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Final Order and Judgment (Hatcher Management Holdings LLC et al.)

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Fulton County Superior Court

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COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

HATCHER MANAGEMENT HOLDINGS, L.L.C.;)
JERRY B. HATCHER, Manger and Member of)
Hatcher Management Holdings; ALAN BARRY)
HATCHER, Manager and Member of Hatcher)
Management Holdings; MARY BETH HATCHER,)
Member of Hatcher Management Holdings; ANNA)
C. HATCHER, Member of Hatcher Management)
Holdings; MARY GRACE HATCHER, Member of)
Hatcher Management Holdings; CAROL B.)
HATCHER, Member of Hatcher Management)
Holdings; DEBORAH G. HATCHER, Member of)
Hatcher Management Holdings; JASON H.)
HATCHER, Member of Hatcher Management)
Holdings; ALAN B. HATCHER, JR., Member of)
Hatcher Management Holdings; MEREDITH)
HATCHER McDOWELL, Member of Hatcher)
Management Holdings; STEVE P. McDOWELL,)
Member of Hatcher Management Holdings;)
CAITLIN McDOWELL, Member of Hatcher)
Management Holdings; JESSICA McDOWELL,)
Member of Hatcher Management Holdings,)

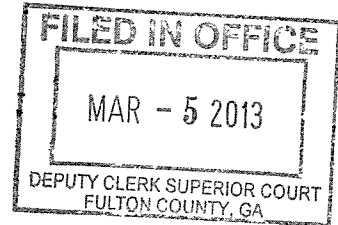
Plaintiffs,)

v.)

HENRY MAURICE HATCHER III,)
a/k/a (a) "Henry Maury Hatcher, III", (b) "H. Maury)
Hatcher", (c) "H. Maury Hatcher, III", (d) "Maury)
Hatcher", (e) "Maury Hatcher, III", (f) "Henry Maury)
Hatcher", (g) "Henry Maurice Hatcher".)

Defendant.)

CIVIL ACTION NO.
2009CV179145



FINAL ORDER AND JUDGMENT

On December 18, 2009, Plaintiffs filed their Complaint against Defendant Henry Maurice Hatcher III ("Maury") alleging claims for breach of contract, breach of fiduciary duty, conversion, conflict of interest transaction in violation of O.C.G.A. § 14-11-307(c), constructive

trust pursuant to O.C.G.A. § 53-12-93, and unjust enrichment. Plaintiffs also sought punitive damages pursuant to O.C.G.A. § 51-12-5.1, and sought attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11, because Maury engaged in bad faith and caused Plaintiffs unnecessary trouble and expense.

The gravamen of the claims is that Maury intentionally breached his fiduciary and contractual duties to Plaintiff Hatcher Management Holdings, LLC (the "LLC") and the individual Members of the LLC, who are Plaintiffs in this action, by knowingly taking assets from the LLC by doing the following: (1) improperly paying himself compensation, (2) improperly redeeming his and his immediate family's membership interests, and (3) improperly paying excessive distributions to himself and his immediate family (i.e., his wife, two sons, and daughter-in-law).

On July 18, 2011, the Court granted, in part, Plaintiffs' Motion for Partial Summary Judgment. In that Order, the Court determined that Maury breached his fiduciary duty and breached the December 13, 2000 "Hatcher Management Holdings, L.L.C. Operating Agreement" (the "Operating Agreement") by paying himself compensation without obtaining membership approval. The Court also determined that Maury breached his fiduciary duty by improperly redeeming his and his immediate family's membership interests, and that, through the redemption, he engaged in a conflict of interest transaction in violation of O.C.G.A. § 14-11-307. The issue of damages on these claims was left for trial, as were the remaining claims not addressed in the Motion for Partial Summary Judgment. The Court of Appeals affirmed the July 18, 2011 Order on July 3, 2012. On November 19, 2012, the Supreme Court denied Maury's Petition for Certiorari.

On February 15, 2013, Plaintiffs filed their First Amendment to Complaint and asserted additional allegations related to the punitive damages claims on the tort counts for breach of fiduciary duty (Count II) and conversion (Count III). As part of those additional allegations, Plaintiffs contend that Maury acted with the specific intent to cause harm to Plaintiffs, and therefore, there is no statutory limit on the amount of punitive damages that may be awarded to punish or deter Maury.

This matter came on for a specially-set trial beginning on March 5, 2013 at 10:00 a.m. Maury failed to appear at the trial and informed the Court by letter dated February 27, 2013 that he would not appear at the trial.

At the trial, Plaintiffs orally moved to strike Maury's Answer and defenses, and the Court granted Plaintiff's motion. The Court proceeded with a trial on damages and the claim for punitive damages. Plaintiffs presented evidence as to their damages on the underlying liability claims, including testimony from Mark Zyla, Plaintiffs' damages expert. Plaintiffs also presented evidence as to their claim for punitive damages. The Court finds on the evidence submitted as follows:

FINDINGS OF FACT

Deceased Hatcher family patriarch, Henry M. Hatcher ("Mr. Hatcher"), created several real estate businesses that acquired commercial and investment property holdings. Following a debilitating stroke, Mr. Hatcher asked his son, Maury, to assume control of the family business.

Shortly before Mr. Hatcher's death, Maury, with the assistance of counsel, created the LLC in order to consolidate various real estate businesses and to implement Mr. Hatcher's estate planning goals. Maury was familiar with and understood the terms of the Operating Agreement.

Pursuant to the Operating Agreement, Maury was appointed Manager of the LLC in 2001, and he served in that capacity until January 2009. The Members of the LLC believed this made sense, because Maury had a finance and business consulting background. He had managed companies for a living and was involved with analyzing corporate assets as part of his own business valuation company called Hatcher/Johnson Valuation, Inc. The Members of the LLC believed Maury understood how to run the LLC. However, it turned out that because of his business background, Maury could determine the best way to remove assets from the LLC without the Members' knowledge.

While acting as Manager, Maury knowingly and intentionally committed a series of improprieties. In so doing, he knowingly and intentionally took LLC assets to which he was not entitled.

First, Maury knowingly paid himself and his immediate family (i.e., his wife, two sons, and daughter-in-law) excessive distributions. Section 15.1 of the Operating Agreement requires that the Manager make quarterly distributions of all net revenue generated each quarter from the assets of the LLC. Section 15.1 of the Operating Agreement states:

Except as provided in Article 19 relating to the liquidation of the Company, Net Distributable Cash [defined in § 1 of the Operating Agreement as "Gross Revenues for such period minus Operating Expenses for such period"], if any, generated during any calendar quarter shall be distributed to Members within 60 days after the end of such calendar quarter.

Id. at § 15.1(emphasis added). In summary, the Operating Agreement requires that the Manager make regular quarterly distributions to the Members unless revenue was not generated for that respective calendar quarter, or the revenue did not exceed the operating expenses of the LLC for that quarter. Such distributions are required to be made on a pro rata basis (i.e., in proportion to each Member's respective ownership interests in the LLC). Id. at § 15.1.2.

Maury failed to make regular quarterly distributions as required by the Operating Agreement. When Maury chose to make distributions, he favored himself and his immediate family by making excessive and improper payments to himself and his immediate family that exceeded their pro rata interests in the LLC. In sum, Maury paid himself and his immediate family \$218,164 in excessive and improper distributions, and damaged the LLC in this amount.

Second, and as discussed in more detail in the July 18, 2011 Order on Plaintiffs' Motion for Partial Summary Judgment, Maury knowingly paid himself compensation that was not approved by the Plaintiffs. Maury lied to the LLC Members and never told them that he was paying himself any type of compensation. Maury even told Barry Hatcher that he "wasn't charging the LLC a penny" for his work. Maury paid himself \$876,500 in unapproved compensation to which he was not entitled and which was not approved by a vote of the LLC membership. Maury further damaged the LLC in this additional amount.

Finally, Maury secretly redeemed his and his immediate family's membership interests without LLC approval. More specifically, the evidence shows that in the Spring of 2008, Jerry Hatcher, an LLC Member, began questioning Maury about the manner in which Maury was making distributions. On August 2, 2008, a meeting of the LLC occurred with Maury and the other Members present. At the meeting, Members continued to question Maury about the way in which Maury made distributions and Maury's failure to provide financial records to the Members. Barry Hatcher, another Member, suggested that the LLC records be reviewed by a CPA or independent accountant, but Maury informed Barry that hiring an accountant would be too expensive and refused to do it.

Shortly after the August 2008 meeting, Maury decided to redeem his and his immediate family's membership interests. Maury did not inform anyone else at the LLC. In October of

2008, Maury secretly executed a Purchase Agreement that redeemed his and his immediate family's interest in the LLC without telling any of the other Members. As part of this secret cash-out, and in a conflict of interest with his duties as Manager, Maury personally valued the membership interest, personally drafted the Purchase Agreement, personally conducted the closing, and then paid himself with LLC assets for that membership interest. Through these actions, Maury improperly redeemed his and his immediate family's membership interests for \$397,614 more than the fair market value, thereby damaging the LLC in this amount.

On October 31, 2008, Maury transferred LLC assets to himself to pay himself for the redemption. Maury personally decided on which LLC assets to use to pay for his and his immediate family's interest, and decided to cash out by paying himself with cash and publicly traded stock from the LLC's brokerage account. Maury did not take any interests from the LLC's real estate holdings, because by late 2008 the real estate was worth much less than the value reflected on the LLC's books. Maury's decisions changed the character of the asset mix held by the LLC, yet he refused to discuss the resulting change with any of the Members or seek their input.

On the same day that Maury transferred the assets, he prepared a separate memorandum to the Members dated October 31, 2008. In the memorandum, he discussed the stock market's performance. Although he had just transferred stocks away from the LLC into his own personal account, he disingenuously told the Members: "We aren't selling much, so we are not losing much now." He further warned the Members not to take anything out of the LLC: "A word of warning: For every dollar pulled out of the LLC right now, you will lose up to \$1.40."

Maury disregarded his own advice and placed his own interests over the LLC's best interests. He removed assets from the LLC, while telling the other Members not to do it. His

unilateral acts forced the remaining Members to absorb the negative financial effects of his redemption. Moreover, despite Maury's hypocritical statements and "warnings," Maury did not inform the Members in this memorandum that he had just redeemed his interest.

Maury did not tell any of the other LLC Members that he had cashed out his interests until January 2, 2009 when he tendered his resignation as Manager. After he resigned, Maury then engaged in additional efforts to keep his misconduct a secret. In fact, Maury interfered with the LLC's new management and refused to return the LLC's records to the remaining Members even though he no longer had any ownership interest or managerial responsibility. For the next two months, after Maury no longer was a member or manager, Maury worked with counsel and sought to negotiate a release of his liability in exchange for his return of the LLC records. The remaining Members of the LLC (i.e., the Plaintiffs) refused to execute a release.

Finally, Maury took the proceeds from his improper redemption and moved to Florida. Maury's efforts to negotiate a release delayed the LLC's discovery of Maury's wrongful conduct. It also allowed Maury further time to move to Florida where he used some of the assets he fraudulently obtained from the LLC to purchase a home in Windermere, Florida and to shield those assets from the LLC. Maury even told Jerry Hatcher, that "liens don't stick down here," that "Florida is a fortress," and "I have done my homework in Florida."

Once the Plaintiffs had an opportunity to review the LLC's records, Plaintiffs began to recognize the extent of Maury's wrongdoing. They engaged an independent accountant, Mark Zyla of Acuitas, Inc., to analyze the records. After considerable work, Plaintiffs' accountant determined the extent of Maury's wrongdoing. In total, Maury took \$1,492,278 in assets from the LLC.

CONCLUSIONS OF LAW

Notwithstanding the Court's findings contained in the Court's July 18, 2011 Order on Plaintiffs' Motion for Partial Summary Judgment, which is incorporated by reference herein, the Court finds that Maury breached his fiduciary duties owed to the LLC, breached the Operating Agreement, converted LLC assets, and unjustly enriched himself by doing the following: (1) improperly paying himself unapproved compensation, (2) improperly redeeming his and his immediate family's membership interests, and (3) paying excessive distributions to himself and his immediate family (i.e., his wife and children).

The Court further determines that Maury acted in a knowingly and intentional manner when he engaged in this misconduct, including his breach of fiduciary duty, and engaged in efforts to hide his misconduct. For example, he refused to provide financial records to the Members as he was required to do under the Operating Agreement, he refused to hire a CPA when the Members requested that he hire a CPA, and he sought a release of his liability in exchange for the LLC's records. He also kept his redemption a secret for over three months after he redeemed his membership interest, and misled the Members when he sent the October 31, 2008 memorandum to the Members on the same day he transferred LLC assets to himself. In short, he used his business background in an effort to gain the trust of the other LLC members, and knowingly took advantage of their trust. He knew that his actions would substantially damage the LLC, and he moved to Florida where he threatened that he was protected by certain debtor-protection laws in an effort to further avoid returning the assets that he unlawfully obtained.

An intentional breach of fiduciary duty amounts to fraud as a matter of law. Morrison v. Morrison, 284 Ga. 112, 113 (2008) ("An intentional breach of fiduciary duty constitutes actual

fraud, which clearly may form the basis for a constructive trust.”) Black & White Const. Co., Inc. v. Bolden Contractors, Inc., 187 Ga. App. 805, 809 (1988) (“[B]reach of fiduciary duty may be either innocent or intentional, and the latter will be sufficient to constitute actual fraud.”). Accordingly, Maury committed actual fraud against the Plaintiffs when he was acting in his fiduciary capacity. Maury also willfully and maliciously injured the LLC through his conversion of LLC assets. Maury intentionally used some of the assets he fraudulently obtained from the LLC to purchase his home in Windermere, Florida, where he is currently residing. He did this with the intent to hinder, delay, or defraud the LLC, which is a creditor of Maury’s.

Maury’s conduct with respect to the tortious payment of improper distributions, tortious redemption of his and his immediate family’s membership interests, and his tortious payment of improper compensation was willful, wanton, malicious, fraudulent, oppressive, and undertaken with conscious indifference to the consequence. Accordingly, an award of punitive damages for this misconduct pursuant to O.C.G.A. § 51-12-5.1 is appropriate to “deter, penalize, or punish the defendant in light of the circumstances.” O.C.G.A. § 51-12-5.1(d)(2).

Moreover, so that Maury could benefit himself, Maury engaged in this conduct with the specific intent to harm the Plaintiffs. Therefore, pursuant to O.C.G.A. § 51-12-5.1(f) there is no statutory limit on the amount of punitive damages that may be awarded to deter, penalize, or punish Maury.

Finally, Maury engaged in bad faith and caused Plaintiffs’ unnecessary trouble and expense. Accordingly, pursuant to O.C.G.A. §13-6-11, Plaintiffs’ are entitled to an award of their reasonable attorneys’ fees and expenses, including the expenses Plaintiffs’ incurred for their forensic accountant expert, Mark Zyla at Acuitas, Inc.

A summary of the various damages is attached as Exhibit “A.”

NOW THEREFORE, IT IS FURTHER ORDERED AND ADJUDGED THAT:

- (1) Plaintiffs' are entitled to an award of economic damages caused by the Defendant Henry Maury Hatcher III in the amount of \$1,492,278.
- (2) Plaintiffs are entitled to an award of punitive damages pursuant to O.C.G.A. § 51-12-5.1 in the amount of \$2,250,000.
- (3) Plaintiffs are entitled to award of reasonable attorneys' fees and expenses pursuant to O.C.G.A. § 13-6-11 in the amount of \$304,659.
- (4) Plaintiffs have a judgment against Defendant Henry Maury Hatcher III in the total amount of \$4,046,937 together with post-judgment interest as provided by law.
- (5) The Clerk shall tax costs against Defendant Henry Maury Hatcher III.
- (6) The Court directs the entry of a final judgment as to the matters set forth herein.

SO ORDERED this 5th day of March 2013.

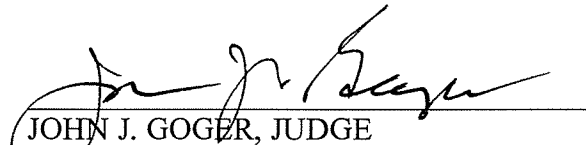

JOHN J. GOGER, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

EXHIBIT A

A. Economic Damages:

1. Excess value of redemption of Defendant Maury Hatcher and his immediate family's membership interest:	\$397,614
2. Improper compensation:	\$876,500
3. Excess distributions paid to Defendant Maury Hatcher and his immediate family:	\$218,164
<u>Total:</u>	<u>\$1,492,278</u>

B. Punitive Damages:

Based on Defendant Maury Hatcher's specific intent to harm Plaintiffs, the Court will apply a multiplier of approximately 1.5 times economic damages.

$$1.5 \times 1,500,000 = \underline{\$2,250,000}$$

C. Attorneys' Fees and Expenses (O.C.G.A. § 13-6-11)

Caldwell & Watson	\$257,464
Acuitas, Inc.	\$47,195
<u>Total:</u>	<u>\$304,659</u>

TOTAL JUDGMENT:

\$4,046,937

Copies sent electronically to:

Attorneys for Plaintiff	Attorneys for Defendants
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