



Doc# 2327215011 Fee \$88.00

RHSP FEE:\$18.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 09/29/2023 01:33 PM PG: 1 OF 17

3315 Memorandum of Judgment

(12/01/20) CCG 0015

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Able Die Casting Corp.

v.

Scott A. Richter

Case No. 2020 L 9699

MEMORANDUM OF JUDGMENT

On 9/25/23, judgment was entered in this court in favor of the plaintiff Able Die Casting Corp. and against defendant Scott A. Richter whose address is 402 Wessex Rd., Valparaiso, Indiana 46385 in the amount of \$ 1,986,646.04

ENTERED:

Dated:

[Handwritten signature]

Judge

Judge's No.

Judge Patrick J. Sherlock

SEP 26 2023

Circuit Court - 1942

Atty. No.: 90599

Atty Name: John J. D'Attomo

Atty. for: Plaintiff

Address: 180 N. LaSalle Street, Suite 3600

City: Chicago

State: IL Zip: 60601

Telephone: (312) 696-2526

Primary Email: jdattomo@nisen.com

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois

cookcountyclerkofcourt.org

Hearing Date: No hearing scheduled  
Location: <<CourtRoomNumber>>  
Judge: Calendar, Q

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## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

FILED  
9/27/2023 12:27 PM  
IRIS Y. MARTINEZ  
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COOK COUNTY, IL  
2020L009699  
Calendar, Q  
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Able Die Casting Corp.,

Plaintiff

v.

Scott Richter,

Defendant

Case No. 2020 L 9699

Judge Patrick J. Sherlock

### ORDER

This matter is before the court for ruling after a bench trial. The parties have submitted closing arguments in writing, the Court has considered the evidence and the arguments and finds:

Plaintiff has four counts from which it seeks recovery from defendant: Count I – Fraud; Count II- Conversion; Count III-Breach of Fiduciary Duty; and Count IV-Replevin. The Court will analyze each count.

#### Count I – Fraud.

Plaintiff Able Die Casting Corp. (“ADC”) alleged that defendant Scott Richter (“Richter”) committed fraud against it making distributions to himself for purposes unrelated to ADC. Because these allegations do not differ substantially from the claims asserted in Count III, the Court dismisses Count I as duplicative of Count III.

#### Count II – Conversion

Plaintiff alleged that defendant converted \$6 million in ADC assets, primarily in the form of cash and opportunities. Because these allegations do not differ substantially from the claims asserted in Count III, the Court dismisses Count II as duplicative of Count III.

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## Count III – Breach of Fiduciary Duty.

ADC is a family owned business. Blanca Stout (“Stout”) is the 51% owner of the business. Nestor Hernandez (“Hernandez”) owns 24.5% of the business and defendant Scott Richter owns 24.5% of the business. Additionally, during all times relevant to the case until May 13, 2020, Richter was the CEO of the business.

Plaintiff complained that Richter breached his fiduciary duties to the company by:

- a. Issuing ADC checks for his personal expenses;
- b. Concealing personal expenses by creating third-party entities;
- c. Converting ADC funds for his own use; and
- d. Refusing to turn over passwords and other critical account management information to ADC after his termination.

The facts support plaintiff’s claim for breach of fiduciary duty.

### A. Shareholder Loans.

The evidence establishes that Defendant improperly used \$1,678,113.50 from ADC by issuing checks to himself for personal use, as well as to third-parties for his personal benefit. None of these payments were disputed at trial.

Defendant issued payments to himself totaling \$515,400. (PX 30-PX 34). Defendant issued a check to himself on July 29, 2015 in the amount of \$190,000 (PX 33), and issued another check to himself on August 4, 2015 in the amount of \$280,000 (PX 34). Defendant used these funds (totaling \$470,000) to purchase real estate at 1102 Canfield, Park Ridge, Illinois on August 3, 2015, and 102 Granville Ave., Park Ridge, Illinois on August 7, 2015.

Defendant used corporate funds totaling \$325,786.06 to remodel, upgrade, and/or maintain his various homes in Park Ridge, Illinois as follows: \$109,351.30 for landscaping

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services; \$88,286.26 for the design and construction of new garages; \$26,648.50 for the repair and/or installation of fencing; \$66,950 for electrical contractor services; and \$34,550 for plumbing and drainage contractor services.

Defendant used corporate funds totaling \$96,277.45 for improvements and maintenance on his home in Valparaiso, Indiana including the following: LSC Construction Services - \$25,625; Omni Entertainment Systems, Inc. - \$34,715.65; Fredman Design Group - \$3,402.36; swimming pool repair and maintenance services (Caribbean Pools, Inc. - \$14,529.09); boat docking and storage at Lake Effect Marina - \$1,262.84; new fencing from Arrow Fence - \$3,260; homeowners association payments to Shorewood Forest Property Owners Association - \$1,850; and housekeeping services to Home Cleaning Centers of America -\$2,025.

Defendant used corporate funds totaling no less than \$561,364.86 to pay for private boarding school expenses for his children, as well as college expenses for his children and his wife, as follows: TMS - \$57,410; Tuition Management Systems - \$38,200; Payment Plan - \$414,250; Western Reserve Academy - \$19,776.15; Triton College - \$1,750.04; and University of Dayton - \$29,978.67. Defendant also used corporate funds totaling no less than \$4,025 to pay for private summer camps for his children.

Defendant used corporate funds to pay for the expense of moving his household belongings (Two Men and A Truck - \$3,700 and pool TADC Ace Pool TADC Service - \$1,275) to his new home in Valparaiso, Indiana.

Defendant used corporate funds totaling \$11,966.41 to pay for dental services and medical services for various family members including the following: Dr. Maria Faklaris DDS - \$6,236.95; Dr. James G. Loeser, DDS - \$1,050; Akron Children's Hospital - \$4,077.32; Park Ridge Spine & Sports Medicine - \$394.14; and Davis & Engert Dentistry - \$208.

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Defendant used corporate funds to pay for purchases at ABT Electronics totaling \$78,730.39. Defendant's claimed that certain ABT purchases might have been used for ADC, but he had not come forth with any evidence to support that assertion.

Defendant used corporate funds to fund a 401(k) retirement account for his wife-these payments total at least \$79,588.52. While the Check History Detail report shows deposits to Michelle Richter's 401(k) account only for 2016, 2017, 2018, and 2019, Michelle Richter admitted she performed no work for ADC after moving to Valparaiso, Indiana. The Richters began residing in Valparaiso on August 15, 2017. None of the forgoing disbursements were disputed at trial.

Defendant argues that his use of \$1.6 million in corporate funds was a "shareholder loan." Defendant failed to present evidence to establish a legally cognizable "shareholder loan." The Bylaws of ADC preclude ADC from engaging in any loan transactions "unless authorized by a resolution of the board of directors." Defendant has not introduced any evidence of a resolution of the board of directors authorizing any shareholder loans. Hernandez testified that he never approved any corporate resolution authorizing any shareholder loans. Defendant also admitted that no such corporate resolutions exist. Defendant admitted that no promissory note or other written loan agreement exists. Defendant admitted there was no fixed schedule for repayment of any "loan." Defendant admitted that no collateral was pledged to secure repayment of any "loan."

Defendant argues that the "shareholder loan" ledger was not actually a loan, but rather a means by which ADC was ADC to distribute free cash to its shareholders without actually making bonus distributions or declaring dividends. The Court believes that Richter is correct in making this argument. Additionally, Richter argues that his shareholder loan balance is actually a negative balance, meaning that ADC owes him money. But, Richter's burden is high and the

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Court finds that Richter did not carry his burden of proof to demonstrate that his use of ADC funds was appropriate.

The Court finds that the evidence demonstrates that the account ledger relied upon by Defendant is inaccurate. Defendant admitted under cross-examination that myriad payments for personal expenses were not recorded in the account ledger. Kathy McLennan testified that she would only make entries in Defendant's shareholder loan ledger when Defendant directed her to make such entries. Randy Ellis (the Porte Brown accountant) ("Ellis") admitted that he has no knowledge whether all disbursements of corporate funds for the personal benefit of Defendant were recorded in Defendant's shareholder loan ledger. Ellis testified that the failure to record all disbursements of corporate funds for the personal benefit of a shareholder would affect the accuracy of the calculation of that individual's shareholder loan balance. Ellis admitted that he has no personal knowledge concerning the accuracy or completeness of the data reflected in ADC's financial statements or tax returns, nor any shareholder loan ledger.

Prior to June 2020, Hernandez never saw any ledger or similar document purporting to be a statement of a shareholder loan account. Hernandez testified that he never discussed with Richter the existence of any shareholder loan account for any ADC shareholder. Hernandez also testified that he never discussed any shareholder loan account with anyone from Porte Brown. Ellis corroborated this testimony. Ellis testified that he never discussed the existence or operation of shareholder loan accounts for ADC shareholders with Hernandez.

Only after a plaintiff establishes that the fiduciary has engaged in self-dealing involving a breach of the duty of loyalty does the burden of proof shift to the fiduciary to prove by clear and convincing evidence that the transactions were equitable and just. *Labovitz v. Dolan*, 189 Ill. App. 3d 403, 413, 545 N.E.2d 304, 136 Ill. Dec. 780 (1989). See also *Levy v. Markal Sales*

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*Corp.*, 268 Ill. App. 3d 355, 365 (1st Dist. 1994)(corporate fiduciary bears the burden of establishing the fairness and propriety of his transactions with the corporation); *E.J McKernan Co. v. Gregory*, 252 Ill. App. 3d 514, 529 (2nd Dist. 1993)("The burden of proof is on fiduciaries to establish the fairness of those transactions where they acquired the assets of the corporation."). The Court finds that plaintiff has carried its burden to demonstrate that Richter engaged in self-dealing. Defendant has not carried its burden by clear and convincing evidence that his use of corporate funds was equitable and just.

The Court has considered the following factors in determining whether Richter's transactions are fair: an open disclosure of relevant information, the consideration was adequate, and the principal had competent and independent advice before completing the transaction. *Schueler v. Blomstrand*, 394 Ill. 600, 61 C. 59 N.E.2d 328 (1946). Richter was not open about his "shareholder loan" dealings. Indeed, defendant makes the brash argument that he could have done whatever he wanted in creating shareholder loans to himself. The law is not nearly as Richter would contend.

## **B. The Diversion of Corporate Funds**

At all relevant times, Rick Bueter was a full-time employee of ADC earning an annual salary for his services as a "tooling engineer." Bueter's duties as "tooling engineer" included sourcing/brokering tooling for ADC customers. The task of "brokering" tooling for a die casting manufacturer involves contacting tooling "shops" or suppliers to solicit bids to fulfill tooling orders received from customers, comparing the pricing and lead times of those bids, and then selecting the most appropriate bid for the tooling order for the customer.

Defendant and Beuter formed U.S. Tool Imports, Inc. ("U.S. Tool") on July 30, 2012. Defendant (51%) and Rick Bueter (49%) were the shareholders of U.S. Tool. U.S. Tool was

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formed to serve as a tooling broker for ADC customers. Bueter was paid by ADC to perform these same services in his capacity as full-time salaried employee of ADC.

Defendant never disclosed to Hernandez that he had engaged U.S. Tool as a tooling broker for ADC customers. Hernandez first discovered the existence of U.S. Tool when he opened mail addressed to U.S. Tool in or about June 2020. Defendant never disclosed to Hernandez that Defendant had engaged any third-party as a tooling broker for ADC customers. Rick Bueter spent his entire career beginning in 1974 in the die casting industry and is not aware of any die casting manufacturer that uses a third-party as a tooling broker.

The corporate opportunity doctrine prohibits a corporation's fiduciary from taking advantage of business opportunities that are considered as "belonging" to the entity. *Anest v. Audino*, 332 Ill. App. 3d 468, 477-78 (2nd Dist. 2002)(citations omitted). A corporate opportunity is defined as a "proposed activity [that] is reasonably incident to the corporation's present or prospective business and ... in which the corporation has the capacity to engage." *Id.* U.S. Tool's business was nothing more than a means by which Richter could divert money from ADC to himself and Beuter. ADC had the capacity to engage in the business of brokering tooling for die cast manufacturing; Mr. Bueter was already performing those same services for ADC in his position as "tooling engineer."

Between 2013-2020, Defendant made payments to U.S. Tool from ADC's checking account totaling the sum of \$3,388,036.98. U.S. Tool had a single customer throughout its existence -ADC. U.S. Tool had no source of revenue other than the payments it received from ADC. The Court can calculate U.S. Tool's profit using Defendant's tax returns. Defendant reported the following income from U.S. Tool on his tax returns between 2013-2019:

2013 = \$23,758 (PX 15, at Bates 282)



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2014 = \$3,571 (PX 16, at Bates 315)

2015 = \$5,037 (PX 17, at Bates 399)

2016 = \$16,163 (PX 18, at Bates 438)

2017 = \$50,103 (PX 19, at Bates 476)

2018 = \$15,289 (PX 20, at Bates 606)

2019 = \$5,053 (PX 21, at Bates 676)

These amounts total the sum of \$118,974. This figure only represents 51% of U.S. Tool's profit distributed to Defendant for his 51% interest in U.S. Tool. The total profit calculation must include Beuter's 49% interest in U.S. Tool. Thus, the total profit generated by U.S. Tool between 2013-2019 is \$233,282.35, i.e.,  $\$118,974 = 51\%$  of \$233,282.35.8

Defendant argues that he formed U.S. Tool with the knowledge and approval of Robert Stout in an effort to retain Beuter. The Court finds no evidence to support this assertion. If the purpose was to deliver more income to Beuter, why is Richter also a shareholder of U.S. Tools. Additionally, U.S. Tool was formed approximately two months after the death of Robert Stout.

### **C. Richter's Conduct Was Intentional and Calculated.**

Defendant created fake invoices in an attempt to conceal his wrongful conduct. See PX 27; PX 28. The Court finds that "Teledyne Metallurgical Spectroscopy Ltd." (PX 27), "Total Maintenance Software" and "Toledo Mechanical Systems, Inc." (PX 28) were not legitimate vendors of ADC. The unrebutted evidence shows that none of these purported entities exist. Instead, the initials for these purported vendors -Toledo Mechanical Systems, Inc. ("TMS"); Total Maintenance Software ("TMS"); and Teledyne Metallurgical Spectroscopy Ltd. ("TMS") match the initials for Tuition Management Systems ("TMS"). Defendant admitted that the checks

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made payable to "TMS" and "Tuition Management Systems" were payments for tuition and related educational expenses for his children.

Notably, the address listed for "Teledyne Metallurgical Spectroscopy Ltd." on the purported invoice (PX 27) matches the address on the checks made payable to "Payment Plan." See PX 51. Further, the monthly payment amounts referenced in the "Teledyne Metallurgical Spectroscopy Ltd." invoice, i.e., three payments of \$4,970 each month (see PX 27), match the dollar amount of the checks issued to "Payment Plan" during 2016 and early 2017. See PX 51. The purported "Teledyne Metallurgical Spectroscopy Ltd." invoice is dated January 2017 and requires three monthly payments of \$4,970. (PX 27) Apparently, the cost of tuition increased in succeeding years and Defendant was forced to fabricate a new invoice to match the increased monthly payment amount. Thus, "Toledo Mechanical Systems, Inc." was born. The purported "Toledo Mechanical Systems, Inc." invoice is dated August 2018 and requires monthly payments of \$5,450. Curiously, the dollar amount of the checks made payable to "Toledo Mechanical Systems" (\$5,450) match the dollar amount of the checks made payable to "Payment Plan" beginning in August 2018. See PX 51. Defendant admitted that the checks issued to "Payment Plan" were payments for tuition and related educational expenses for his children. (S. Richter Test.)

Fred Aguilar has been employed with ADC for 33 years and currently holds the position of Vice President of Operations. The "Toledo Mechanical Systems, Inc." invoice identifies the items purchased by ADC as two "Foundry Grade Industrial Robots." Mr. Aguilar testified that ADC has never used robots in its manufacturing business during his 33 years of employment with ADC. Aguilar further testified that he has never observed industrial robots anywhere at

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ADC's facility during his 33 years of employment with ADC. These invoices demonstrate an intentional and knowing breach of fiduciary duty.

At trial, Defendant asserted argued that ADC fabricated the bogus invoices and related e-mails comprising PX 27 and PX 28. The testimony of Kathy McClennan undermines this contention. Ms. McLennan testified that Defendant's practice during his tenure as CEO was to review invoices and then hand-stamp the invoice with a "smiley face" to indicate that he reviewed the invoice and approved it for payment. Both the purported "Teledyne Metallurgical Spectroscopy Ltd." invoice (PX 27) and the purported "Toledo Mechanical Systems, Inc." invoice (PX 28) are marked with a hand-stamped "smiley face." Ms. McLennan agreed that these purported invoices were necessarily in existence in hard copy prior to June 2020 in order for Defendant to hand-stamp the invoices with a "smiley face."

David Ratkovich of ETS Intelligence testified that his inspection of the ADC computer servers revealed that historic data was deleted from the servers and, furthermore, that the "security logs" - which would indicate who performed the deletions and when - were erased.

Plaintiff introduced additional evidence of intentional misconduct is further reflected by the fake mailing address used on the U.S. Tool invoices, i.e. 830 Maple Lane, Bensenville, IL, and checks. Bueter testified that U.S. Tool never maintained an office at 830 Maple Lane, nor otherwise conducted business operations at that location. Bueter also admitted that Defendant directed him (Bueter) to find a mailing address for U.S. Tool. The Court finds this is further evidence of an intentional breach of fiduciary duty and Defendant's calculated efforts to conceal his wrongdoing from ADC.

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## D. Damages.

ADC seeks \$1,678,113.69 consisting of all amounts Defendant wrongfully paid to himself and/or third-parties for his personal benefit. Richter introduced evidence that he paid money to ADC in the sum of \$340,000 (Dx. 11). The Court finds that ADC is entitled to judgment for the difference: \$1,338,113.69.

ADC also seeks forfeiture of all monetary amounts that Defendant received from ADC during the period of time that he was breaching his fiduciary duty. "[W]hen one breaches a fiduciary duty to a principal the appropriate remedy is within the equitable discretion of the court." *In re Marriage of Pagano*, 154 Ill. 2d 174, 190, 607 N.E.2d 1242, 180 Ill. Dec. 729 (1992). "While the breach may be so egregious as to require the forfeiture of compensation by the fiduciary as a matter of public policy [citation], such will not always be the case." *Pagano*, 154 Ill. 2d at 190. "[A] willful and deliberate breach of a fiduciary duty requires complete forfeiture of all compensation during the period of the breach." *LID Associates v. Dolan*, 324 Ill. App. 3d 1047, 1071, 756 N.E.2d 866, 258 Ill. Dec. 592 (2001); see also *ICD Publications, Inc. v. Gittlitz*, 2014 IL App (1st) 133277, ¶ 58, 388 Ill. Dec. 618, 24 N.E.3d 898; *Tully v. McLean*, 409 Ill. App. 3d 659, 681, 948 N.E.2d 714, 350 Ill. Dec. 434 (2011). "The purpose of ordering forfeiture of a fiduciary's compensation earned during the period of a breach is not to compensate the injured party but rather to deprive the wrongdoer of the gains from the breach of duty and to deter disloyalty." *Tully*, 409 Ill. App. 3d at 681. The Court is not required to order a complete forfeiture, but rather is allowed to modify forfeiture to fit the facts and circumstances of the case. *Flynn v. Maschmeyer*, 2020 IL App (1st) 190784, P78 ("In the case at bar, we cannot find any error in the trial court's determination that a partial forfeiture of the distributions . . . was appropriate.").

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In this case, Richter was operating under the fair assumption that he was utilizing a “shareholder loan” to pay for certain family expenses. After all, the evidence showed that Robert Stout, Blanca Stout and Nestor Hernandez also paid personal expenses from the company kitty (but there was no evidence that Stout or Hernandez abused the company books like Richter did). However, Richter did engaged in deceitful conduct when he created false invoices for Toledo Mechanical Systems, Inc., Total Maintenance Software and Teledyne Metallurgical Spectroscopy Ltd for purposes of paying educational expenses. Accordingly, the Court requires that Richter disgorge salary in the sum of \$414,250 (which is equal to the falsely represented sums paid to Tuition Management Services and “Payment Plan” for tuition).

ADC argues that since Defendant formed U.S. Tool in 2012, Defendant's breach of his fiduciary duty began no later than 2012. The amount of compensation Defendant received from ADC between 2013-2019 totals \$2,357,342. ADC requests disgorgement of the profit generated by U.S. Tool between 2013-2020. ADC requests disgorgement of the profit generated by U.S. Tool between 2013-2020 in the amount of \$677,605.36. Plaintiff's evidence shows that U.S. Tool generated profits of \$233,282.35 (plaintiff did not introduce evidence of any profits in 2020). Accordingly, the Court orders that plaintiff disgorge \$233,282.35 of profits that U.S. Tool earned from 2013-2019.

Plaintiff also seeks punitive damages. Punitive damages are available "as a matter of law" for a breach of fiduciary duty. Plaintiff requests an award of punitive damages in the amount of three times the award of damages. Here, the Court declines to award punitive damages. While Richter used ADC as his personal piggy-bank, so did Blanca Stout and Nestor Hernandez. And while it is certainly true that Richter abused his position of trust, the Court has punished Richter by requiring him to disgorge salary he earned in the amount of his most deceitful conduct.

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For these reasons, the Court finds in favor of ADC and against Richter on Count III and awards \$1,986,646.04 in damages.

## **E. Constructive Trust.**

Plaintiff asks the Court to impose a constructive trust upon defendant's real estate at 1102 Canfield and 102 Granville in Park Ridge, Illinois. "A constructive trust is an equitable remedy that may be imposed to redress unjust enrichment caused by a party's wrongful conduct."

*Charles Hester Enterprises, Inc. v. Illinois Founders Insurance Co.*, 114 Ill. 2d 278, 293, 499 N.E.2d 1319, 102 Ill. Dec. 306 (1986). When a plaintiff's legal remedy is adequate, the imposition of a constructive trust is erroneous. *Hagshenas v. Gaylord*, 199 Ill. App. 3d 60, 78, 557 N.E.2d 316, 145 Ill. Dec. 546 (2d Dist. 1990), citing *Graham v. Mimms*, 111 Ill. App. 3d 751 (1st Dist. 1982). Plaintiff has an adequate remedy at law and the Court, in its exercise of discretion, declines to impose a constructive trust upon the Park Ridge properties.

## **F. Pre-Judgment Interest.**

In Illinois, prejudgment interest may be recovered when warranted by equitable considerations, and disallowed if such an award would not comport with justice and equity. Whether equitable circumstances support an award of interest is a matter lying within the sound discretion of the trial judge. *In re Estate of Wernick*, 127 Ill. 2d 61, 87 (1989). The Court declines to allow an award of pre-judgment interest in this case.

## **Count IV - Replevin.**

Plaintiff has failed to establish all of the requisite elements of his claim for replevin. "To prevail in replevin, a plaintiff must be entitled to immediate possession of the property; thus, in turn, replevin is defeated when a plaintiff has no right to possession of the property." *Malek v.*

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*Gold Coast Exotic Imps., LLC*, 2018 IL App (1st) 171459, ¶ 26. Plaintiff did not introduce evidence that it was entitled to immediate possession of the Tesla automobile<sup>1</sup>.

## **Defendant's Statute of Limitations/Laches Arguments.**

The statute of limitations for claims of breach of fiduciary duty is five years: 735 ILCS 5/13-205. Accordingly, the Court need only concern itself with actions that took place more than 5 years before September 10, 2015. And then, only if ADC knew or should have known of Richter's misconduct. Illinois uses the discovery rule, which delays the commencement of the two-year statutory period until when the plaintiff knew or reasonably should have known of its injury. See *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77, 651 N.E.2d 1132, 209 Ill. Dec. 684 (1995); see also *Lane v. Deutsche Bank AG*, 2015 IL App (1st) 142968, ¶ 18, 398 Ill. Dec. 519, 44 N.E.3d 548. It is not necessary that a plaintiff knows the full extent of the injury, only that the plaintiff has been put on notice of the need to investigate further. *Clay v. Kuhl*, 189 Ill. 2d 603, 611-12, 727 N.E.2d 217, 244 Ill. Dec. 918 (2000).

Although mere silence on the part of the defendant is generally insufficient to constitute fraudulent concealment, a different rule applies when a fiduciary duty is involved (*Henderson Square Condo. Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, P40, the Illinois Supreme Court holds that "[i]t is the prevailing rule that, as between persons sustaining a fiduciary or trust or other confidential relationship toward each other, the person occupying the relation of fiduciary or of confidence is under a duty to reveal the facts to the plaintiff (the other party), and that his silence when he ought to speak, or his failure to disclose what he ought to disclose, is as much a fraud at law as an actual affirmative false representation or act; and that mere silence on his part

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<sup>1</sup> The Court does not mean to imply that ADC cannot recover either the homes or the Tesla in post-judgment proceedings. Those are issues for another day.

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as to a cause of action, the facts giving rise to which it was his duty to disclose, amounts to a fraudulent concealment.”

Richter never disclosed his use and abuse of ADC’s corporate funds. Richter controlled the company books and accounts. Plaintiff’s claims are timely under the statute of limitations.

Richter also argues laches. The party asserting laches bears the burden of establishing the defense by a preponderance of the evidence. *O’Brien v. Meyer*, 281 Ill. App. 3d 832, 834, 666 N.E.2d 726, 217 Ill. Dec. 57 (1996). Two elements must be established for laches to successfully defeat a claim: (1) lack of diligence by the party asserting the claim and (2) prejudice to the opposing party resulting from the delay. *PNC Bank, N.A. v. Kusmierz*, 2022 IL 126606, P26. Laches requires that Richter demonstrate actual prejudice “resulting from the delay.” *Kusmierz*, 2022 IL 126606, ¶ 26. “If the defendant is not injured by the delay, laches is inapplicable.” (Internal quotation marks omitted.) *LaSalle National Bank v. Dubin Residential Communities Corp*, 337 Ill. App. 3d 345, 351, 785 N.E.2d 997, 271 Ill. Dec. 803 (2003).

Richter has not carried his burden to demonstrate that he suffered any actual prejudice as a result of any delay by ADC in bringing this suit. Additionally, the Court finds that Hernandez acted with reasonable diligence discovering the wrongdoing and in bringing suit after Richter was removed from the CEO position.

For all of the above stated reasons, the Court enters judgment in favor of ADC and against Richter on Count III and awards \$1,986,646.04 in damages. The Court dismisses Counts I and II as duplicative. The Court enters judgment for Richter and against ADC on Count IV.

ENTERED:

Judge Patrick J. Sherlock

**ENTERED**  
Judge Patrick J. Sherlock-1942  
SEP 25 2023  
IRIS Y. MARTINEZ  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL

I hereby certify that the document to which this certification is affixed is a true copy.  
Date **IRIS Y. MARTINEZ SEP 28 2023**  
**IRIS Y. MARTINEZ**  
Clerk of the Circuit Court  
of Cook County, IL





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## LEGAL DESCRIPTIONS

LOTS 10 AND 11 IN BLOCK EIGHT (8) IN R.S. PEALE'S SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 1102 Canfield Road, Park Ridge, Illinois 60068  
 Permanent Real Estate Index Number: 09-36-330-033-0000

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LOTS FIFTEEN (15) SIXTEEN (16) AND SEVENTEEN (17) IN BLOCK EIGHT (8) IN R.S. PEALE'S SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION THIRTY-SIX (36), TOWNSHIP FORTY-ONE (41) NORTH, RANGE TWELVE (12) EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 1114 Canfield Road, Park Ridge, Illinois 60068  
 Permanent Real Estate Index Number: 09-36-330-028-0000

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LOTS 38 AND 39 IN BLOCK 4 IN R.S. PEALE'S SUBDIVISION AT CANFIELD, BEING THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: 915 S. Washington, Park Ridge, Illinois 60068  
 Permanent Real Estate Index Number (s): 09-36-318-006-000J; and 09-36-318-007-0000