

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

UPSTATE HOLDINGS, LLC,

Case No.:

Plaintiff,

Division:

vs.

STATE STORAGE GROUP, LLC, and
ANG EQUITY HOLDINGS, LLC,

Defendants.

**VERIFIED EMERGENCY PETITION FOR BREACH OF FIDUCIARY DUTY,
JUDICIAL DISSOLUTION OR APPOINTMENT OF RECIEVER AND
REQUEST FOR TEMPORARY AND PERMANENT RELIEF**

Plaintiff, UPSTATE HOLDINGS, LLC (herein “**Plaintiff**”, or “**UHLLC**”), by and through its undersigned counsel, files this Verified Emergency Petition seeking temporary and permanent injunctive relief and damages against Defendants, STATE STORAGE GROUP, LLC (“**SSGLLC**”), and ANG EQUITY HOLDINGS, LLC (“**ANGLLC**”)(collectively referred to herein as “**Defendants**”) and alleges as follows:

NATURE OF THE ACTION

1. This is an action by UHLLC for judicial dissolution of GATOR STATE STORAGE TB, LLC (“**GSSTBLLC**” of the “**Company**”), or as an alternative, appointment of a receiver to remedy Defendants’ violation of Florida Statutes §§ 605.04091, 605.0702(1)(b)4, 605.0801 and 605.0802, and temporarily conduct and manage the affairs of GSSTBLLC. Specifically, Plaintiff seeks temporary and permanent injunctive relief, fees and costs, and other relief pursuant to Florida Statutes §§ 605.0703 and 605.0704, and Rule 1.610(a) of the Florida Rules of Civil Procedure.

2. Plaintiff has satisfied the requirements of Florida Statutes §§ 605.0801 and 605.0802 and herein seeks to enforce the rights of Plaintiff itself and the subject entity, GSSTBLLC.

3. Defendants' improper acts have caused and are causing UHLLC irreparable harm and damage, which require that Defendants be enjoined to prevent further harm. UHLLC consequently seeks a temporary and permanent injunction, as well as attorney's fees, court costs, and other relief.

PARTIES

4. Plaintiff currently is, and at all times mentioned herein was, a Florida corporation with a principal place of business in Largo, Pinellas County, Florida.

5. Defendant SSGLLC currently is, and at all times mentioned herein was, a Florida corporation with a principal place of business in Riviera Beach, Florida, but doing business in Pinellas County, Florida.

6. Defendant ANGLLC currently is, and at all times mentioned herein was, a foreign corporation with a principal place of business in Plano, Texas, but doing business in Pinellas County, Florida.

7. The primary entity owned by Defendants that makes up the subject matter of this action is GSSTBLLC, a Florida corporation that owns real property and personal property located at 12501 S. Belcher Road Largo, Florida 33773.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter for injunctive relief and additionally, this Court has subject-matter jurisdiction over the claims alleged in this Verified Petition pursuant to Florida Statutes §§ 26.012(2)(g) and 26.012(3) in that Plaintiff is seeking, in

part, issuance of both a temporary and a permanent injunction in an action involving the title to real property.

9. Venue is proper in Pinellas County because at all times relevant to this lawsuit, the parties did business related to this action in Pinellas County, Florida. All acts and omissions that make the basis of this lawsuit took place in or accrued in Pinellas County, Florida, and the real property involved in this action is located in Pinellas County, Florida. The relief sought by Plaintiff is within the jurisdictional limits of this Court and Defendants consented to venue in this Court by doing business in and owning real property in Pinellas County, Florida.

10. Plaintiff files this action in good faith, and not for the purpose of delay, unnecessary expense or any other motive, aside from this action being the only recourse available to Plaintiff under the law, to preserve Plaintiff's position and to prevent irreparable harm to Plaintiff's business interests.

11. Further, Plaintiff engaged Defendants in good faith negotiations regarding options for resolution, but no such resolution has been reached in the past sixty (60) days.

BACKGROUND AND FACTUAL ALLEGATIONS

12. Plaintiff UHLLC, Defendant SSGLLC and Defendant ANGLLC are co-owners, members and partners in a storage facility called Gator State Storage TB, LLC ("GSSTBLLC" or the "Company") incorporated in Florida on June 29, 2017.

13. Defendant SSGLLC is managed by a Mr. David Heil (herein "Heil").

14. Defendant ANGLLC is managed by a Mr. Austin Good (herein "Good").

15. Plaintiff UHLLC is managed by a Mr. Jordan Hidalgo (herein "Hidalgo").

16. Plaintiff UHLLC, Defendant SSGLLC and Defendant ANGLLC are the only owners and members of the Company pursuant to an Operating Agreement between the members concerning the Company.

17. Hidalgo incorporated the Company with the Florida Department of State's Division of Corporations in 2017 and has filed annual reports on behalf of UHLLC and on behalf of the Company, as its registered agent each year since the Company's formation. A true and correct copy of the Company's Articles of Incorporation and Annual Reports showing Hidalgo's founder and member authority in the Company are attached hereto as **Exhibit "A"**.

18. Hidalgo, Heil and Good worked together on behalf of the members for the establishment and successful running of the Company, which acquired assets, the primary being the real property on which the Company's storage facility was built in Largo, Florida. The entity also purchased another additional facility as part of its asset portfolio located at 13001 Belcher Road in Largo, Florida.

19. Property records from the Pinellas County Property Appraiser's office shows the Company's real property lists BD Capital as the legal owner of the real property. BD Capital is the lender that holds title pursuant to a loan extended by BD Capital to the Company, and the real property secures said loan (herein the **"Loan"**). A true and correct copy of the real property records is attached hereto as **Exhibit "B"**.

20. On July 9, 2019, Defendants ousted Plaintiff from operations in the Company, including the placement of restrictions to Plaintiff's physical access to the Company, access and authority on all the Company's bank accounts, and access to the financial software that the Company uses to manage its finances, by unilaterally removing

Plaintiff's management rights without a shareholder's meeting. A true and correct copy of the Consent to Action taken on July 9, 2019 is attached hereto as **Exhibit "C"**.

21. Following this action, Defendants called Plaintiff's member loans due earlier than scheduled for the purpose of diluting Plaintiff's membership interest.

22. On September 4, 2019, after failed direct negotiations between the parties, Plaintiff gave notice of Defendant's wrongful conduct and notice of their breach of fiduciary duty of loyalty and care under Florida Statutes § 605.04091. A true and correct copy of this notice is attached hereto as **Exhibit "D"**.

23. Defendants failed to address or rectify their breach of fiduciary duty and were and still are non-responsive to Plaintiff's communications and correspondences.

24. On September 30, 2019, Plaintiff learned, through notice from BD Capital that a balloon payment on the Loan was to become due on November 19, 2019. A true and correct copy of this notice is attached hereto as **Exhibit "E"**.

25. Interest payments on the Loan were continuously due and owing and Defendants caused defaults of the payment of the interest payments on October 9, 2019 by having insufficient funds in the Company's bank accounts. A copy of a returned payment constituting a default on the Loan is attached hereto as **Exhibit "F"**.

26. It was also discovered that the Company's bank accounts were being drained by Defendants, who among other occurrences, caused large sums to be transferred out of the Company's bank accounts and into other accounts including the personal account of Defendant SSGLLC's manager, David Heil. A true and correct copy of one such transfer of \$105,000.00 followed by a deposit of \$5,000.00 is attached hereto as **Exhibit "G"**.

27. On October 20, 2019, Hidalgo learned that the real property was sold or was to be sold. A true and correct copy of the correspondence containing this information is attached hereto as **Exhibit “H”**.

28. The October 20, 2019 email contained information that on September 26, 2019, the Defendants sold the real property by way of a sale to an unknown purchaser known as 12501 S Belcher Trust. A true and correct copy of the Consent to Action taken on September 26, 2019 is attached hereto as **Exhibit “I”**.

29. Upon information and belief, upon learning of the current state of affairs of the Company and the sale of its assets, all members, including Plaintiff are at risk of great financial losses of their investments in the Company and Plaintiff brings this action pursuant to Florida Statutes §§ 605.0801 and 605.0802.

30. Additionally, further harm to all members is imminent due to the defaults on the Loan and other indebtedness and waste incurred by the Defendants. Subsequent harm is likely to follow from Defendants’ conduct, including the liquidation of other Company assets once the balloon payment on the Loan becomes due.

31. Plaintiff’s sworn verification of the above facts is attached below.

COUNT I
BREACH OF FIDUCIARY DUTY

32. Plaintiff realleges the allegations set forth above in paragraphs 1 through 31 of this Verified Petition as if fully set forth herein.

33. For a claim for Breach of Fiduciary Duty to prevail, it must be shown that Plaintiff and Defendant shared a relationship whereby: (a) Plaintiff reposes trust and confidence in Defendant; and (b) Defendant undertakes such trust and assumes a duty to advise, counsel and/or protect Plaintiff; (c) Defendant breaches its duties to Plaintiff; and

(d) Plaintiff suffers damages.

34. Here, Defendants had a fiduciary duty of loyalty and care under Florida Statutes § 605.04091 to Plaintiff as a Class A voting member of GSSTBLLC. As such, Plaintiff reposed trust and confidence in Defendants for their conduct with respect to GSSTBLLC's day-to-day and long-term activities and affairs, including the management of the Company's finances, assets and operations.

35. Plaintiff entrusted Defendants with the Company's assets and finances and the protection of Plaintiff's membership interest, investment and business interest in the Company.

36. Plaintiff has legitimate business interests in protecting its membership interest and investment in the Company.

37. As alleged herein, Defendants materially breached their fiduciary duties in a number of ways, including, but not limited to,

- a. Ousting Plaintiff without cause or justification from the Company with removal of Plaintiff in day-to-day and long-term decision making and operations of the Company;
- b. Removal of Plaintiff's physical access to the Company;
- c. Restriction of Plaintiff's access to the financial software and records of the Company;
- d. Restriction of Plaintiff's access to the Company's bank accounts and bank account logins;
- e. Placing the Company in indebtedness and causing defaults in the Company's obligations under the Loan;

- f. Continuing to indirectly liquidate the Company through the sale of its major asset, the real property and storage facility on said property.

38. Defendants' actions have caused, and will cause, severe irreparable injury to Plaintiff's legitimate business interests. Such injuries include, but are not limited to, the loss of Plaintiff's capital investment in the Company, its standing as a voting member in the Company, its future returns on the investment in the Company, negative implications bearing from the default in the Loan, and other financial losses associated with the removal of its membership interest in the Company.

39. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer both irreparable harm and future unknown monetary damages in an amount equal to its investment, capital contributions and potential future returns on said investment in and from the Company.

WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth in the Prayer for Relief, and any such other relief as this Court deems just and proper.

COUNT II
JUDICIAL DISSOLUTION OR APPOINTMENT OF RECEIVER

40. Plaintiff realleges the allegations set forth above in paragraphs 1 through 31 of this Verified Petition as if fully set forth herein.

41. Under Florida Statutes §§ 605.0703 and 605.0704, the Court may appoint a receiver or custodian to preserve the Company's assets wherever located, or order any equitable remedy in its discretion.

42. Here, the Company's assets and in particular the major real property asset of the Company is at risk of being sold or disposed of in a manner that is adverse to the Company's survival and adverse to the interests of all members of the Company.

43. If the real property is sold at this time, it would cause great financial losses to the Company and the members of the Company constituting irreparable harm to all.

44. A receiver or custodian, who is neutral, would be best able to salvage the Company's assets until the Plaintiff and Defendants have had an opportunity to attend mediation and rectify the Company's overall health, financial status and cure the defaults on the Loan and other indebtedness caused by Defendants.

WHEREFORE, Plaintiff respectfully requests that the Court grant the relief set forth in the Prayer for Relief below, set forth a procedure to judicially dissolve the Company, or appoint a receiver or custodian pursuant to Florida Statutes §§ 605.0703 and 605.0704 and any such other relief as this Court deems just and proper.

PRAYER FOR INJUNCTIVE RELIEF AND DAMAGES

WHEREFORE, Plaintiff UHLLC reserves its right to amend this Petition as and when new and unknown information becomes known, and respectfully moves this Court for injunctive rulings and relief as follows, individually or cumulatively:

- 1) Immediate hearing at the Court's earliest opportunity to enter a temporary injunction and Order waiving the amount and conditions of the bond required for the injunctive relief pursuant to Florida Rules of Civil Procedure, Rule 1.610(b) and this Court's local rule requirements;
- 2) A temporary and permanent injunction:
 - a. Ordering the parties to attend mediation as soon as possible;
 - b. Immediately appointing a receiver to conduct the affairs and carry

on business of the Company and preserve the Company's assets, or judicially dissolving the Company under a custodian pursuant to Florida Statutes § 605.0703;

- c. Prohibiting Defendants and all persons or entities in active concert or participation with them until the parties are able to schedule and attend mediation, from selling any assets of GSSTBLLC, and causing GSSTBLLC to incur further indebtedness;
- d. Prohibiting Defendants and all persons or entities in active concert or participation with them until the parties are able to schedule and attend mediation, specifically from selling or otherwise dispose of any Company assets including the real property and storage facility located at 12501 S. Belcher Road in Largo, Florida and 13001 Belcher Road S. in Largo, Florida;
- e. Ordering that Plaintiff be given physical access to the Company;
- f. Ordering that Plaintiff be given access to the Company's financial software and bank accounts, including bank account logins;
- g. Reinstating the Plaintiff's member rights as a Class A voting member with its percentage share in the management and operation of the Company; and,

- 3) Finding that SSGLLC breached its fiduciary duty to Plaintiff;
- 4) Finding that ANGLLC breached its fiduciary duty to Plaintiff;
- 5) Awarding Plaintiff the reasonable expenses incurred in bringing this action, including attorney's fees and costs; and
- 6) For any other legal and equitable relief as this Court may deem proper.

Respectfully submitted,

/s/ Karan S. Nayee

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VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing Petition for Judicial Dissolution, Appointment of Receiver, and Injunctive Relief, and that the facts stated in it are true and correct, and that I authorize my attorney, Karan S. Nayee, Esq. to submit this Petition on behalf of Upstate Holdings, LLC.

By: Jordan Hidalgo
Jordan Hidalgo, Manager
For Upstate Holdings, LLC

October 19, 2019