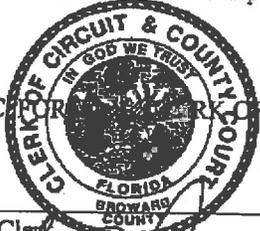
By Serving:  
ITS REGISTERED AGENT:  
CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE, FL 32301

Each Defendant is required to serve written defenses to the complaint on J. Michael Pennekamp, Esquire, FOWLER WHITE BURNETT, P.A., Espirito Santo Plaza, Fourteenth Floor, 1395 Brickell Avenue, Miami, Florida 33131, (305) 789-9000, within 20 days after service of this summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint.

DATED ON SEP 19 2013 2013.

HOWARD C. FORMAN, CLERK OF COURT

(Court Seal)



BY: \_\_\_\_\_  
Deputy Clerk

*Howard G. Forman*  
HOWARD G. FORMAN

### IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales, Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica. Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

### IMPORTANT

Des poursuites judiciaires ont été entreprise contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation de cette citation pour déposer une réponse écrite à la plainte ci-jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis antérieur du tribunal. Il y a d'autres obligations juridiques et vous pouvez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphone).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

**FORM 1.997. CIVIL COVER SHEET**

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions for completion.)

**I. CASE STYLE**

(IN THE CIRCUIT COURT OF THE 17<sup>th</sup> JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA)

ISLAMORADA BOAT WORKS LLC  
a Florida limited liability company

Plaintiff

vs.

FIFTH THIRD BANK

Defendant

**II. TYPE OF CASE**

(If the case fits more than one type of case, select the most definitive category.)  
If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- |  |  |
|--|--|
| <input type="checkbox"/> Condominium                                 | <input type="checkbox"/> Homestead residential foreclosure \$0 - \$50,000          |
| <input checked="" type="checkbox"/> Contracts and indebtedness       | <input type="checkbox"/> Homestead residential foreclosure \$50,001 - \$249,999    |
| <input type="checkbox"/> Eminent domain                              | <input type="checkbox"/> Homestead residential foreclosure \$250,000 or more       |
| <input type="checkbox"/> Auto negligence                             | <input type="checkbox"/> Nonhomestead residential foreclosure \$0 - \$50,000       |
| <input type="checkbox"/> Negligence—other                            | <input type="checkbox"/> Nonhomestead residential foreclosure \$50,001 - \$249,999 |
| <input type="checkbox"/> Business governance                         | <input type="checkbox"/> Nonhomestead residential foreclosure \$250,000 or more    |
| <input type="checkbox"/> Business torts                              | <input type="checkbox"/> Other real property actions \$0 - \$50,000                |
| <input type="checkbox"/> Environmental/Toxic tort                    | <input type="checkbox"/> Other real property actions \$50,001 - \$249,999          |
| <input type="checkbox"/> Third party indemnification                 | <input type="checkbox"/> Other real property actions \$250,000 or more             |
| <input type="checkbox"/> Construction defect                         | <input type="checkbox"/> Professional malpractice                                  |
| <input type="checkbox"/> Mass tort                                   | <input type="checkbox"/> Malpractice—business                                      |
| <input type="checkbox"/> Negligent security                          | <input type="checkbox"/> Malpractice—medical                                       |
| <input type="checkbox"/> Nursing home negligence                     | <input type="checkbox"/> Malpractice—other professional                            |
| <input type="checkbox"/> Premises liability—commercial               | <input type="checkbox"/> Other   |
| <input type="checkbox"/> Premises liability—residential              | <input type="checkbox"/> Antitrust/Trade regulation                                |
| <input type="checkbox"/> Products liability                          | <input type="checkbox"/> Business transactions                                     |
| <input type="checkbox"/> Real property/Mortgage foreclosure          | <input type="checkbox"/> Constitutional challenge—statute or ordinance             |
| <input type="checkbox"/> Commercial foreclosure \$0 - \$50,000       |  |
| <input type="checkbox"/> Commercial foreclosure \$50,001 - \$249,999 |  |
| <input type="checkbox"/> Commercial foreclosure \$250,000 or more    |  |

- Constitutional challenge—proposed amendment
- Corporate trusts
- Discrimination—employment or other
- Insurance claims
- Intellectual property

- Libel/Slander
- Shareholder derivative action
- Securities litigation
- Trade secrets
- Trust litigation

III. **REMEDIES SOUGHT** (check all that apply):  
 monetary;  
 nonmonetary declaratory or injunctive relief;  
 punitive

IV. **NUMBER OF CAUSES OF ACTION:** [2]  
(specify) Count I: Specific Performance of Contract; Count II: Damages for Breach of Contract

V. **IS THIS CASE A CLASS ACTION LAWSUIT?**  
 yes  
 no

VI. **HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**  
 no  
 yes If "yes," list all related cases by name, case number, and court.

VII. **IS JURY TRIAL DEMANDED IN COMPLAINT?**  
 yes  
 no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature

Sandra I. Tart

Attorney or party

Fla. Bar # 358134

Sandra I. Tart  
(type or print name)

Date

9/13/13

IN THE CIRCUIT COURT OF THE 17<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO. CACE-13-020957

ISLAMORADA BOATWORKS, LLC,  
a Florida limited liability company,

Plaintiff,

v.

FIFTH THIRD BANK,

Defendant.

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**COMPLAINT**

Plaintiff ISLAMORADA BOATWORKS, LLC, by and through its undersigned counsel, hereby sues FIFTH THIRD BANK, and alleges and avers as follows:

**Parties**

1. Plaintiff ISLAMORADA BOATWORKS, LLC ("ISLAMORADA"), is a Florida limited liability company, with its offices located in Islamorada, Monroe County, Florida.
2. Plaintiff ISLAMORADA brings this action as assignee of Diversified Composite Products, LLC. ("DIVERSIFIED").
3. DIVERSIFIED is a Florida corporation located in Perry, Taylor County, Florida.
4. Defendant Fifth Third Bank ("BANK") is a foreign corporation which is registered to do business and is doing business in the State of Florida. BANK has an agent or representative, and maintains one or more offices in Broward County, Florida.

**Jurisdiction and Venue**

5. This is an action for specific performance and for damages in excess of \$15,000. This Court has subject matter jurisdiction of this action under Section 26.012, *Florida Statutes*.

6. Venue is proper under Section 47.051, *Florida Statutes*, as BANK, a foreign corporation, has agents and representatives, and one or more offices in Palm Beach County, Florida.

**General Allegations**

7. On or about November 30, 2011, DIVERSIFIED purchased the following assets (collectively the "LAKE & BAY ASSETS" or "ASSETS") in an auction operated by BANK's agent, Kincaid Distributing, Inc, d/b/a "Randy Kincaid Auction ("KINCAID AUCTION"):

- a. all boat molds owned by Lake & Bay Boats, LLC ("BOAT MOLDS");
- b. all rights, title, interest in the trade name Lake & Bay ("LAKE & BAY NAME" or "NAME");
- c. all rights, title and interest in and to the trademark "Lake & Bay" with Serial No. 76316910 (the "LAKE & BAY MARK" or "MARK") and all goodwill associated with the MARK;  
and
- d. all rights to, and all title and interest in, the domain name "Lake & Bay" and the websites [www.lakeandbay.com](http://www.lakeandbay.com) and [www.lakeandbayboats.com](http://www.lakeandbayboats.com) ("DOMAINS").

8. A copy of the Bill of Sale for the LAKE & BAY ASSETS dated December 16, 2011, executed by KINCAID AUCTION, on behalf of "Seller", which is identified as "5/3<sup>rd</sup> Bank" and by DIVERSIFIED, is attached hereto as Exhibit "1."

9. A copy of an advertisement of the auction of the LAKE & BAY ASSETS posted online by KINCAID AUCTION is attached hereto as Exhibit "2."

10. BANK was the Seller of the ASSETS and KINCAID AUCTION was acting on behalf of BANK in offering and selling the LAKE & BAY ASSETS to DIVERSIFIED in an auction.
11. The Bill of Sale, Exhibit "1" hereto, states: "Auctioneer is acting on behalf of 5/3<sup>rd</sup> Bank."
12. DIVERSIFIED paid good and valuable consideration for the LAKE & BAY ASSETS.
13. The LAKE & BAY ASSETS, including the NAME, MARK, DOMAINS, and BOAT MOLDS, are unique and irreplaceable property.
14. The Bill of Sale described the "goods" sold to DIVERSIFIED as: "Molds from the former Lake & Bay Boat Company; Lakeandbay.com website; and the Lake & Bay trade name."
15. In referencing the "goods" sold to DIVERSIFIED, the Bill of Sale states: "Seller represents it has the right and title to sell the above listed goods...."
16. After DIVERSIFIED purchased the ASSETS, BANK, through counsel, continued to represent to DIVERSIFIED that BANK had the right to sell the LAKE & BAY ASSETS, including the "Lake & Bay Boats, LLC boat molds, trade name and website" to DIVERSIFIED in the auction.
17. BANK, through its counsel, represented to DIVERSIFIED that BANK had given the "Borrower Lake & Bay Boats written notice of the BANK's intent to dispose of the boat molds, trade name and website, as required by the Uniform Commercial Code and that BANK had a valid and perfected security interest in the property Diversified Composite Products bid on." A copy of the letter dated March 29, 2012 from counsel for BANK to Patricia Hansen, the President of DIVERSIFIED is attached hereto as Exhibit "3."

18. A copy of the Financing Statement Form filed in Florida on October 4, 2004 by BANK, Form #200408018168, and Exhibit "A" thereto, is attached hereto as Exhibit "4."

19. When DIVERSIFIED went to the storage location specified by BANK pick up the LAKE & BAY boat molds that DIVERSIFIED had purchased, some of the molds were missing.

20. DIVERSIFIED notified BANK that all of the molds sold to DIVERSIFIED in the auction were not at the specified storage location, but BANK has never furnished the missing Lake & Bay boat molds to DIVERSIFIED.

21. Upon information and belief, Michael Del Duca ("DEL DUCA"), without authorization from DIVERSIFIED or ISLAMORADA, has been conducting business operations, including the building of boats and advertising, under the LAKE & BAY NAME.

22. Upon information and belief, the "missing" Lake & Bay boat molds that BANK sold to DIVERSIFIED, but never in fact furnished to DIVERSIFIED are being used by DEL DUCA or others to build boats under the trade name "Lake & Bay".

23. DEL DUCA is listed as the President of "Lake & Bay Boats LLC" in filings with the Florida Secretary of State and BANK is not listed on these filings.

24. Bank is not the registered owner of any Lake & Bay MARK with the United States Patent & Trademark office ("USPTO").

25. Lake & Bay Boats, LLC of 7835 Airport Pulling Road, #4-355, Naples, Florida 34109, is listed as the owner of the Lake & Bay MARK, with the United States Patent and Trademark office ("USPTO"), U.S. Registration No. 2665945.

26. On May 10, 2013, Lake & Bay Boats, LLC filed an application with the USPTO to register the standard character mark, "LAKE & BAY," which application is pending.

27. The DOMAINS, including the websites www.lakeandbay.com and www.lakeandbayboats.com which BANK sold to DIVERSIFIED in the auction are not registered online as owned by BANK. "Lake and Bay Boats LLC" is listed at the "WHOIS" online database as the owner of the domain names www.lakeandbay.com and www.lakeandbayboats.com.

28. The contract between BANK and DIVERSIFIED, entered into through BANK's agent, KINCAID AUCTION, was specific as to its terms. The "Description of Goods Sold" in the Bill of Sale expressly identifies the ASSETS of LAKE & BAY sold to DIVERSIFIED as including the "Lake & Bay" NAME, MARK, and DOMAINS.

29. DIVERSIFIED fully performed its contract with BANK to purchase the LAKE & BAY ASSETS by tendering payment for the ASSETS to BANK's agent, KINCAID AUCTION.

30. BANK has failed to fully perform its contract for the sale of the LAKE & BAY ASSETS to DIVERSIFIED.

31. BANK has failed to fulfill its contractual obligations to deliver to DIVERSIFIED good title and physical possession of all of the LAKE & BAY boat molds which DIVERSIFIED purchased in the auction.

32. BANK has failed to fulfill its contractual obligations to transfer to DIVERSIFIED good title and all rights to and interest in the LAKE & BAY NAME, MARK and DOMAINS.

33. By failing to deliver good title to and physical possession of the LAKE & BAY boat molds and good title to the intangible LAKE & BAY ASSETS purchased by DIVERSIFIED, BANK has breached its contract with DIVERSIFIED.

34. In April, 2013, DIVERSIFIED sold and assigned all of the LAKE & BAY ASSETS that it had purchased from BANK to Plaintiff ISLAMORADA. A copy of the Bill of Sale signed by DIVERSIFIED and ISLAMORADA is attached hereto as Exhibit "5" ("BOS"). A copy of the Asset

Purchase Agreement signed by DIVERSIFIED and ISLAMORADA is attached hereto as Exhibit "6" ("APA").

35. In April 2013, as reflected in Exhibit "A" of the BOS and the APA, DIVERSIFIED assigned to ISLAMORADA the following relating to the LAKE & BAY MARK:

Right to any and all claims the Seller [DIVERSIFIED] may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to Trademark "Lake & Bay" and its goodwill (Serial No. 76316910) or claims relating thereto.

36. In April 2013, as reflected in Exhibit "A" of the BOS and the APA, DIVERSIFIED assigned to ISLAMORADA the following relating to the LAKE & BAY DOMAINS:

Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing, Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to domain name and website "lakeandbay.com" and its goodwill or claims relating thereto.

Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing, Inc., d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to domain name and website "lakeandboats.com" and its goodwill or claims relating thereto.

37. In April 2013, as reflected in Exhibit "A" of the BOS and the APA, DIVERSIFIED has assigned the following to ISLAMORADA:

Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to any and all other assets relating to or containing the [LAKE & BAY] Trademark.

38. DIVERSIFIED's assignments to ISLAMORADA included any and all claims that DIVERSIFIED has or may have against BANK relating to the LAKE & BAY ASSETS, including but not limited to the right to bring the instant action.

39. ISLAMORADA entered into its contract with DIVERSIFIED to enable ISLAMORADA to manufacture boats using the LAKE & BAY boat molds, use the trademark LAKE & BAY and do business under the trade name LAKE & BAY.

40. ISLAMORADA has paid DIVERSIFIED good and valuable consideration and fully performed under its contract with DIVERSIFIED.

41. ISLAMORADA, as assignee of all rights of DIVERSIFIED with regard to all of the LAKE & BAY ASSETS which DIVERSIFIED purchased from BANK, is unable to do business as "LAKE & BAY" because DEL DUCA or others are operating a business as "LAKE & BAY, LLC", using the NAME, MARK, and DOMAINS and claiming to own some or all of the LAKE & BAY ASSETS which BANK sold to DIVERSIFIED at the auction in December 2011.

42. All conditions precedent to the bringing of this action have been waived or satisfied.

#### COUNT I

##### **(Breach of Contract – Specific Performance Against BANK)**

43. Plaintiff ISLAMORADA re-alleges and re-avers the allegations of paragraphs 1 through 42 as through fully set forth herein.

44. Upon information and belief, DEL DUCA or others are using the missing LAKE & BAY boat molds to build boats under the trade name "Lake & Bay."

45. Plaintiff has no adequate remedy at law, because the LAKE & BAY ASSETS were and are unique.

46. The inability of Plaintiff to do business as "Lake & Bay" and to build and sell boats under the Lake & Bay name and mark, cannot be adequately compensated by money damages.

47. BANK can specifically perform the contract between BANK and DIVERSIFIED by delivering physical possession to ISLAMORADA of the missing LAKE & BAY molds, and by taking any and all actions necessary for BANK to transfer and assign to ISLAMORADA good title and all rights in and to the LAKE & BAY ASSETS, which includes the physical property and the NAME, MARK and DOMAINS.

WHEREFORE, Plaintiff ISLAMORADA, as assignee of DIVERSIFIED, prays that the Court enter an Order requiring BANK to specifically perform under its contract with DIVERSIFIED and to transfer all rights, title and interest in the LAKE & BAY ASSETS to ISLAMORADA , and for such other and further relief as the Court deems just and proper.

## COUNT II

### **(Breach of Contract Against BANK – Alternative Claim for Damages)**

48. Plaintiff ISLAMORADA re-alleges and re-avers the allegations of paragraphs 1 through 12 and 14 through 42 as through fully set forth herein.

49. Plaintiff asserts the cause of action in the instant Count II for damages as an alternative claim for relief.

50. DIVERSIFIED purchased the LAKE & BAY ASSETS in an auction held by KINCAID AUCTION, as agent for BANK, which was the Seller of the ASSETS.

51. DIVERSIFIED fully performed under its contract with BANK by paying good and valuable consideration for the LAKE & BAY ASSETS.

52. BANK breached its contract with DIVERSIFIED, which obligated BANK to deliver all of the boat molds from Lake & Bay Boats LLC to DIVERSIFIED.

53. BANK breached its contract with DIVERSIFIED, which obligated BANK to furnished DIVERSIFIED with good title and all rights, and interests in and to the "Lake & Bay" NAME, MARK and DOMAINS.

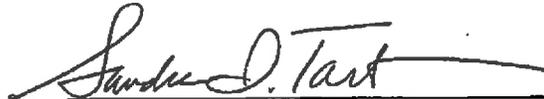
54. Plaintiff, as assignee of DIVERSIFIED, has suffered damages caused by BANK'S failure to deliver to DIVERSIFIED all of the LAKE & BAY ASSETS, which DIVERSIFIED purchased in the auction.

55. Plaintiff has suffered damages as a result of BANK's breaches of contract.

WHEREFORE, in the alternative to Plaintiff's claim in Count I for Specific Performance, Plaintiff ISLAMORADA prays that the Court award Plaintiff damages and enter judgment against BANK in favor of Plaintiff, in an amount to proven at trial, and for such other and further relief as the Court deems just and proper.

Dated: September 13, 2013

Respectfully submitted,



J. Michael Pennekamp  
Fla. Bar No. 983454  
Email: [jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com)  
Sandra I. Tart  
Fla. Bar No. 358134  
Email: [start@fowler-white.com](mailto:start@fowler-white.com)

FOWLER WHITE BURNETT, P.A.  
Espirito Santo Plaza, Fourteenth Floor  
1395 Brickell Avenue  
Miami, Florida 33131  
Telephone: (305) 789-9200  
Facsimile: (305) 789-9201

*Counsel for Plaintiff Islamorada  
Boatworks, LLC*

December 16, 2011

**Bill of Sale**

Buyer:  
Diversified Composite Products LLC  
1581 Carter Cemetery Rd  
Perry, FL 32346  
(850) 584 3953

Description of Goods  
Molds from the former Lake & Bay Boat Company  
Lakeandbay.com web site, and the Lake & Bay trade name. \_\_\_\_\_ \$15,000  
for resale no sales tax collected

Conditions of sale:

1. Buyer will forward funds by wire transfer on Monday December 19, 2011 (see wire instructions below)
2. Seller represents it has the right and title to sell the above listed goods, but will be unable to furnish passwords to the website or assist in obtaining access to the necessary codes to change it.
3. Auction company will hold said funds in trust for 10 business days to allow adequate time for the buyer to get the molds removed from the premises in Sebring. Buyer will make a diligent effort to remove the molds by the end of 2011.
4. Buyer is purchasing the molds "as is" and as represented in pictures furnished the buyer.
5. Auctioneer is acting on behalf of 5/3<sup>rd</sup> Bank and in no way will be held liable for any more the ant amount of the purchase price should a dispute arise from this transaction.

Auction Company  
X

Diversified Composite Products  
X

Date:

Date:

Wire instructions: Kincaid Auction Trust, 3809 East CR 542, Lakeland, FL TD Bank NA  
888-751-9000 Bank# 067014822 Account # 4254234796

*Handwritten notes:*  
Kincaid, Randy...  
for account to the property...  
if not...  
if need more time, please...



**No Reserve Auction - Internet Bidding Only**  
**Repossessed Lake and Bay Boat Company Molds**  
**Bidding Ends November 27th 5pm EST - 1100 Industrial Way E Sebring, FL 33870-0900**  
*Please do not go to the auction site other than designated times for preview and pickup times.*

*Legendary*  
**LAKE & BAY**

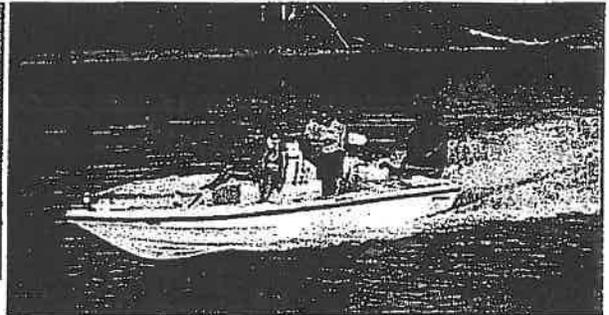
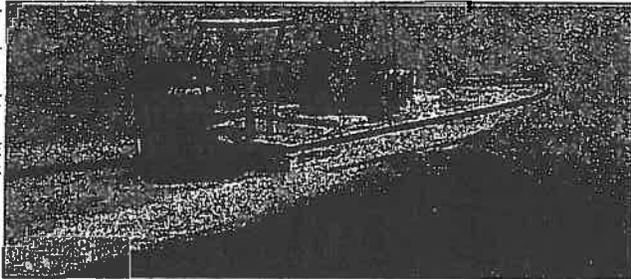
Custom High-Performance Flats Boats



**Predator 176"**

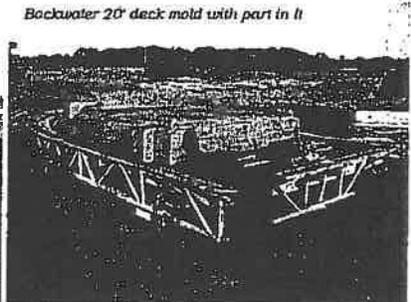
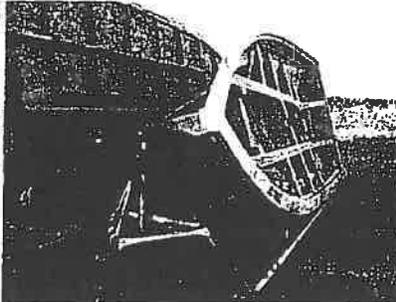
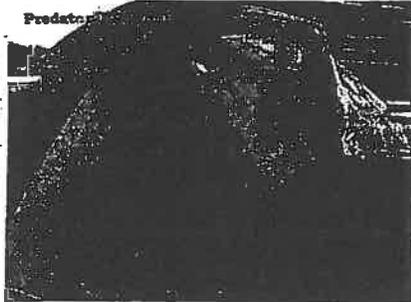


**Backwater 20**



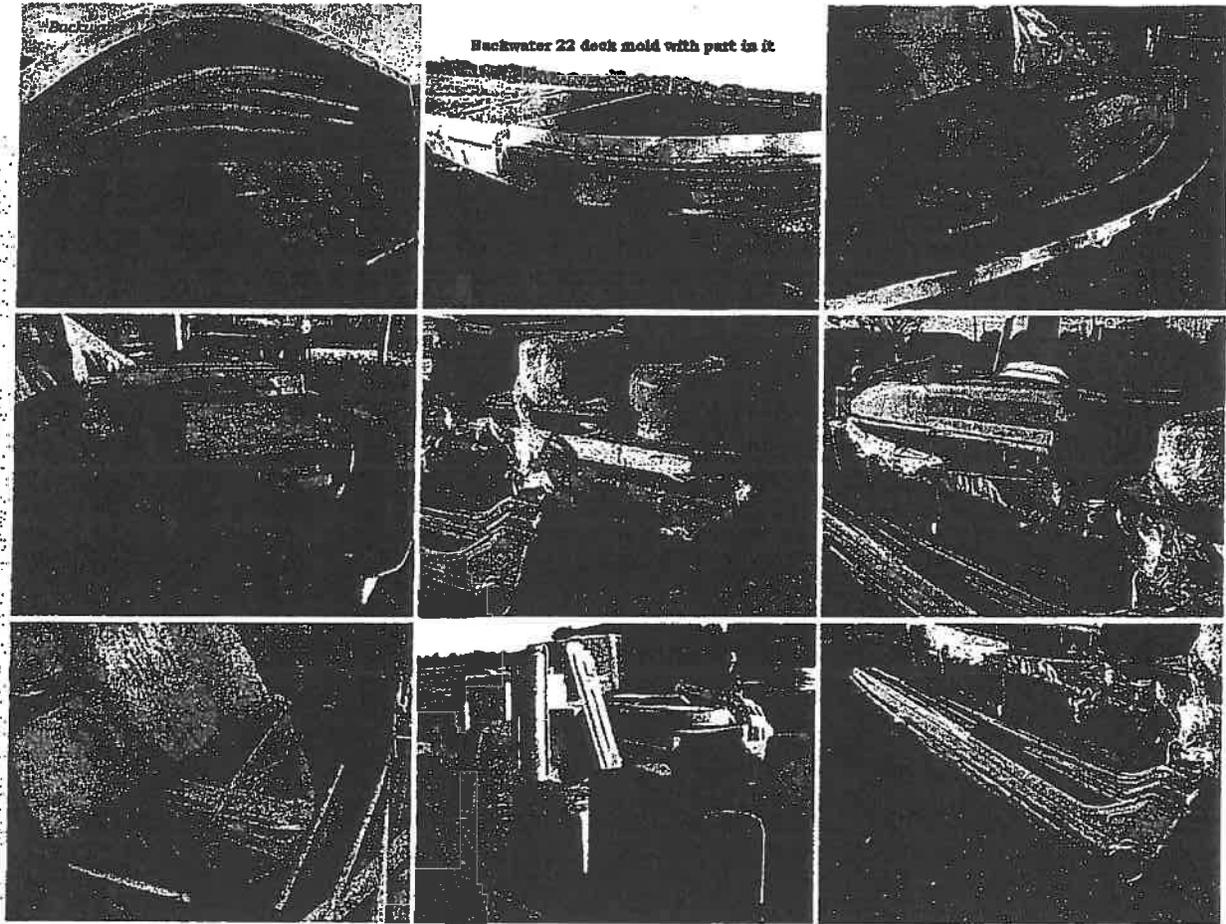
**Back Water 22'**

**Back Water 24**



*Backwater 20' deck mold with part in it*





**More Pictures**

These molds appear to be in great condition. I could see no checking, warping or cracks. The 24' deck mold may need some cleaning and buffing and the 17' hull mold is needing compounding. I think I matched up the molds and decks in the pictures but you will need to inspect them yourself. It has been a long time since I manufactured boats. Since we cannot for sure identify all of the molds, you will be buying all for one money including all of the smaller molds for livewells, box lids, stringers, etc. These molds are very professionally built with the turning apparatus, great steel bracing and castors on the racks. What you see is what you get. Additionally you will be entitled to the use of the name

Preview inspection is by appointment

Lic ab551/au905

[back to Kincaid Auction Schedule](#)



FL Lic ab551/au905  
Randy Kincaid CCIM, Lic R.E. Broker  
**(800)-970 1977**

Joshua M. Bialek  
Florida Bar Board Certified in Real Estate  
jbialek@porterwright.com

Porter Wright  
Morris & Arthur LLP  
9132 Strada Place  
Third Floor  
Naples, FL 34108-2883

Direct: 239-593-2962  
Fax: 239-593-2990  
Toll free: 800-976-7982  
www.porterwright.com

**porterwright**

CINCINNATI  
CLEVELAND  
COLUMBUS  
DAYTON  
NAPLES  
WASHINGTON, DC

March 29, 2012

Patricia A. Hansen  
Diversified Composite Products, LLC  
1581 Carlton Cemetery Road  
Perry, FL 32348

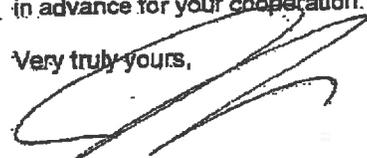
RE: Fifth Third Bank/Boat Molds

Dear Ms. Hansen:

This firm represents Fifth Third Bank regarding the Lake & Bay Boats, LLC boat molds, trade name and website auctioned and sold to Diversified Composite Products on November 30, 2011. We have been advised that all issues regarding the pick-up of the boat molds have been resolved. You are free to pick up the boat molds at your convenience. Please note that Fifth Third Bank gave the Borrower Lake & Bay Boats written notice of the bank's intent to dispose of the boat molds, trade name and website as required by the Florida Uniform Commercial Code, and that the Bank had a valid and perfected security interest in the property Diversified Composite Products bid on. This notice to the Borrower allowed Fifth Third Bank to sell the property pursuant to public or private sale as allowed by law.

Please let me know if you have any questions or concerns. Thank you in advance for your cooperation.

Very truly yours,

  
Joshua M. Bialek

JMB:jd

NAPLES001630.1



**STATE OF FLORIDA UNIFORM COMMERCIAL CODE  
FINANCING STATEMENT FORM**

<b>A. NAME &amp; DAYTIME PHONE NUMBER OF CONTACT PERSON</b> KEVIN A. DENTI, ESQUIRE (239) 261-9300	
<b>B. SEND ACKNOWLEDGEMENT TO:</b>	
Name	KEVIN A. DENTI, ESQUIRE
Address	CHEFFY PASSIDOMO WILSON & JOHNSON, LLP
Address	821 FIFTH AVENUE SOUTH, SUITE 201
City/State/Zip	NAPLES, FLORIDA 34102

FLORIDA SECURED TRANSACTION REGISTRY

**FILED**

2004 Oct 04 AM 12:00

\*\*\*\*\* 200408018168 \*\*\*\*\*

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (1a OR 1b) - Do Not Abbreviate or Combine Names**

<b>1a. ORGANIZATION'S NAME</b> Lake & Bay Boats, LLC					
<b>1b. INDIVIDUAL'S LAST NAME</b>		<b>FIRST NAME</b>		<b>MIDDLE NAME</b>	<b>SUFFIX</b>
		Sebring		FL	33870
<b>1c. MAILING ADDRESS</b> 501 North Eucalyptus Street		<b>CITY</b>		<b>STATE</b>	<b>POSTAL CODE</b>
		Sebring		FL	33870
<b>1d. TAX ID#</b> 20-1536909	<b>REQUIRED ADD'L INFO RE: ORGANIZATION DEBTOR</b>	<b>1e. TYPE OF ORGANIZATION</b> limited liability company	<b>1f. JURISDICTION OF ORGANIZATION</b> Florida	<b>1g. ORGANIZATIONAL ID#</b> L04000059573 <input type="checkbox"/> NONE	

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (2a OR 2b) - Do Not Abbreviate or Combine Names**

<b>2a. ORGANIZATION'S NAME</b>					
<b>2b. INDIVIDUAL'S LAST NAME</b>		<b>FIRST NAME</b>		<b>MIDDLE NAME</b>	<b>SUFFIX</b>
<b>2c. MAILING ADDRESS</b>		<b>CITY</b>		<b>STATE</b>	<b>POSTAL CODE</b>
<b>2d. TAX ID#</b>	<b>REQUIRED ADD'L INFO RE: ORGANIZATION DEBTOR</b>	<b>2e. TYPE OF ORGANIZATION</b>	<b>2f. JURISDICTION OF ORGANIZATION</b>	<b>2g. ORGANIZATIONAL ID#</b>	
				<input type="checkbox"/> NONE	

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - INSERT ONLY ONE SECURED PARTY NAME (3a OR 3b)**

<b>3a. ORGANIZATION'S NAME</b> FIFTH THIRD BANK (FLORIDA)					
<b>3b. INDIVIDUAL'S LAST NAME</b>		<b>FIRST NAME</b>		<b>MIDDLE NAME</b>	<b>SUFFIX</b>
<b>3c. MAILING ADDRESS</b> 999 Vanderbilt Beach Road		<b>CITY</b> Naples		<b>STATE</b> FL	<b>POSTAL CODE</b> 34108
					<b>COUNTRY</b> USA

This FINANCING STATEMENT covers the following collateral:

ALL PROPERTY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY VIRTUE OF THIS REFERENCE.



<b>ALTERNATE DESIGNATION (if applicable)</b>	<b>LESSEE/LESSOR</b>	<b>CONSIGNEE/CONSIGNOR</b>	<b>BAILEE/BAILOR</b>
	<b>AG. LIEN</b>	<b>NON-UCC FILING</b>	<b>SELLER/BUYER</b>

Florida DOCUMENTARY STAMP TAX - YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX

All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.

Florida Documentary Stamp Tax is not required.

**OPTIONAL FILER REFERENCE DATA**

STANDARD FORM - FORM UCC-1 (REV.12/2001)

Filing Office Copy

Approved by the Secretary of State, State of Florida

EXHIBIT "A"

- a. All rents, income, issues, proceeds, and profits of the Debtor, and any and all leases of which the Debtor is the Lessor, with all extensions, renewals, amendments, and other modifications or replacements thereof, and any and all guaranties of the lessees' obligations under any provisions thereof (any such leases or obligations being hereinafter referred to collectively as the "Leases"), together with all rents, income, issues, proceeds, and profits which may inure to the benefit of Debtor from or as a result of such Leases;
- b. All accounts, accounts receivable, contract rights, instruments, documents, chattel paper, intellectual property (including, without limitation, patents and licenses), and general intangibles (including without limitation, choses in action, tax refunds, and insurance proceeds), all other obligations or indebtedness owed to Debtor from whatever source arising; all rights of Debtor to receive any payments in money or in kind, all cash or non-cash proceeds of any of the foregoing, all guaranties of the foregoing and security therefor, all of the right, title, and interest of Debtor in and with respect to the goods; services, or other property that gave rise to or that secures any of the foregoing and insurance policies and proceeds relating thereto, all of the rights of Debtor as an unpaid seller of goods or services, including, without limitation, the rights of stoppage in transit, replevin, reclamation, and resale, and all of the foregoing, whether now existing or hereinafter created or acquired;
- c. All inventory, goods, merchandise, inventory, and other personal property now owned or hereafter acquired by Debtor that are held for sale or lease, or are furnished or to be furnished under any contract of service or are raw materials, work in process, supplies, or materials used or consumed in Debtor's business, and all products thereof and parts therefor, and all substitutions, replacements, additions, or accessions therefor and thereto;
- d. All cash or non-cash proceeds of all of the foregoing, including insurance proceeds;
- e. Any present or future deposit accounts of Debtor with Secured Party;
- f. All ledger sheets, files, records, documents, and instruments (including, without limitation, computer programs, tapes, and related electronic data processing software) evidencing or relating to any of the above;
- g. All machinery, equipment, furniture, furnishings, and fixtures of Debtor (including automotive equipment) now owned or hereafter acquired by Debtor and used or acquired for use in the business of Debtor, together with all accessions thereto and all substitutions and replacements thereof and parts and appurtenances therefor and thereto, and all cash or non-cash proceeds thereof; and
- h. All instruments, documents, securities, cash, property, and the proceeds of any of the foregoing owned by Debtor or in which Debtor has an interest, which now or hereafter are at any time in the possession or control of Secured Party or in transit by mail or carrier to Secured Party, without regard to whether Secured Party received the same in pledge, for safekeeping as agent, for collection, transmission, or otherwise, or whether Secured Party had conditionally released the same.

\*The terms "Borrower" and "Debtor" shall be interchangeable for all purposes relating hereto.

**BILL OF SALE**

**DIVERSIFIED COMPOSITE PRODUCTS, LLC**

**THIS IS A BILL OF SALE** (this "Instrument") made, executed and delivered by Diversified Composite Products, LLC, a Florida limited liability company ("Seller"), in favor of ISLAMORADA BOATWORKS, LLC, a Florida limited liability company ("Buyer"), with respect to the conveyancing by Seller to Buyer of certain assets of Seller as further described on Exhibit A ("Purchased Assets") attached hereto and made a part of this Instrument. Seller and Buyer, for good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged), hereby agree as follows:

1. Sale and Assignment of Purchased Assets. Seller does hereby absolutely, unconditionally and irrevocably assign, transfer, deliver and convey to Buyer, Seller's entire right, title and interest in and to all of the Purchased Assets; TO HAVE AND TO HOLD all and singular the Purchased Assets for its own use forever.

2. Purchase Price. The purchase price for the Purchased Assets shall be Two Hundred Eighty Thousand and NO/100 (\$280,000.00) Dollars ("Purchase Price"), and shall be paid to Seller as follows:

(a) An initial refundable deposit of One Hundred Thousand and NO/100 (\$100,000.00) Dollars ("Deposit") which has already been delivered to Seller, and Seller hereby acknowledges the receipt of the Deposit;

(b) One Hundred Fifty Thousand and NO/100 (\$150,000.00) Dollars to be paid at Closing via cashier's check drawn on a U.S. bank account; and,

(c) Thirty Thousand and NO/100 (\$30,000.00) Dollars to be paid upon delivery of an additional boat mold (as further described on Exhibit A) to be manufactured by Seller.

3. Allocation of Purchase Price. The Purchase Price will be allocated among the Purchased Assets by Buyer at its sole and absolute discretion prior to the Closing hereunder and as reflected on Exhibit A.

4. Seller Representations. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida. Seller owns all of the Purchased Assets, and said Purchased Assets shall be conveyed to Buyer free and clear of any liens, encumbrances and claims. All tangible assets comprising the Purchased Assets shall be in good, working and clean condition. The Seller represent and warrant that this transaction was entered into without the involvement of any broker or finder. If a broker or finder places a claim for commission owed on this transaction, such broker or finder shall be paid by Seller. Seller acknowledges that no authorization, approval or consent of and no registration or filing with any governmental or regulatory official, body or authority is required in connection with the



execution, delivery or performance of this Agreement or the documents required to be delivered hereby by or on behalf of Seller, and the execution, performance or delivery of this Agreement and the documents required to be delivered hereby by or on behalf of Seller will not result in the creation of any lien upon any of the Purchased Assets.

5. Closing. The closing (the "Closing") of the sale and purchase of the Purchased Assets shall take place on April \_\_, 2013, at 3:00 PM (EST) (the "Closing Date"), at the offices of Fowler White Burnett, P.A., 1395 Brickell Avenue, 14th Floor, Miami, FL 33131 or at such other date and time as agreed to by the parties hereto.

6. Further Action. Seller agrees that it shall execute and deliver or cause to be executed and delivered from time to time such instruments, documents, agreements, consents and assurances as may be reasonably requested by Buyer and shall take such other action as Buyer reasonably may require more effectively to sell, assign and transfer to and vest in Buyer all right, title and interest in and to the assets and rights assigned hereunder.

7. Miscellaneous Provisions.

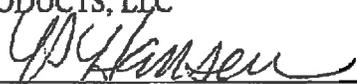
(a) Exhibits; Number; Gender; Captions. Each attachment to this Instrument is hereby incorporated into, and made a part of, this Instrument. Whenever the context so requires, the singular number shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders. Titles and captions of or in this Instrument are inserted only as a matter of convenience and for reference and in no way affect the scope or intent of this Instrument.

(b) Controlling Law and Jurisdiction. This Instrument shall be governed by, construed and enforced in accordance with the laws of the State of Florida applicable to agreements made and to be performed entirely within such state, including all matters of enforcement, validity and performance, without reference to conflict of laws principles. The courts within Miami-Dade County, Florida shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement.

(c) Counterparts. This Instrument may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement which is binding upon the parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

**DULY EXECUTED** and delivered by the parties to this Agreement on March \_\_ 2013, and effective as of the date set forth above.

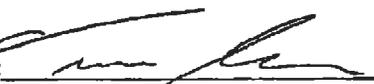
DIVERSIFIED COMPOSITE  
PRODUCTS, LLC

By: 

Name: Patricia A. Hansen

Title: Managing Member

ISLAMORADA BOATWORKS, LLC

By: 

Name: Tom Gordon

Title: Managing Member

execution, delivery or performance of this Agreement or the documents required to be delivered hereby by or on behalf of Seller, and the execution, performance or delivery of this Agreement and the documents required to be delivered hereby by or on behalf of Seller will not result in the creation of any lien upon any of the Purchased Assets.

5. Closing. The closing (the "Closing") of the sale and purchase of the Purchased Assets shall take place on April 5, 2013, at 3:00 PM (EST) (the "Closing Date"), at the offices of Fowler White Burnett, P.A., 1395 Brickell Avenue, 14th Floor, Miami, FL 33131 or at such other date and time as agreed to by the parties hereto.

6. Further Action. Seller agrees that it shall execute and deliver or cause to be executed and delivered from time to time such instruments, documents, agreements, consents and assurances as may be reasonably requested by Buyer and shall take such other action as Buyer reasonably may require more effectively to sell, assign and transfer to and vest in Buyer all right, title and interest in and to the assets and rights assigned hereunder.

7. Miscellaneous Provisions.

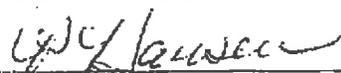
(a) Exhibits; Number; Gender; Captions. Each attachment to this Instrument is hereby incorporated into, and made a part of, this Instrument. Whenever the context so requires, the singular number shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders. Titles and captions of or in this Instrument are inserted only as a matter of convenience and for reference and in no way affect the scope or intent of this Instrument.

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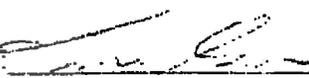
(c) Counterparts. This Instrument may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement which is binding upon the parties hereto, notwithstanding that all parties are not signatories to the same counterpart.

DULY EXECUTED and delivered by the parties to this Agreement on ~~March 5~~ April 5 2013, and effective as of the date set forth above.

DIVERSIFIED COMPOSITE  
PRODUCTS, LLC

By:   
Name: Patricia A. Hansen  
Title: Managing Member

ISLAMORADA BOATWORKS, LLC

By:   
Name: Tom Gordon  
Title: Managing Member

**EXHIBIT "A"**

**Assets and Purchase Price Allocation**

Asset	Price Allocation
Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to Trademark "Lake & Bay" and its goodwill (Serial No. 76316910)	
Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to domain name and website "lakeandbay.com" and its goodwill	
Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to domain name and website "lakeandbayboats.com" and its goodwill	
Right to any and all claims the Seller may have against the owner of record, Michael A. Del Duca, Fifth Third Bank and/or Kincaid Distributing Inc. d/b/a "Randy Kincaid Auction Company" for the rights, title and interest to any and all other assets relating to or containing the Trademark	
24' Lake & Bay hull stringer, deck, and all small part molds for Backwater 24'	
22' Lake & Bay hull stringer, deck, and all small part molds for Backwater 22'	
20' Lake & Bay hull stringer, deck, and all small part molds for Backwater 20'	
20' Lake & Bay hull stringer, deck, and all small part molds for Boca Grande 20'	
20' flats boat hull stringer, deck, and all small part molds to be manufactured by Seller	
Lake & Bay hull, stringer molds for Skiff 17'	
Lake & Bay Backwater 24' Hull (HIN# DUH 20423J011) and all equipment and appurtenances thereto	
1 Backwater 24' Magic Tilt Trailer (Serial No. 1M5BA2429D1E79677)	
Lake & Bay Backwater 20' Hull (HIN# _____) and all equipment and appurtenances thereto	
1 Backwater 20' Magic Tilt Trailer (Serial No. _____)	
<b>Total</b>	<b>\$280,000.00</b>

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT ("Agreement")** is dated the \_\_\_ day of March, 2013, by and between DIVERSIFIED COMPOSITE PRODUCTS, LLC a Florida limited liability company ("**Seller**"), and ISLAMORADA BOATWORKS, LLC, a Florida limited liability company ("**Buyer**"). Buyer and Seller shall collectively be referred to as the "**Parties**".

### RECITALS

**WHEREAS**, Seller, on or about November 30, 2011, purchased from Fifth Third Bank certain boats, boat hulls, decks, small boat parts, molds, mold plugs, websites and a trademark that the bank obtained through foreclosure action against Lake & Bay Boats, LLC based on Florida Financing Statement Form 20040801 8168; and,

**WHEREAS**, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, all of the assets purchased from Fifth Third Bank as more fully described herein.

**NOW, THEREFORE**, for and in consideration of the Recitals above and of the respective covenants, representations, warranties and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are incorporated herein.

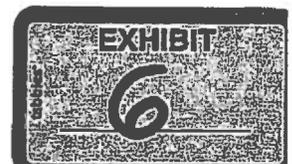
2. Purchase and Sale of the Assets. At the Closing (as defined in Paragraph 5), Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase from Seller, FREE AND CLEAR OF ANY AND ALL ENCUMBRANCES, LIENS, AND CLAIMS, all rights, title and interest of the Seller to the assets listed and described on Exhibit A attached hereto and made a part of this Agreement, including specifically, but not limited to, any claims the Seller may have against the owner of record, Fifth Third Bank, their attorneys, and the auction company for the rights, title and interest to the trademark "Lake & Bay", any and all signage using said trademark (collectively, the "Purchased Assets").

3. No Assumption of Liabilities. Buyer shall not assume, nor take any of the Purchased Assets subject to any liabilities of Seller.

4. Purchase Price. The purchase price for the Purchased Assets shall be Two Hundred Eighty Thousand and NO/100 (\$280,000.00) Dollars (the "**Purchase Price**"), and shall be paid to Seller as follows:

4.1 An initial refundable deposit of One Hundred Thousand and NO/100 (\$100,000.00) Dollars ("**Deposit**") which has already been delivered to Seller, and Seller hereby acknowledges the receipt of the Deposit;

4.2 One Hundred Fifty Thousand and NO/100 (\$150,000.00) Dollars to be paid at Closing via cashier's check drawn on a U.S. bank account; and,



4.3 Thirty Thousand and NO/100 (\$30,000.00) Dollars to be paid upon delivery of an additional boat mold (as further described on Exhibit A) to be manufactured by Seller.

5. Allocation of Purchase Price. The Purchase Price will be allocated among the Purchased Assets by Buyer at its sole and absolute discretion prior to the Closing hereunder and as reflected on Exhibit A.

6. Closing. The closing (the "Closing") of the sale and purchase of the Purchased Assets shall take place on April \_\_, 2013, at 3:00 PM (EST) (the "Closing Date"), at the offices of Fowler White Burnett, P.A., 1395 Brickell Avenue, 14<sup>th</sup> Floor, Miami, FL 33131 or at such other date and time as agreed to by the Parties.

7. Deliveries.

7.1 At the Closing, Seller shall deliver to Buyer:

7.1.1 physical possession of the Purchased Assets.

7.1.2 the Bill of Sale substantially in the form attached hereto as Exhibit B.

7.1.3 Quit-Claim Assignment.

7.1.4 all other instruments of conveyance which are necessary, appropriate or desirable to effect the sale and transfer to the Buyer of the Purchased Assets, free and clear of any encumbrance, lien or claim thereon.

7.2 At the Closing, Buyer shall deliver to Seller:

7.2.1 the Purchase Price.

7.2.2 any documents or instruments reasonably requested by Seller that are necessary or desirable to effectuate the transaction contemplated herein.

8. Representations and Warranties.

8.1 Of Seller. Seller represents and warrants to Buyer that:

8.1.1 Legal Existence. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida.

8.1.2 Ownership of Assets and Quality. Seller owns all of the Purchased Assets, and said Purchased Assets shall be conveyed to Buyer free and clear of any liens, encumbrances and claims. All tangible assets comprising the Purchased Assets shall be in good, working and clean condition.

8.1.3 No Approvals Required. Seller's acknowledges that no authorization, approval or consent of and no registration or filing with any governmental or regulatory official, body or authority is required in connection with the execution, delivery or performance of this Agreement or the documents required to be delivered hereby by or on behalf of Seller, and the

execution, performance or delivery of this Agreement and the documents required to be delivered hereby by or on behalf of Seller will not result in the creation of any lien upon any of the Purchased Assets.

8.1.4 No Proceedings. There is no injunction, order or decree of any court or administrative agency or any action or proceeding pending or, to the knowledge of the Seller, threatened by or against Seller, to restrain or prohibit the consummation of the transactions contemplated hereby.

8.1.5 Taxes. Seller has paid, or prior to the Closing will have paid, all taxes and other charges due or claimed to be due from it to any federal, state, local (including sales taxes) or foreign taxing authority (including, without limitation, those due in respect of properties, income, licenses, sales or payrolls and any withholding obligations, or other trust fund taxes and any interest, penalties or additions to tax) relating to the Business and the Purchased Assets; and there are no tax liens upon any property or assets of Seller. All taxes and other assessments and levies required to be withheld by Seller from customers with respect to the sale of goods, or from or on behalf of employees for income, social security and unemployment insurance taxes have been collected or withheld and either paid to the appropriate governmental agency or set aside and held in accounts for such purpose.

8.1.6 Acted in Good Faith. In acquiring the Purchased Assets from Fifth Third Bank during its foreclosure on Lake & Bay Boats, LLC, the Seller acted in good faith as defined in section 9-102(a)(43) of the Florida Uniform Commercial Code by dealing honestly in fact and in observance of reasonable commercial standards of fair dealing. Furthermore, Seller did not have a relationship with Fifth Third Bank prior to the foreclosure.

8.1.7 Litigation. There are no suits, actions or other litigation matters, including any arbitration, investigation or other proceedings of or before any court, arbitrator or federal, state or other governmental or regulatory official, body or authority, pending or, threatened against Seller, or which relates to the Business or the Purchased Assets.

8.1.8 Compliance with Laws; Governmental Authorizations. Seller is in compliance with all federal, state, and local laws, ordinances, rules, regulations, permits, judgments, orders and decrees applicable to it, the Business or any of its properties, assets, or operations. At Closing, Seller will deliver a complete listing of all governmental licenses, permits, approvals and other governmental authorization necessary to permit Seller to transfer the Purchased Assets, all of which are in full force and effect. The Seller will use its best efforts to cause them to be transferred or assigned or make the benefits thereof available to Buyer.

8.1.9 Environmental Matters. To the best of the Seller's knowledge, the Seller has complied with and is in compliance with all federal, state, and local statutes, laws, ordinances, regulations, rules, permits, judgments, orders and decrees applicable to it relating to environmental protection including, without limitation, standards relating to air, water, land and the generation, storage, transportation, treatment or disposal of Hazardous Wastes and Hazardous Substances (as such terms are defined in any applicable state or federal environmental law or regulation).

8.2 Of Buyer. Buyer represents and warrants to Seller that:

8.2.1 Legal Existence. Buyer is a Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Florida.

8.2.2 No Proceedings. There is no injunction, order or decree of any court or administrative agency or any action or proceeding pending or, to the knowledge of the Buyer, threatened by or against Buyer, to restrain or prohibit the consummation of the transactions contemplated hereby.

9. Survival of Representations and Warranties. All representations and warranties made by the Parties in this Agreement or in any document executed in connection herewith, or in connection with the negotiation, execution and performance of this Agreement shall survive the Closing.

10. Indemnification.

10.1 General Indemnification Obligation of Seller. From and after the Closing for a period of five years, Seller, shall indemnify and hold Buyer harmless and its members, shareholders, officers, directors, employees and agents, and their respective heirs, successors and assigns (each an "Indemnified Party") from and against any and all damages, losses, deficiencies, liabilities, costs and expenses incurred or suffered by any Indemnified Party that results from, relate to or arise out of (i) any and all liabilities and obligations of Seller of any nature whatsoever; (ii) any and all actions, suits, claims or legal, administrative, arbitration, governmental or other proceedings or investigations against any Indemnified Party that relate to Seller, the Purchased Assets or the Business; and (iii) claims or demands which relate in any manner to any misrepresentation, breach of warranty or nonfulfillment of any agreement or covenant on the part of Seller under this Agreement, or from any misrepresentation in or omission by any of them in any document furnished to Buyer pursuant to this Agreement.

10.2 Other Rights and Remedies Not Affected. The indemnification rights of the Parties under this Paragraph 10 are independent of and in addition to such rights and remedies as the parties may have at law or in equity.

11. Post-Closing Matters.

11.1 Discharge of Obligations. From and after the Closing Date, Seller shall pay and discharge, in accordance with past practice but not later than on a timely basis, all obligations and liabilities of Seller incurred with respect to the Purchased Assets. Seller may dispute or contest any charges as long as such charges are not a lien on the Purchased Assets.

11.2 Use of Name. On and after the Closing Date, Seller shall cease its use of the name "LAKE & BAY" ("Trademark").

11.3 Manufacture of Additional Molds. Seller agrees to manufacture and make available for pick-up by Buyer a new Boca Grande 20' hull and stringer grid molds within ninety (90) days from date of Closing as part of the Purchase Price. In addition, Seller agrees to manufacture and make available for pick-up by Buyer a new deck, hatch and related small part

molds for the Boca Grande 20' within sixty (60) days following receipt of specifications from Buyer for the new deck design as part of the Purchase Price.

11.4 Storage of Mold Plugs. Seller agrees to store, at no charge, all Lake & Bay mold plugs for future use to build new molds and agrees not to dispose of same without prior written notice to Buyer and providing thirty (30) days from Buyer's receipt of notice to retrieve the Lake & Bay mold plugs at no charge.

11.5 Litigation Support. In the event Buyer contests or defends against any claim in connection with any transaction contemplated under this Agreement, the Seller will cooperate with Buyer and its counsel in the contest or defense at the sole cost and expense of Buyer, unless the Buyer is entitled to indemnification therefor under Paragraph 10.

11.6 Noncompetition and Nonsolicitation. Seller agrees not to compete with the Buyer in a 20 mile radius (linear) from the location of the Buyer's business for a period of three (3) years from the Closing Date. In addition, Seller agrees not to solicit an employee of the Buyer or induce an employee of the Buyer to leave Buyer's business.

## 12. Miscellaneous.

12.1 Brokers' and Finders' Fees. The Parties represent and warrant that this transaction was entered into without the involvement of any broker or finder. If a broker or finder places a claim for commission owed on this transaction, such broker or finder shall be paid by the person that contracted with such broker.

12.2 Expenses. Each party hereto shall pay its own expenses incidental to the preparation of this Agreement, the carrying out of the provisions of this Agreement, and the consummation of the transactions contemplated hereby.

12.3 Contents of Agreement; Parties in Interest; Etc. This Agreement sets forth the entire understanding of the Parties with respect to the transaction contemplated hereby. It shall not be amended or modified except by written instrument duly executed by each of the Parties. Any and all previous agreements and understandings between or among the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

12.4 Assignment and Binding Effect. This Agreement may not be assigned by either party without the consent of the other. Subject to the foregoing, all of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the respective parties hereto.

12.5 Waiver. Any term or provision of this Agreement may be waived at any time by the party entitled to the benefit thereof by a written instrument duly executed by such party. No waiver shall be effective unless it is in a writing signed by the party sought to be charged.

13. Notices. All notices, requests, demands, waivers, consents, approvals or other communication which are required or permitted hereunder shall be in writing and shall be deemed given if delivered personally (and effective upon delivery), sent by overnight mail (and effective on the date delivered) or sent by registered or certified mail, postage prepaid (and effective three (3)

days thereafter), as follows:

If to Buyer, to: ISLAMORADA BOATWORKS, LLC  
80625 Overseas Highway  
Islamorada, FL 33036  
Attn: Tom Gordon

If to Seller, to: Diversified Composite Products, LLC  
1581 Carlton Cemetery Rd.  
Perry, FL 32348  
Attn: Patricia A. Hansen

or to such other address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered or mailed.

13.1 Governing Law. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Florida, without giving effect to any provisions thereof relating to conflict of laws. Venue and jurisdiction for any action or proceeding arising out of this Agreement or the transactions contemplated herein shall lie exclusively either in the state courts of Florida located in and for Miami-Dade County, Florida or the United States District Court for the Southern District of Florida. The Parties expressly waive any other venue and consent to such jurisdiction.

13.2 Severability. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.

13.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

13.4 Joint Efforts. This Agreement is the result of the joint efforts and negotiations of the Parties, with each party being represented, or having the opportunity to be represented, by legal counsel of its own choice, and no singular party is the author or drafter of the provisions hereof. Each party hereto assumes joint responsibility for the form and composition of each and all of the contents of this Agreement and each party agrees that this Agreement shall be interpreted as though each of the parties participated equally in the composition of this Agreement and each and every provision and part hereof. The parties agree that the rule of judicial interpretation to the effect that any ambiguity or uncertainty contained in an agreement is to be construed against the party that drafted the agreement shall not be applied in the event of any disagreement or dispute arising out of this Agreement.

13.5 Attachments. Each attachment to this Agreement is hereby incorporated into, and made a part of, this Agreement. Whenever the context so requires, the singular word shall include the plural and the plural shall include the singular, and the gender of any pronoun shall include the other genders. Titles and captions of or in this Agreement are inserted only as a matter of convenience and for reference and in no way affect the scope or intent of this Agreement.

13.6 Seller Default. In the event of the default by Seller of its obligations pursuant to this Agreement, the Buyer shall have the right to commence an action for specific performance.

13.7 Attorney's Fees and Costs. In the event of any proceeding to enforce the terms hereof or of any dispute hereunder, the prevailing party in each such proceeding and/or dispute shall be entitled to recover its expenses associated therewith including, without limitation, reasonable attorney's fees and costs through and including all trial, appellate and post-judgment proceedings, from the non-prevailing party.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first written above.

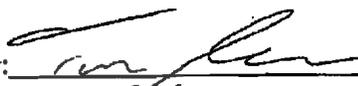
**SELLER:**

**BUYER:**

Diversified Composite Products, LLC

ISLAMORADA BOATWORKS, LLC

By: 

By: 

Print Name: Patricia A. Hansen

Print Name: Tom Gordon

Its: Managing Member

Its: Managing Member

**EXHIBIT "A"**  
**Assets and Purchase Price Allocation**

	Price Allocation
Right to any and all claims the Seller may have against the owner of record, Fifth Third Bank or their attorneys for the rights, title and interest to Trademark "Lake & Bay" and its goodwill (Serial No. 76316910)	
Right to any and all claims the Seller may have against the owner of record, Fifth Third Bank or their attorneys for the rights, title and interest to domain Name "lakeandbay.com" and its goodwill	
Right to any and all claims the Seller may have against the owner of record, Fifth Third Bank or their attorneys for the rights, title and interest to domain Name "lakeandbayboats.com" and its goodwill	
24' Lake & Bay hull stringer, deck, and all small part molds for Backwater 24'	
22' Lake & Bay hull stringer, deck, and all small part molds for Backwater 22'	
20' Lake & Bay hull stringer, deck, and all small part molds for Backwater 20'	
20' Lake & Bay hull stringer, deck, and all small part molds for Boca Grande 20'	
20' flats boat hull stringer, deck, and all small part molds to be manufactured by Seller	
Lake & Bay hull, stringer molds for Skiff 17'	
Lake & Bay Backwater 24' Hull (HIN# DUH 20423J011) and all equipment and appurtenances thereto	
1 Backwater 24' Magic Tilt Trailer (Serial No. IM5BA2429D1E79677)	
Lake & Bay Backwater 20' Hull (HIN# _____) and all equipment and appurtenances thereto	
1 Backwater 20' Magic Tilt Trailer (Serial No. _____)	
<b>Total</b>	<b>\$280,000.00</b>



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## Detail by Entity Name

### Foreign Profit Corporation

FIFTH THIRD BANK

### Cross Reference Name

FIFTH THIRD BANK

### Filing Information

Document Number	F03000006380
FEI/EIN Number	310676865
Date Filed	12/24/2003
State	OH
Status	ACTIVE
Last Event	DROPPING DBA
Event Date Filed	04/15/2011
Event Effective Date	NONE

### Principal Address

38 FOUNTAIN SQUARE PLAZA  
CINCINNATI, OH 45263

### Mailing Address

38 FOUNTAIN SQUARE PLAZA  
MD 10AT76  
CINCINNATI, OH 45263

Changed: 04/22/2004

### Registered Agent Name & Address

CORPORATION SERVICE COMPANY  
1201 HAYS STREET  
TALLAHASSEE, FL 32301

### Officer/Director Detail

#### **Name & Address**

Title CEO



Michael Nolan &lt;mike@nolanprocessservers.com&gt;

---

**Summons/Complaint**

2 messages

---

**Williams Process Service** <mary.williamsprocess@comcast.net>  
To: mike@nolanprocessservers.com

Tue, Sep 24, 2013 at 9:34 AM

Attached is the Summons we discussed.

The client has asked that it be served today - can you do that? Apparently, she made a mistake and was supposed to get it to us quicker, and then we didn't mail it to you on Friday or Monday.

Let me know - THANKS!

---

 **Document (29).pdf**  
1157K

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**Michael Nolan** <mike@nolanprocessservers.com>  
To: Williams Process Service <mary.williamsprocess@comcast.net>

Tue, Sep 24, 2013 at 9:44 AM

Thanks Mary! I let Mike know he said no worries we'll take care of it today and no charge on the rush fee!  
I'll let you know when it's been served!

Amber Douglas  
Nolan Process Servers, LLC  
7498 Anglewood Lane  
Tallahassee, Florida 32309  
(850) 562-6058  
[Quoted text hidden]

## EXHIBIT 2

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

ISLAMORADA BOATWORKS, LLC,  
a Florida limited liability company,

Plaintiff,

v.

Case No. CACE 13-020957

FIFTH THIRD BANK,

Defendant.

---

**MOTION TO INTERVENE**

Intervenor, Lake & Bay Boats, LLC, ("Lake & Bay") pursuant to Fla. R. Civ. P. 1.230, moves this Court for entry of an order to intervene as a party defendant in this action and in support states:

1. Lake & Bay Boats, LLC is a Florida limited liability company located in Collier County, Florida.
2. Plaintiff, Islamorada Boatworks, LLC, ("Islamorada") commenced the instant action on September 13, 2013, by filing a two-part Complaint against Defendant Fifth Third Bank ("Fifth Third"). The gravamen of the Complaint was that Islamorada's predecessor in interest allegedly purchased certain assets<sup>1</sup> at an auction operated by Fifth Third's agent known as Kincaid Auction. After the auction, Islamorada contends that it became apparent that Fifth Third failed to convey a portion of the assets that Islamorada contends were auctioned and purchased.<sup>2</sup>
3. Specifically, Islamorada contends that it purchased:
  - a. All boat molds owned by Lake & Bay Boats, LLC ("BOAT MOLDS")
  - b. All rights, title, interest in the trade name Lake & Bay ("LAKE & BAY NAME")

---

<sup>1</sup> The Complaint refers to these assets as the "Lake & Bay Assets" or "Assets."

<sup>2</sup> As of the date of filing the instant motion, Defendant does not appear to have answered the Complaint.

Or "NAME")

c. All rights, title and interest in and to the Trademark "Lake & Bay" with Serial No. 76316910 (the "LAKE & BAY MARK" or "MARK") and all goodwill associated with the MARK; and

d. All rights to, and all title and interest in, the domain name "Lake & Bay" and the websites [www.lakeandbay.com](http://www.lakeandbay.com) and [www.lakeandbayboats.com](http://www.lakeandbayboats.com) ("DOMAINS").

4. Contrary to Islamorada's allegations, Lake & Bay contends that it owns all of the assets set forth in paragraph 3b, 3c, and 3d above, but that Fifth Third had lawfully taken ownership and possession of certain of Lake & Bay's boat molds that were stored in Sebring, Florida.

5. "In order for a party to intervene, its interest must be in the matter in litigation, and such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." Omni National Bank v. Georgia Banking Company, 951 So.2d 1006, 1007 (Fla. 3d DCA 2007)(internal quotations and citation omitted).

6. Count I of the Complaint purports to be a claim for specific performance that may result in a judgment compelling Fifth Third to convey to Islamorada property that is owned by Lake & Bay. Moreover, any potential voluntary settlement between the parties that is adopted and incorporated into an order or judgment of this Court could directly and improperly provide facial legal validity to any purported conveyance of Lake & Bay's property from Fifth Third to Islamorada.

7. The pleadings in the instant action are still open and Lake & Bay's intervention and prompt filing of an answer to the Complaint will not unduly delay this action or prejudice any of the parties. Lake & Bay could be prepared to file an answer within ten days of entry of an order granting the instant motion. In light of the foregoing, it would be an abuse of discretion to deny Lake & Bay an opportunity to intervene and defend its property interests. Hartford Fire Ins. Co. v. School Bd. Of Dade County, 661 So.2d 111,112 (Fla. 3d DCA 1995).

GOEDE, ADAMZYK & DEBOEST, PLLC

By: 

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Florida Bar No. 0297010  
sbunner@gad-law.com  
8950 Fontana Del Sol Way, Suite 100  
Naples, FL 34109  
(239) 331-5100 – Telephone  
(239) 331-5101 – Facsimile  
Attorneys for Lake & Bay Boats, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of March, 2014, I electronically filed the foregoing with the Florida Courts E-Filing Portal which will send notice of the electronic filing and the foregoing to:

J. Michael Pennekamp  
Sandra I. Tart  
Fowler White Burnett, P.A.  
[jpennekamp@fowler-white.com](mailto:jpennekamp@fowler-white.com)  
[start@fowler-white.com](mailto:start@fowler-white.com)

David J. Smith, Esq.  
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[miaecf@cfdom.net](mailto:miaecf@cfdom.net)

By:   
Stanley A. Bunner, Jr.