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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2020-CV-000442



Court: Shawnee County District Court
Case Number: 2020-CV-000442
Case Title: Dale Svacina - Individually and Derivatively obo
Jr vs. Kimberly Koehler - Representative Capacity
and Individually, et al.
Type: MEMORANDUM DECISION AND ORDER

SO ORDERED.

A handwritten signature in cursive script that reads "M.E. Christopher".

/s/ Honorable Mary E Christopher, District Judge

payments, Medicare Health Benefits, and Section VIII Public Housing Assistance in the form of a housing voucher. Svacina receives approximately \$800 per month in SSI benefits and \$400 in Section VIII housing benefits. Medicare pays for all his medical needs.

Svacina and Kimberly Koehler met in 2013 and began a dating relationship in September of that year. In January 2016, Svacina and Koehler formed two companies: 4R Construction Company, LLC (4R) and Hundred-Proof Property Management, LLC (Hundred-Proof). They filed the Articles of Incorporation for both companies on January 4, 2016. Koehler was listed as the sole organizer of each company. At the time of the initial incorporation of 4R and Hundred-Proof Svacina agreed not to share in the profits realized by either company. He made the decision not to draw a salary or receive a disbursement of profits, in part, to protect his governmental benefits and infuse funds into the companies to help them grow.

On February 16, 2016, an Amended Articles of Organization for 4R was filed indicating Svacina was “being included as a member/owner of 4R Construction Company with an interest in membership of 1%.” On December 16, 2016, a Certificate of Amendment for 4R Construction was filed indicating Svacina “has withdrawn in good faith his 1% interest in membership.”

Koehler suggested Svacina enroll in the Working Healthy program, where he could work for partial compensation, or cease receiving governmental benefits so he could earn compensation from his work with 4R and Hundred-Proof. Svacina did not enroll in the Working Healthy program or cease receiving benefits. Svacina never complained he did not receive wages or other earnings for his work.

Svacina alleges he prepared 200 quotes for prospective 4R customers, “solicited, planned, organized, implemented, worked on, oversaw and/or managed” 193 projects for 4R customers, worked an average of 40 to 60 hours per week, and individually generated more than three-quarters of a million dollars in gross revenue for 4R. Svacina alleges his “involvement and contributions in and towards Hundred-Proof projects generated over \$37,000 in gross revenues in 2019.” Svacina further alleges he was the sole driver behind acquiring and refurbishing the Chandler, Minnesota, and Wayne properties¹ on behalf of Hundred-Proof.

Svacina and Koehler ended their relationship in May 2020. The two never married. On June 6, 2020, Koehler sent Svacina a letter demanding he cease performing work on behalf of 4R and Hundred-Proof. To date, Svacina has not received any wages for his work with 4R or Hundred-Proof.

At the time of his deposition, Svacina testified he continued to work, rehabbing distressed houses for two companies, similar to the work Svacina provided for 4R and Hundred-Proof. Svacina admitted he received no compensation from his employment but worked to give his life purpose.

Svacina filed this litigation, which includes 12 separate counts. He seeks an order declaring him part-owner of 4R and Hundred-Proof or, in the alternative, back wages. Svacina alleges a verbal agreement between himself, Koehler, and another individual, Kirk Revelle, dealt with the parties’ intention to split the annual net profits. Specifically, Svacina alleges he and Revelle were

¹ These properties are detailed in plaintiff’s responsive briefing filed November 9, 2022.

to split the annual net profits evenly. Later, the parties allegedly agreed Koehler would receive 5% of the profits and the two men would split the remaining profits. Svacina's allegations are supported by an affidavit filed by Revelle, who ceased his affiliation with 4R or Hundred-Proof following the completion of the first project (Swygart project)² in the summer of 2016.

The defendants filed several counterclaims against Svacina, including assault, battery, and replevin. The defendants' Motion for Summary Judgment is presently under consideration.

II. STANDARD OF REVIEW

On deciding whether summary judgment is appropriate, the court must resolve all facts and inferences drawn from the evidence in favor of the party against whom summary judgment is sought. *Saliba v. Union Pac. R. Co.*, 264 Kan. 128, 131, 955 P.2d 1189, 1192 (1998). "Summary judgment is appropriate when the pleadings . . . and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Troutman v. Curtis*, 286 Kan. 452, 454-55, 185 P.3d 930 (2008). A party opposing summary judgment must provide evidence to establish a dispute regarding a material fact. *Troutman*, 286 Kan. at 455.

III. CONCLUSIONS OF LAW

Defendants first argue they are entitled to summary judgment because it is undisputed Koehler is the sole legal owner of 4R and Hundred-Proof, and Svacina refused wages during his

² More details regarding this project are in plaintiff's responsive briefing filed November 9, 2022.

time working for the two companies. Defendants further contend Svacina was a competent adult capable of entering “the arrangement” he had with Koehler and cannot now complain.

In contrast, Svacina testified about the verbal arrangement he shared with Koehler and Revelle. The alleged terms were that Svacina and Revelle would split the profits, with Koehler later being given 5% based on her start-up contribution. Svacina provided the affidavit of Revelle, which supports Svacina’s allegations. While there is little dispute Koehler was listed as the sole organizer so Svacina could continue receiving his benefits without issue, there remain disputed material facts that are not conducive to settling this matter via summary judgment.

Defendants next argue the Court cannot grant Svacina the relief he seeks because to do so would be to assist Svacina in committing fraud. For his part, Svacina maintains it is his “responsibility to report” any back wages or compensation he receives and “face any consequences flowing therefrom.” The Court is astounded by the audacity of these parties. First, Koehler attempts to deflect all blame for this fraudulent scheme on Svacina when, as the evidence indicates, she fully agreed to be the name on the documents so that Svacina could avoid risking his governmental benefits. It escapes logic for Koehler to maintain she did not share in the benefits of the fraud as soon as 4R and Hundred-Proof earned any revenue or that she is otherwise immune from the scheme. Second, Svacina’s statement that it is his decision to risk consequences lacks sincerity when he has evidenced little trouble deceiving agencies and abusing a system meant to help those truly unable to work.

The Court does not find summary judgment is an appropriate method to resolve this case because of the disputed material facts and special circumstances involved.

ORDER

For the reasons stated above, the Court DENIES the Defendants' Motion for Summary Judgment. No further journal entry is necessary.

IT IS SO ORDERED.

This Order is effective on the date and time shown on the electronic file stamp.

**HON. MARY E. CHRISTOPHER
DISTRICT COURT JUDGE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically on the date stamped on the order, providing notice to counsel of record in this matter.

 /s/ Vicky Haynes
Vicky Haynes, Div. 8
Administrative Assistant