

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DAWN PRICE

Plaintiff(s)

vs.

BRYAN KESTNER

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-10-5858

Submitted By: Dan M. David, O. Grady Query, Esq.
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29412

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Other:
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

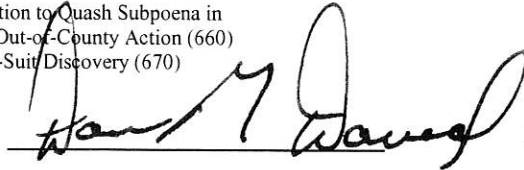
**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/
Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture—Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured
Settlement Payment Rights
Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers
Compensation Settlement
Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699)
<input type="checkbox"/> Sexual Predator (510) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in
an Out-of-County Action (660)
<input type="checkbox"/> Pre-Suit Discovery (670) | | |

Submitting Party Signature:



Date: October 30, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

Dawn Price
Plaintiff,

vs.

Bryan Kestner
Defendant.

SUMMONS

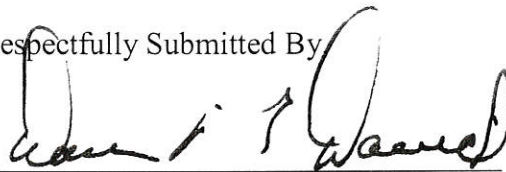
CASE NO. 2015-CP-10-_____

FILED
2015 OCT 30 PM 2:32
JULIE J. ARMSTRONG
CLERK OF COURT


TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint of the Plaintiff in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices at 147 Wappoo Creek Dr. Ste 101, Charleston South Carolina 29412 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

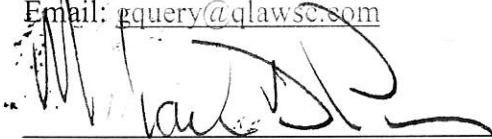
Respectfully Submitted By



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ATTORNEYS FOR PLAINTIFF

October 30, 2015

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Dawn Price)
 Plaintiff,)
)
vs.)
)
Bryan Kestner)
 Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

COMPLAINT

CASE NO. 2015-CP-10-_____

FILED
OCT 30 PM 2:32
JULIE J. ARISTON
CLERK OF COURT

NOW COMES Dawn Price (hereinafter "Plaintiff") by and through his undersigned attorneys and complaining of Bryan Kestner, ("Defendant") would respectfully show onto this Honorable Court the following:

PARTIES

1. Plaintiff Dawn Price was a citizen and resident of Charleston County, South Carolina, during all times referred herein, and has recently accepted employment in Jacksonville, Florida.
2. Defendant Bryan Kestner is a citizen and resident of Charleston County, South Carolina.

JURISDICTION

3. This court has personal and subject matter jurisdiction over the claims raised in this Complaint due to the fact that the parties all reside in Charleston County.

VENUE

4. Pursuant to South Carolina Code Annotated §15-7-30 (1976 & Supp. 2006), venue is proper in this court because Defendants are citizens and residents of Charleston County, South Carolina.

FACTS

5. Beginning in the year 2011 Plaintiff and Defendant resided together until August 2015. Over the course of their relationship Plaintiff took care of all expenses including Defendant's personal, living, and travel expenses while Defendant was attempting to gain employment with a local television show, and while owning and operating a restaurant called "Generalisimo".

6. Plaintiff was orally promised multiple times by Defendant that Plaintiff would be remunerated for her time, expenses, and efforts.

7. To memorialize the various promises to pay Plaintiff back for her generosity, the two Parties executed a promissory note on May 19, 2015. (See Exhibit A, attached hereto).

8. This note obligated Defendant to pay Plaintiff ten percent (10%) of any money Defendant received from Generalisimo, LLC, not including any of Plaintiff's promised salary.

9. Also included was a handwritten addendum, which obligated Defendant to pay Plaintiff an additional fifty-five thousand dollars (\$55,000.00) by June 1, 2018, with an initial lump sum payment of \$15,000.00, due August 1, 2015.

10. The actual agreement was an arms-length transaction, and was consented to by both parties and was conducted through Plaintiff's continued payment of Defendant's expenses. Consideration was made in the form of a nominal five-dollar (\$5.00) payment made at the time the agreement was executed and for past performance by Plaintiff.

11. After the relationship ended, Plaintiff discovered that Defendant was never in any ownership capacity of Generalisimo, LLC and therefore would be unable to convey her any money or other valued interest in that entity.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

12. Plaintiff incorporates the allegations of Paragraphs 1 through 11 as if set forth verbatim herein.

13. By his conduct, Defendant breached and/or unjustifiably failed to perform the contract, he executed with Plaintiff.

14. As a direct and proximate result of Defendant's breach, Plaintiff suffered monetary loss.

FOR A SECOND CAUSE OF ACTION
(Fraud and Misrepresentation)

15. Plaintiff incorporates the allegations of Paragraphs 1 through 14 as if set forth verbatim herein.

16. By his conduct Defendant made a representation that he knew to be false, asserting that he had an interest in Generalisimo, LLC.

17. That falsity was material to the agreement, as it provided the avenue by which Plaintiff would be repaid.

18. Defendant made these written and oral statements with full knowledge of their falsity, and with a reckless disregard for the truth.

19. Defendant further made these written/oral statements with the intent that Plaintiff act upon his misrepresentations.

20. Plaintiff relied on Defendant's representations. Plaintiff had no knowledge that Defendant made misrepresentations, and had no way to independently corroborate Defendant's claims.

21. To her detriment, Plaintiff relied upon these representations and had the right contractually to rely upon them, and Plaintiff was consequently and proximately injured as a direct result of her reliance and through the inability to recoup significant expenses made by her on behalf of Defendant.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

22. The Plaintiff reaver and reallege paragraphs 1 through 21 above the same as though repeated here verbatim.

23. The Defendant owed a duty to the Plaintiff to see that truthful and accurate information was communicated to the Plaintiff regarding legal advice being rendered by the Defendant to the Plaintiff in connection with business and financial transactions of a significant nature.

24. The Defendant made false representations to the Plaintiffs regarding the meaning and significance of legal documents which the Defendants undertook to review on behalf of the Plaintiff.

25. The Defendant, acting in the course of their professional responsibilities, had a pecuniary interest in the matters with respect to which they were providing legal advice to the Plaintiff.

26. The Defendant breached his duty of care to the Plaintiff by failing to exercise due care in rendering legal services to the Plaintiff.

27. The Plaintiff relied, and had a right to rely, upon the false representations of the Defendant.

28. As direct and proximate result of the reliance by the Plaintiffs on the false representations of the Defendant, the Plaintiff suffered a pecuniary loss.

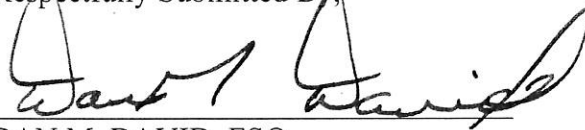
29. The Plaintiff is entitled to recover her actual damages from the Defendant.

30. In addition, based upon the egregious nature of the Defendant negligent misrepresentations, the Plaintiff is entitled to punitive damages in an amount sufficient to deter the Defendant and others from engaging in similar conduct in the future.

WHEREFORE, Plaintiff is entitled to judgment against the Defendant as follows:

- A. Actual damages to be determined by the jury;
- B. Punitive damages to be determined by the jury;
- C. An award of costs and fees as permitted by law;
- D. Such other and further relief as the Court deems proper.

Respectfully Submitted By,



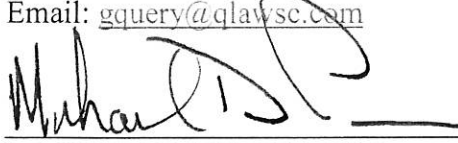
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A handwritten signature in black ink, appearing to read "Michael Dupree", is written over a horizontal line.

P. MICHAEL DUPREE, ESQ.

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Fax: 843.571.5062

Email: panodupree@aol.com

ATTORNEYS FOR PLAINTIFF

October 30, 2015

Charleston. South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AGREEMENT

Bryan Kestner is a Principal of a Corporation known as Generalisimo, LLC a restaurant in the process of opening located on King Street in the City of Charleston South Carolina.

Bryan Kestner agrees that for \$5.00 and other goods and valuable consideration, the receipt of which is acknowledged, to pay to Dawn Price Ten (10%) percent of any sums of money that he receives from Generalisimo, LLC not including his salary. It being specifically understood and agreed that his salary will not be used to calculate in any amounts contemplated hereunder to be paid to Dawn Price.

That included in the the Ten (10%) percent contemplated to be paid by Bryan Kestner to Dawn Price shall also include any franchise restaurants under the name of Generalisimo, LLC, or such other restaurants that Bryan Kestner may develop under the same concept or business plan as Generalisimo, LLC and also any products sold under the name Generalisimo, LLC.

55,000
- 7,000
48,000
paid 6/30
remaining on 7/1

Bryan Kestner 5/19/15
Bryan Kestner

I Bryan Kestner agree to pay DAWN Price, separate from Above Agreement, \$55,000.00, Fifty five thousand dollars.

By June 1, 2018 payments to be made periodically over time period \$15 thousand by Aug 1, 2015 Bna 1A 15,000