

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

John R. "Jack" Hibbits,)
)
Plaintiff,)
)
versus)
)
Kenneth C. "Clay" Thornton, Halo)
and Company, LLC, and Bank of)
America, NA,)
)
Defendants.)
)
_____)

SUMMONS

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/ David K. Haller
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September 3, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

John R. "Jack" Hibbits,)
)
Plaintiff,)

versus)

COMPLAINT

Kenneth C. "Clay" Thornton, Halo)
and Company, LLC, and Bank of)
America, NA,)
)
Defendants.)

TO: THE DEFENDANTS ABOVE NAMED

Plaintiff John R. "Jack" Hibbits, by and through his undersigned counsel, alleges and complains of the defendants as follows:

1. Plaintiff John R. "Jack" Hibbits is a resident and citizen of Charleston County.
2. Defendant Kenneth C. "Clay" Thornton is a resident and citizen of Charleston County.
3. Defendant Halo and Company, LLC is a South Carolina limited liability company with its primary place of business in Charleston County.
4. Defendant Bank of America, NA is a national lending institution which owns property and does business in Charleston County. On information and belief, Bank of America is holding property in which Hibbits has an interest in Charleston County.
5. This court has jurisdiction over the subject matter of this action and the parties hereto. Venue is proper in Charleston County.

FACTS

6. In March of 2020, just as the coronavirus pandemic was sweeping the world, defendant Clay Thornton approached plaintiff Hibbits about a sales representative position selling

pandemic related medical equipment to hospitals and governments. Hibbits is a South Carolina insurance agent of more than 20 years experience, with a focus on health insurance, and has relationships with hospital systems throughout the state and country.

7. Thornton's offer of employment to Hibbits was that for every customer introduced by him who purchased medical supplies from Thornton (or his companies), Hibbits would receive twenty-five (25%) percent of the net receipts less expenses of sale, such as wholesale cost of the product, shipping, customs, and the like.
8. The supplies were obtained from foreign sources and then sold to hospitals and related systems in the United States. Given the sudden emergent needs for medical supplies caused by the pandemic, the hope and expectation of the employment arrangement was that the Thornton could sell to substantial supplies to Hibbits' contacts.
9. Hibbits accepted Thornton's offer and a contract of employment was entered into between them.
10. Hibbits reached out to his contacts and introduced Thornton to them. Among the introductions made by Hibbits to Thornton was the Medical University of South Carolina (hereinafter "MUSC"). MUSC is a major provider of medical services throughout South Carolina, especially in rural communities, and its needs for equipment to handle the pandemic were plenty.
11. Soon after Hibbits introduction, Thornton sent the email dated March 29, 2020, attached hereto as Exhibit A¹ to Jennifer Simon at MUSC. Among other things, Thornton tells Ms. Simons, "You are in great hands with Jack as your rep & our companies' resources. WE

¹ All exhibits referenced herein are incorporated by reference and made a part and parcel hereof to this complaint.

ARE ABSOLUTELY HERE FOR YOU 24/7 & AT YOUR DISPOSABLE. WE WANT TO HELP YOU SOLVE YOUR CHALLENGES, by offering you a full turnkey-solution.”

12. MUSC had an urgent need for more than 100,000 thermometers. On or about March 30, 2020, from Hibbits connection to it, MUSC agreed to pay \$850,000.00 for 105,000 thermometers.
13. The supplier and importer of the medical equipment that was sold to MUSC is a company called Le Rouge Medical. Attached as Exhibit B is Le Rouge Medical’s DEAL SHEET for the thermometer transaction. The bottom of the page states that Jack Hibbits was due \$60,000 for sale commission. Le Rouge Medical then transmitted Hibbits’ commission to defendant Halo and Company, the entity Thornton used for these transactions. Upon receipt, Halo and Company paid Hibbits the commission due him from this transaction consistent with their contract.
14. Soon after, as a result of Hibbits’ work and connections to MUSC, MUSC ordered another 250,000 thermometers from Le Rouge Medical for \$1,262,250.00.
15. Attached as Exhibit C is Le Rouge Medical’s Invoice to MUSC for the second order of thermometers. Under the “ship to” box is “Sales Rep: JACK HIBBITS.”
16. Le Rouge Medical then paid Hibbits commission to Halo and Company. Halo and Company paid Hibbits the commission due him from this transaction consistent with their contract.
17. Within days, MUSC had a need for more thermometers and nasal swabs, and it agreed to purchase these through Le Rouge as a result of Hibbits’ work and introduction to it for \$2,400,000.00.

18. Attached as Exhibit D is Le Rouge's NET SHEET, showing a breakdown of the transaction among the interested parties. On the second page it shows Jack Hibbits entitled to a commission. Le Rouge Medical then paid Hibbits' commission to Halo and Company. Halo and Company paid Hibbits the commission due him from this transaction.
19. Attached as Exhibit E is a letter dated October 26, 2020, from Thornton on Halo and Company letterhead confirming Hibbits worked for it and paid him commission for his work.
20. At the same time and consistent with their agreement, Hibbits and Thornton were working on selling MUSC more than one million gowns and related personal protective equipment. The cumulative total of this sale would exceed \$3,000,000.00.
21. Attached hereto as Exhibit D is an email from Thornton to Hibbits dated May 2, 2020 regarding the MUSC invoices created by Hibbits' work and connections. Thornton says, "IM TRYING LIKE HELL TO GET THEM TO ORDER GOWNS LIKE YOU ARE-ROPER. Currently, there will be a total of (3) MUSC INVOICES & (1) AMEDYSIS INVOICE. HOPING FOR A (4TH) MUSC INVOICE!"
22. On or about April 28, 2020, MUSC ordered through Le Rogue Medical, as a result of Hibbits' work and connections to it, 730,000 gowns and related equipment for \$3,304,000.
23. Manufacture, delivery, and internal MUSC approvals of the condition of the gowns turned out to be a months long process. Hibbits remained involved in the process after the sale had been completed while awaiting delivery. However, over time, Thornton more and more began excluding Hibbits from the interactions with MUSC.

24. The gowns were eventually delivered. MUSC made the final payment to Le Rogue Medical on or about June 1, 2021. On information and belief, Le Rouge Medical then paid Hibbits' commission and the commission of others due funds to Halo and Company.
25. However, Halo and Company have refused to pay Hibbits his commission. In fact, Thornton and all representatives of Halo and Company and Le Rouge have refused to answer any questions posed by Hibbits, including verification of the actual expenses deducted from his previous payments.
26. Halo and Company have their operating accounts with Bank of America and Bank of America is believed to be in possession of Hibbits' funds in accounts held by Halo and Company and/or Thornton.
27. At the same time Thornton has been ignoring Hibbits, he has been renovating the home he lives in and uses as the office for Halo and Company at 529 Pelzer Drive in Mount Pleasant. On information and belief, Thornton has been, or plans to, use Hibbits' commissions to pay for the renovation of the home.

FOR A FIRST CAUSE OF ACTION

Accounting

28. Plaintiff realleges the paragraphs above as if restated verbatim.
29. Hibbits and Thornton through Halo and Company entered into an employment contract by which Hibbits provided certain services to it in exchange for 25% of the net profit after the deduction of expenses.
30. As alleged herein, Hibbits has requested information to verify the deductions made before his commission was determined. Halo and Company have failed and refused to respond.

31. Halo and Company have also failed and refused to account for the commission due Hibbits from the last transaction it entered into with MUSC from Hibbits' efforts and connections.
32. Plaintiff prays for an order requiring Halo and Company to account for all expenses deducted from the gross payments from invoices in which he is entitled to a commission and for all commission payments to which he is entitled generally.

FOR A SECOND CAUSE OF ACTION

Violation of the South Carolina Payment of Wages Act

33. Plaintiff realleges the paragraphs above as if restated verbatim.
34. This is a cause of action pursuant to the South Carolina Payment of Wages Act, S.C. Code Ann. 41-10-10, et seq.
35. Halo and Company is an employer of Hibbits. Halo and Company agreed to pay Hibbits wages in the form of commissions, as those terms are defined by the Act.
36. Hibbits' commissions were due upon receipt by Halo of the funds from MUSC. Halo was obligated to honestly account for all expenses deducted from gross receipts and the amount of Hibbits commission.
37. Halo has received the payment from MUSC for all sums generated by Hibbits' work and he is due a commission. Halo has failed and refused pay Hibbits' commission without right or justification.
38. Pursuant to S.C. Code Ann. §41-10-80, Plaintiff is entitled to, "an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees" for having to bring this action.
39. As a direct and proximate result of Halo and Company's violation of the Payment of Wages Act, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment

against Halo and Company for actual damages, in an amount to be determined by the trier of fact, together with three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees, and prejudgment interest to the fullest extent allowed by law.

FOR A THIRD CAUSE OF ACTION

CONVERSION

40. Plaintiff realleges the paragraphs above as if restated verbatim.
41. Thornton has assumed the unauthorized use of funds belong to Hibbits, to wit: commissions due Hibbits from work performed by him as alleged herein.
42. As a direct and proximate result of Thornton's conversion, Plaintiff has been injured and suffered damages. Plaintiff is entitled to a judgment against Halo and Company for actual damages, in an amount to be determined by the trier of fact, punitive damages in an amount sufficient to deter such similar conduct in the future.

FOR A FOURTH CAUSE OF ACTION

Equitable Lien

43. Plaintiff realleges the paragraphs above as if restated verbatim.
44. Thornton has taken the commissions due Hibbits and converted it to his own use in renovating his home and office in Mount Pleasant, among other things.
45. Hibbits is entitled to an equitable lien on Thornton's home and property, as further described in Exhibit F.

FOR A FIFTH CAUSE OF ACTION

Constructive Trust

46. Plaintiff realleges the paragraphs above as if restated verbatim.

47. Bank of America is holding funds in the name of Halo and Company and/or Thornton that rightfully belong to Hibbits.

48. Plaintiff prays for a constructive trust around all cash in the name of Halo and Company and/or Thornton which belongs to Hibbits. Further, plaintiff prays for an order directing Bank of America to interplead all such cash into the court until such time as the proper ownership of the same is determined.

WHEREFORE Plaintiff prays for judgment in his favor, for an accounting, for an award of actual damages in an amount to be determined by the trier of fact, treble damages, attorney's fees, court costs, punitive damages, an equitable lien on the property more fully described on Exhibit E, and a constructive trust on the commissions due Hibbits.

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September 3, 2021

Charleston, South Carolina