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Velva L. Price
District Clerk
Travis County
D-1-GN-24-000633
Stefany Vega juarez

CAUSE NO. D-1-GN-24-000633

PSW REAL ESTATE, LLC, by and through its receiver, STAPLETON GROUP, INC.,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
V.	§	TRAVIS COUNTY, TEXAS
ANTHONY V. SIELA, J. RYAN DIEPENBROCK, AND CHAD ALAN SHEPLER	§	345TH, DISTRICT COURT
Defendants.	§	______ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff PSW Real Estate, LLC ("PSW"), acting by and through the court-appointed Receiver, Stapleton Group, Inc., files this suit against Defendants Anthony V. Siela ("Siela"), J. Ryan Diepenbrock ("Diepenbrock"), and Chad Alan Shepler ("Shepler") (collectively, Siela, Diepenbrock and Shepler shall be known as the "PSW Executives" or "Defendants") and respectfully shows as follows:

I. Level 3 Discovery Control Plan

1. PSW intends discovery to be conducted under Level 3 pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.4.

II. Specific Statement of Relief Sought

2. At this time, PSW seeks actual and exemplary damages and prays for monetary relief in excess of $5,000,000.

III. Parties

3. PSW is a real estate development company for which Stapleton Group has been appointed to act and serve as the court-appointed receiver as set forth in the July 31, 2023 Order

Appointing Receiver, issued in the District Court of Travis County, Texas, Cause No. D-1-GN-23-003968.

4. Siela is an individual who resides in Travis County, Texas. Siela may be served with process at his residence at 1004 Maufrais St., Austin, Texas 78703, or wherever he may be found.

5. Diepenbrock is an individual who resides in Travis County, Texas. Diepenbrock may be served with process at his residence at 504 Sunny Lane, Austin, Texas 78704, or wherever he may be found.

6. Shepler is an individual who resides in Travis County, Texas. Shepler may be served with process at his residence at 22305 Chipotle Pass, Spicewood, Texas 78669, or wherever he may be found.

IV. Jurisdiction & Venue

7. The Court has jurisdiction because PSW brings suit for damages within the jurisdictional limits of this Court. Venue is proper in Travis County, Texas because the PSW Executives reside in Travis County, Texas, PSW's principal place of business is in Austin, Travis County, Texas, and substantial portions of the events and omissions giving rise to these claims occurred in Travis County, Texas.

V. Factual Background

8. PSW, operating under the brand name of StoryBuilt, is an Austin based company that specializes in developing single-family and multi-family residential housing in Austin, Dallas, Seattle, and Denver. PSW has completed over fifty (50) residential housing developments and sold or leased over 1,500 residential units. PSW's involvement in projects takes one of three forms: (i) PSW solely owns and develops a project, (ii) PSW serves as sponsor and managing member for a development in which other investors provide capital; or (iii) PSW transitions development to

another developer and serves as a non-managing member of the project. In order to capitalize developments, PSW utilized complicated capital structures and multiple lines of credit. Most developments involving third parties include several layers of ownership with various interest holders at each level.

9. At the time the Receiver was appointed, PSW served as the general contractor and primary developer on 13 projects at various stages of construction and served as a joint venture partner on 16 projects at various stages of construction.

10. Several of PSW's officers, specifically Anthony Siela, J. Ryan Diepenbrock, and Chad Alan Shepler, severely mismanaged PSW and various PSW joint venture projects, abdicating their duty of care and loyalty to PSW and the joint ventures in the process.

11. As more fully detailed herein, the PSW Executives acted negligently and wrongfully by, among other things, failing to act with loyalty and good faith, strict integrity and accountability, in their roles as fiduciaries to PSW, and by using their positions to place their own personal interests ahead of the interests of PSW.

12. PSW seeks damages for the economic harm it has incurred arising from the conduct and decisions of the PSW Executives and directors and/or officers who participated in the negligence and misconduct as well as those who had actual or constructive knowledge of the misconduct and negligence.

13. PSW seeks damages for economic harm including, but not limited to, claims for breaches of fiduciary duty, negligence, unjust enrichment, and breach of the duty of care. In the ordinary course of conduct, the Receiver has identified evidence of the misconduct of the PSW Executives and discovery is expected to reveal further similar conduct to that described herein.

VI. Joint Venture Projects

14. **SB Austin 84 LLC – Ellie May Condominiums**

SB Austin 84 LLC ("SB Austin") is a joint venture between IHP Capital Partners VI, LLC and PSW-Springdale, LLC, a PSW controlled entity. SB Austin 84 LLC is the owner and developer of the Residential Master Unit 1 and Garage Master Unit 2 of Ellie May Master Condominiums in Travis County, Texas ("Property"). As the developer, PSW-Springdale was responsible for the development and construction of up to 84 attached residential condominium units on the Property, and, pursuant to the Guaranty, PSW guaranteed PSW-Springdale obligations.

IHP Capital Partners VI sent a notice removing PSW-Springdale as Managing Member of SB Austin 84 LLC and alleging that PSW had mismanaged SB Austin to the detriment of all stakeholders involved, which includes IHP Capital Partners VI and PSW. The notice of removal alleged that the PSW Executives (i) misused and misapplied funds earmarked for SB Austin, and it therefore lacked funds necessary to pay vendors performing work on the Property, resulting in mechanics liens filed against the Property; (ii) failed to manage the development of the Project with due care causing unnecessary and avoidable delays that caused damage to the stakeholders; and (iii) furloughed its employees on or about July 10, 2023, such that they could not fulfill their obligations.

Specifically, IHP Capital Partners VI asserted that PSW officers misused funds earmarked for SB Austin by spending the money on other projects. It contended that PSW's officers used $478,251.33 in SB Austin funds to pay costs and expenses for the development of an adjacent property, leaving SB Austin development costs unpaid. It also contended that SB Austin paid $544,164.09 in insurance premiums for the other properties.

15. **<u>George 116 – Austin, L.P.</u>**

George 116 – Austin, L.P. ("George") was a joint venture partnership between HHPIII GP, LLC, Hearthstone Housing Partners III, LLC and SB-George Holdings, LLC, a PSW controlled entity. George is the owner and developer of the 36 single-family homes and 80 townhome units located in Travis County, Texas. A PSW related entity, PSW GC, LLC, was designated as the manager of the George Project.

Hearthstone sent a notice terminating PSW GC, LLC as manager based on allegations that it had breached the Subdivision Development Agreement ("SDA"). Specifically, Hearthstone alleged that the PSW Executives (i) were responsible for millions of dollars in budget overages, (ii) were responsible for the development being many months behind schedule, (iii) had failed to construct, market and sell the residences, (iv) had misdirected over \$1.5 million in buyer deposits and \$1.2 million in construction loans advanced from Sterns Bank, (iv) had submitted to the receivership, and (v) had caused SB-George Holdings, LLC to default on its loans.

In addition, as a result of the PSW Executives' failure to exercise due care, Hearthstone alleged it was obligated to hire third parties to assist with day-to-day management of the construction, market, and selling of the residences, adding additional costs to George.

16. **<u>Tranche I Venture & Tranche II Venture</u>**

StoryBuilt Investment – Tranche I JV LLC ("Tranche I") and StoryBuilt Investment – Tranche II JV LLC ("Tranche II") are two joint ventures between Partners Group StoryBuilt Holdings, LLC ("Partners Group") and PSW.

On July 17, 2023, PSW was removed as manager of Tranche I and Tranche II by Partners Group. The notice of removal alleged the PSW Executives engaged in several removal events under the joint venture agreements, including: (i) defaults and events of default under the

Development Service Agreement, (ii) failure to perform under the Financing Guaranty, Funding Guaranty or Completion Guaranty, and (iii) failure to maintain the net worth and liquidity required under the Funding Guaranty. As a result, PSW lost its right to promote distributions. In addition, there are allegations that the PSW Executives failed to deliver reports and information required under the joint venture agreements and failed to exercise due care with respect to the planning, development and construction of the projects and all oversight thereof.

17. **Thornton Property Project**

The Thornton Apartments, LLC ("Thornton") is a single-member LLC with Tranche I as the sole member. On December 12, 2021, Thornton and SB JV Property Management, LLC, entered into the Thornton Property Management Agreement ("Thornton PMA") in which SB JV Property Management served as the property manager for an Austin, Texas apartment building owned by Thornton. Following the removal of PSW as manager of Tranche I and Tranche II discussed above, Partners Group sent a notice letter terminating the Thornton PMA and alleging breaches of the agreement. The letter alleged that units at the property located at 2313 Thornton Rd., Austin, TX 78704 had been leased without informing investors and without reporting any generated income to their investors.

18. **Issues Surrounding Other Projects**

In addition to these allegations by third-party stakeholders, information suggests that the PSW Executives received approximately $6,700,000 from investors to purchase a property for the "Dayton Project." However, the PSW Executives did not acquire the property that was the subject of the investment, and upon information and belief, comingled the Dayton Project investments with other funds not specifically allocated for the project. While a small percentage of those funds were expended in diligence and legal fees, no funds were returned to Dayton Project investors and were spent on unrelated projects.

19. The PSW Executives' failure to adequately consider the impact of their flagrant mismanagement of joint venture projects damaged PSW and third-party stakeholders and has had a detrimental impact on PSW. For example, the JV Partners and Partners Group termination significantly damaged the value of PSW's 10% interest in those ventures, devaluing approximately $20 million that PSW invested in these ventures. In addition, Partners Group now alleges that it has the authority to make capital calls which will dilute PSW's ownership interest in those joint ventures.

VII. Failure to Supervise Investor Compliance

20. In addition to the allegations arising out of mismanagement of certain projects, the PSW Executives engaged in other negligent misconduct that damaged PSW. As of 2019, PSW could only accept accredited investors and had to take certain proactive steps to verify that such investors were accredited before accepting funds into any investment offering. However, an accreditation audit based on data from 2019 through 2022 revealed that 320 investors were not accredited. In January 2023, the PSW Executives were informed that a significant number of investors were not accredited and that they had put in place systems that intentionally did not verify accreditation status, which put the company at risk of investigations by the United States Securities and Exchange Commission ("SEC") and damaged the company directly, including damaging the company's ability to continue raising equity for a significant period of time. PSW Executives took no actions to cure or address the issue. PSW is currently under investigation by the SEC and Texas Securities Board.

VIII. Mismanagement of MCA Loans and Proceeds

21. In addition to the allegations above, Siela and Diepenbrock arranged for PSW to borrow approximately $3,000,000 from several Merchant Cash Advance ("MCA") lenders. According the PSW's bank, either Siela or Diepenbrock authorized at least one MCA lender,

Legacy Capital 26, LLC, to draft $10,000 per day from bank accounts held by approximately 79 entities related to PSW and allegedly to its joint ventures. The MCA loan agreements were entered into without the advice of legal counsel as to the terms of the loan, including representations and warranties, covenants, and appropriate authorizations for the contracting entities. This unreasonable and improper authorization resulted in an overreach by one of the lenders who took $140,000 out of one of the Partners Group joint venture bank accounts for PSW-Georgetown. The $3,000,000 borrowed from the MCAs was negligently mismanaged and was not properly accounted for in PSW's records. Moreover, the terms on which PSW borrowed money from the MCAs were unreasonable and not in the best interests of PSW. In some cases, MCAs are charging PSW interest at an annual percentage rate (or APR) in excess of 286%.

IX. Kenneth Lyttleton Morgan III – Arbitration Award

22. Kenneth Lyttleton Morgan III loaned PSW $1,000,000 pursuant to an April 2021 Promissory Note ("Note"). The PSW Executives negligence and mismanagement caused PSW to default on its payments to Morgan under the terms of the Note. As a result, Morgan brought and prevailed in an arbitration against PSW in the amount of $838,116.20, plus interest at twelve percent. Had the PSW Executives exercised reasonable care with the management of PSW and its funds, PSW would not have defaulted on the Note or been obligated to pay the usurious interest required by the arbitration award.

X. Government Investigations

23. To date, Stapleton has been contacted by the following government agencies in regards to the conduct of the PSW Executives:

- United States Department of Justice
- United States Internal Revenue Service, Criminal Investigation Unit
- United States Department of Labor
- United States Securities and Exchange Commission, Division of Enforcement

- Federal Bureau of Investigations
- Texas State Securities Board
- Texas Workforce Commission - Wage & Hour Division
- Texas State Comptroller's Office

24. As a result, PSW has incurred significant costs in responding to requests by these government agencies that would have been avoided had the PSW Executives taken adequate measures to fulfil their fiduciary duties to PSW.

XI. CAUSES OF ACTION

A. Breach of Fiduciary Duty

25. PSW incorporates by reference and re-asserts each and every allegation above, as though fully set forth herein.

26. As company officers and directors, the PSW Executives owed fiduciary duties to PSW to act at all times in a reasonable and prudent manner and in the best interests of PSW. Based on their fiduciary status as corporate officers and/or directors, the PSW Executives owed PSW duties including those of obedience, loyalty, candor, and due care. The PSW Executives abused their positions and breached their fiduciary duties to PSW causing monetary damages, among other things, in the following respects:

(i) failing to act in good faith and with scrupulous honesty towards PSW by placing their own interests ahead of PSW's interests; and by failing to disclose important information; and by wholly failing to ensure that proper controls were in place for PSW's accounting and operational functions; and by failing to appropriately manage the liquidity of PSW;

(ii) breaching the fiduciary duty of obedience by acting beyond the PSW Executives' scope of authority;

(iii) in some instances, retaining employees on payroll without any means to pay them, creating an administrative priority liability of at least $1,800,000 and causing at least three regulatory agencies to request detailed information at a large cost;

(iv) in other instances, terminating employees leaving no one to fulfill their obligations;

(v) mismanagement causing delays inciting additional costs;

(vi) authorizing high salaries for themselves when PSW was clearly insolvent, and despite apparently telling investors that they weren't taking any compensation until certain investments or loans were repaid;

(vii) failing, including without limitation, to provide information regarding valuations and cash flow statements on a regular basis;

(viii) comingling funds without proper record-keeping, inciting additional expenses;

(ix) written legal misrepresentations creating exposure to liability;

(x) misdirecting millions of dollars in homebuyer deposits and advanced construction loans;

(xi) mismanagement causing defaults on multiple loans;

(xii) mismanagement and inaccurate record-keeping resulting in, among many other material issues, a $7 million investment being reclassified as debt from equity;

(x) mismanagement and failure to perform under the terms of various contracts, including failure to maintain the required net worth and liquidity, creating events of breach of contract;

(xiii) leasing property units without informing investors or reporting income, thereby generating and retaining revenue "under the table";

(xiv) misplacing $6.7 million from investors to purchase property for the "Dayton Project," returning none of the funds to Dayton Project investors when the property was not purchased, *i.e.*, utilizing those funds to pay PSW corporate expenses or to repay other investors and lenders;

(xv) misusing and misapplying Joint Venture, lender, investor, and company funds resulting in unpaid vendors, inciting mechanics liens;

(xvi) mismanagement causing devaluation of Joint Venture investments and creating exposure to unanticipated capital calls;

(xvii) failure to perform due diligence in accordance with known and established policies to verify investor accreditation; creating exposure to SEC investigations as well as damaging the company's reputation;

(xviii) failure to cure when issues arose from PSW's failure to perform;

(xix) transferring investment funds to themselves and their associates and engaging in self-dealing transactions; and

(xx) other misconduct to be established at trial.

27. The PSW Executives breached their fiduciary duty by their failure to exercise oversight and provide ordinary care and supervision.

28. The PSW Executives' actions were unreasonable under the circumstances and not a valid exercise of business judgment.

29. PSW has suffered damages that were proximately caused by the extensive breaches of fiduciary duty committed by the PSW Executives. PSW is entitled to actual damages, lost profits, and exemplary damages for these breaches of fiduciary duty.

B. Negligence and Gross Negligence Against the PSW Executives

30. PSW incorporates by reference and re-asserts each and every allegation above, as though fully set forth herein.

31. The PSW Executives, as officers, directors or employees of PSW, owed a duty to PSW to exercise reasonable care as described above.

32. The PSW Executives breached their duties by, among other things, failing to act primarily for the benefit of PSW, by approving and incurring unwarranted costs and transactions counter-productive to the interests of PSW, by failing to manage the liquidity for PSW, and by having PSW pay excessive fees and expenses on items and services that benefited the PSW Executives. Accordingly, these breaches caused PSW to incur losses and damages. Further, given the nature of the PSW Executives' actions, coupled with their awareness of the financial condition of PSW and conscious indifference thereof, the PSW Executives' actions constitute gross negligence, for which the PSW Executives are liable.

C. Unjust Enrichment

33. PSW incorporates by reference and re-asserts each and every allegation above, as though fully set forth herein.

34. As set forth above, the PSW Executives wrongfully mismanaged PSW's money. The PSW Executives should not be allowed to keep or continue to use mismanaged PSW funds under the fundamental principles of justice, equity and good conscience.

35. The PSW Executives obtained benefits from PSW by the actions described above. The PSW Executives owe PSW damages for their unjust enrichment.

XII. Inconsistent or Alternative Claims

36. Should any claim, cause of action, or allegation set forth herein be inconsistent or be required to be alleged as an alternative claim, any such claim, cause of action, or allegation shall be considered an alternative claim pursuant to Rule 48 of the TEXAS RULES OF CIVIL PROCEDURE.

XIII. Conditions Precedent

37. PSW has performed and/or satisfied all conditions precedent to its claims.

XIV. Documents to be Used Pursuant to Rule 193.7

38. Pursuant to Rule 193.7 of the TEXAS RULES OF CIVIL PROCEDURE, Plaintiff notifies Defendants that they intend to use all documents exchanged and produced between the parties during the trial and motion practice in this case.

XV. Prayer

WHEREFORE, PSW respectfully requests, upon final trial herein, that this Court enter judgment in its favor and grant PSW the damages against Defendants to which it is entitled, including, but not limited to those damages as set forth more specifically below:

1) Actual, economic damages;

2) Lost profits;

3) All damages allowed by Texas law, including punitive damages;

4) Pre and post-judgment interest at the highest rate allowed by law from the date of judgment until paid; and

5) Such other relief, general and special, legal and equitable to which PSW complains of herein and to which it may be justly entitled.

Dated: January 31, 2024

Respectfully submitted,

REED SMITH LLP

By: */s/ Kenneth E. Broughton*

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