

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

FIRST CLUB MARKETING, LLC,)
)
 Plaintiff/Counterclaim Defendant,)
)
 vs.)
)
 KANSAS CITY BARBEQUE SOCIETY,)
)
 Defendant/Counterclaim Plaintiff/)
 Third Party Plaintiff/Counterclaim)
 Defendant,)
)
 vs.)
)
 RANDALL BOWMAN,)
)
 Third Party Defendant/)
 Counterclaim Plaintiff.)

Case No. 1916-CV32558
Division 11

JUDGMENT

On the 13th day of October, 2021, this matter came before the Court for a trial by jury. Third Party Defendant/Counterclaim Plaintiff Randall Bowman (“Bowman”) appeared in his individual capacity and as a representative of Plaintiff/Counterclaim Defendant First Club Marketing, LLC (“FCM”) by counsel, Eric Dirks and Courtney Stout. Defendant/Counterclaim Plaintiff Kansas City Barbeque Society (“KCBS”) appeared by corporate representative Emily Detwiler and by counsel, Dane Martin and Brad Bodamer.

On October 13, 2021, a jury was selected and opening statements were presented. FCM’s presentation of evidence on its claim for damages against KCBS began on October 13, 2021, and concluded on October 14, 2021. KCBS’s Motion for Directed Verdict as to FCM’s Claim for Breach of Contract was presented and **DENIED**.

KCBS began its presentation of evidence on its counterclaims on October 14, 2021, and rested its case on October 18, 2021. FCM and Bowman's joint Motion for Directed Verdict on KCBS's Counterclaims was presented and **DENIED**.

FCM and Bowman began presenting their evidence on KCBS's counterclaims on October 18, 2021, and concluded the presentation of their evidence on October 19, 2021. KCBS filed its Motion for Directed Verdict as to Claims for Breach of Contract and Breach of Fiduciary Duty on October 19, 2021. The same was **DENIED** on October 20, 2021.

On October 20, 2021, at approximately 1:00 p.m., the case was submitted to the jury upon the presentation of all evidence, the instructions of the Court, and the arguments of counsel. The jury recessed for the evening at approximately 5:00 p.m. and resumed deliberations the following morning at 9:00 a.m. On October 21, 2021, at approximately 10:00 a.m., after due deliberations, the jury returned to open court with the following verdicts:

VERDICT A

On the claim of First Club Marketing for breach of contract against the Kansas City Barbeque Society, we, the undersigned jurors, find in favor of: First Club Marketing.

We, the undersigned jurors, assess the damages of First Club Marketing at \$39,000.00.

Ten jurors signed Verdict A.

VERDICT B

On the claim of the Kansas City Barbeque Society for breach of fiduciary duty against Randall Bowman, we, the undersigned jurors, find in favor of: Randall Bowman.

We, the undersigned jurors, assess the damages of the Kansas City Barbeque Society at \$0.00.

Nine jurors signed Verdict B.

VERDICT C

On the claim of the Kansas City Barbeque Society for breach of contract against First Club Marketing, LLC, we, the undersigned jurors, find in favor of: Kansas City Barbeque Society.

We, the undersigned jurors, assess the damages of the Kansas City Barbeque Society at \$7,000.00.

Nine jurors signed Verdict C.

VERDICT D

On the claim of the Kansas City Barbeque Society for breach of contract against First Club Marketing, LLC, we, the undersigned jurors, find in favor of: Kansas City Barbeque Society.

We, the undersigned jurors, assess the damages of the Kansas City Barbeque Society at \$1.00.

Nine jurors signed Verdict D.

The Court accepted the jury's verdicts and entered an order on November 1, 2021. After trial, the parties agreed to a prejudgment briefing schedule on the issue of attorney's fees. The Kansas City Barbeque Society also filed its Motion for Judgment Notwithstanding the Jury's Verdict. The Court has carefully considered the pleadings, and being fully advised in the premises makes the following rulings. The Kansas City Barbeque Society's Motion for Judgment Notwithstanding the Jury's Verdict is DENIED. The Court finds that under the circumstances of this case, there is no prevailing party under Paragraph 11(g) of the Marketing Agreement. *See Ken Cucchi Const. Inc. v. O'Keefe*, 973 S.W.2d 520 528 (Mo. App. 1998); *Flamingo Pools, Spas, Sunrooms & More Store, Inc. v. Penrod*, 993 S.W.2d 588, 590 (Mo. App. 1999); *Matt Miller Co. v. Taylor-Martin Holdings, LLC.*, 393 S.W.3d 68, 88 (Mo. App. 2012).

On April 14, 2022, the parties filed a joint stipulation dismissing Count II of Plaintiff's claim for Declaratory Judgment and the parties' cross claims for indemnification. Accordingly,

Plaintiff's claim for Declaratory Judgment is dismissed as moot, based on the parties' agreement that neither party prevailed on the claim. Plaintiff Randall Bowman's claim for indemnification against KCBS is dismissed with prejudice. KCBS's claim for indemnification against FCM is dismissed with prejudice.

The Court's September 23, 2021, Judgment and Order in favor of Plaintiff FCM and against Defendant KCBS on Count 1 of Plaintiff's Petition and Count III of Defendant's Counterclaim is incorporated into this judgment. Judgment is entered in favor of Randall Bowman and FCM and against KCBS on Count III of KCBS's counterclaim.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that, in accordance with the jury's Verdict returned on October 21, 2021, judgment is entered in favor of FCM and against KCBS on FCM's claim for breach of contract in the amount of \$39,000.00.

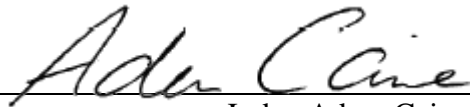
WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that, in accordance with the jury's Verdict returned on October 21, 2021, judgment is entered in favor of Randall Bowman and against KCBS on KCBS's claim for breach of fiduciary duty.

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that, in accordance with the jury's Verdict returned on October 21, 2021, judgment is entered in favor of KCBS and against FCM on KCBS's claim for breach of contract in the amount of \$7,001.00.

IT IS SO ORDERED.

April 15, 2022

Date



Judge Adam Caine

Certificate of Service

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system on April 15, 2022.



Terra Brockman, Law Clerk