

2014 WL 8107400 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Multnomah County

ORION AGENCY LLC, an Oregon limited liability company, Plaintiff,

v.

Andreas PAPACHRISTOPOULOS, an individual, James Papachristopoulos,
an individual, Christos Efthimiadis, an individual, and North American
Shipping Agencies, LLC, a Washington limited liability company, Defendant(s).
Andreas PAPACHRISTOPOULOS, an individual, James Papachristopoulos, an
individual, Christos Efthimiadis, an individual, and North American Shipping
Agencies, LLC, a Washington limited liability company, Counterclaim-Plaintiffs,

v.

ORION AGENCY LLC, an Oregon Limited Liability Company, Matt King,
an individual, and Steve King, an individual, Counterclaim-Defendant(s):.

No. 130609063.
March 26, 2014.

Prayer Amount: \$2,958,461

Jury Trial Demanded

Defendants' Answer, Affirmative Defenses, and Counterclaims

Chock Barhoum LLP, [Adina Matasaru](#), OSB No. 033886, Email: adina.matasaru@chockbarhoum.com, [Iayesha Smith](#), OSB No. 044190, Email: iayesha.smith@chockbarhoum.com, for defendants.

Defendants, Andreas Papachristopoulos, James Papachristopoulos, Christos Efthimiadis (“Efthimadis”), and North American Shipping Agencies LLC (“NASA”), in Answer to Plaintiffs First Amended Complaint, admit, deny, and allege as follows:

1.

Defendants admit Paragraphs 1 and 3 through 5.

2.

Responding to Paragraph 2, defendants admit that Andreas Papachristopoulos is a resident of Washington County, Oregon. Defendant is unable to ascertain the meaning of the allegation that Andreas Papachristopoulos, an individual, is “doing business in” Washington County and therefore denies the same. Except as expressly admitted herein, the allegations of Paragraph 2 are denied.

3.

Responding to Paragraphs 6 through 8, defendant Andreas Papachristopoulos admits that he sold Orion Ship Agency LLC (“OSA”) to Matt King and Steve King, executing an agreement for the sale and a consulting agreement on or about May 10, 2009. Exhibit AA is an incomplete copy of those agreements received in discovery in the related bankruptcy matter, described

more fully below. These documents recited an effective date of January 1, 2010. Defendant Andreas Papachristopoulos further admits that he, Matthew King, and Steve King thereafter, on or about February 10, 2011, executed a revised document titled Agreement for Sale and Purchase of Business Assets (Exhibit A) (“Sale Agreement”) and a five-year consulting agreement (Exhibit B) (“Consulting Agreement”). These documents likewise recited an effective date of January 1, 2010. The terms of all of these documents speak for them selves. Except as expressly admitted herein, the allegations of Paragraphs 6 through 8 are denied.

4.

Defendants admit the allegations of Paragraph 9.

5.

Responding to Paragraph 10, defendants admit that NASA is ship agency, that Efthimiadis formerly owned NASA, that James Papachristopoulos currently owns NASA, and that James Papachristopoulos is the son of Andreas Papachristopoulos. Defendants are unable to ascertain the meaning of the conclusory allegation that NASA is “a competing” ship agency and therefore deny the same. Except as expressly admitted herein, the allegations of Paragraph 10 are denied.

6.

Responding to Paragraphs 11 and 12, defendants admit that, in late 2012, Andreas Papachristopoulos learned NASA may be for sale and notified Steve King; discussions regarding plaintiff purchasing NASA ensued. Defendants further admit that, at the time, plaintiff was performing some work for NASA, under an informal agreement to share profits. Except as expressly admitted herein, the allegations of Paragraphs 11 and 12 are denied.

7.

The allegations of Paragraph 13 are denied.

8.

Responding to Paragraph 14, defendants admit that James Papachristopoulos purchased NASA in the spring of 2013. Except as expressly admitted herein, the allegations of Paragraph 14 are denied.

9.

Responding to Paragraph 15, defendants admit that James Papachristopoulos was generally aware that Andreas Papachristopoulos had a consulting agreement with plaintiff. Defendants further admit that Andreas was aware and James Papachristopoulos was generally aware of the matters admitted in Paragraph 6. Except as expressly admitted herein, the 5 allegations of Paragraph 15 are denied.

10.

The allegations of Paragraph 16 are denied.

11.

Responding to Paragraph 17, defendants incorporate by reference their responses to Paragraphs 1 through 16 as though fully set forth herein.

12.

Responding to Paragraph 18, defendant Andreas Papachristopoulos admits that he signed the agreements admitted at Paragraph 3. Except as expressly admitted herein, the allegations of Paragraph 18 are denied.

13.

The allegations of Paragraphs 19 and 20 are denied.

14.

Responding to Paragraph 21, defendants incorporate by reference their responses to Paragraphs 1 through 20 as though fully set forth herein.

15.

The allegations of Paragraph 22 represent a legal conclusion to which no response is required. To the extent a response is required, defendant Andreas Papachristopoulos admits that the law implies certain obligations upon contracting parties, the parameters of which can be found in the controlling case law. Except as expressly admitted herein, the allegations of Paragraph 22 are denied.

16.

The allegations of Paragraphs 23 and 24 are denied.

17.

Responding to Paragraph 25, defendants incorporate by reference their responses to Paragraphs 1 through 24 as though fully set forth herein.

18

The allegations of Paragraphs 26 through 30 are denied.

19.

Responding to Paragraph 31, defendants incorporate by reference their responses to Paragraphs 1 through 30 as though fully set forth herein.

20.

Paragraphs 32 and 33 constitute legal conclusions, to which no response is required. To the extent a response is required, the allegations of Paragraphs 32 and 33 are denied.

21.

The allegations of Paragraphs 34 and 35 are denied.

22

Responding to Paragraph 36, defendants incorporate by reference their responses to Paragraphs 1 through 35 as though fully set forth herein.

23.

Paragraphs 37 and 38 constitute legal conclusions, to which no response is required. To the extent a response is required, the allegations of Paragraphs 37 and 38 are denied.

24.

The allegations of Paragraphs 39 and 40 are denied.

25.

Responding to Paragraph 41, defendants incorporate by reference their responses to Paragraphs 1 through 40 as though fully set forth herein.

26.

Responding to Paragraphs 42 and 43, defendants James Papachristopoulos, Efthimiadis, and NASA admit on information and belief generally that Andreas had a consulting agreement with plaintiff. The allegation that these defendants “knew or should have known of that contractual relationship” is a legal conclusion to which no response is required; to the extent a response is required, that allegation is denied. Except as expressly admitted herein, the allegations of Paragraphs 42 and 43 are denied.

27.

The allegations of Paragraphs 44 and 45 are denied.

28

Responding to Paragraph 46, defendants incorporate by reference their responses to Paragraphs 1 through 45 as though fully set forth herein.

29.

The allegations of Paragraphs 47 through 49 are denied.

30.

Except as expressly admitted herein, the allegations of Plaintiff's Amended Complaint are denied in their entirety.

By way of a separate Answer and **AFFIRMATIVE DEFENSES**, and in the alternative to its denials where appropriate, defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

FAILURE TO STATE A CLAIM

31.

Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

COMPARATIVE FAULT

32.

Some or all of the damages, if any, claimed by plaintiff were caused by the fault of plaintiff and/or its agents.

THIRD AFFIRMATIVE DEFENSE

WAIVER/ESTOPPEL

33.

Some or all of the plaintiff's claims are barred by the doctrines of waiver and/or estoppel.

FOURTH AFFIRMATIVE DEFENSE

FAILURE TO MITIGATE

34.

Plaintiff has failed to mitigate its damages, if any.

FIFTH AFFIRMATIVE DEFENSE

LIQUIDATED DAMAGES PROVISION INVALID

35.

The liquidated damages provision relied on by plaintiff is so indefinite as to render the provision invalid.

By way of his **COUNTERCLAIMS** against plaintiff, Steve King, and Matt King, hereby named as counterclaim defendants, defendant/counterclaim plaintiff **ANDREAS PAPACHRISTOPOULOS** alleges as follows:

GENERAL ALLEGATIONS PERTAINING TO COUNTERCLAIMS

36.

Defendant/counterclaim-plaintiff Andreas Papachristopoulos incorporates Paragraphs 1 through 30 above as though fully set forth herein.

37.

Counterclaim-defendant Matt King is a debtor in a chapter 7 bankruptcy case (Case No. 13-33284-tmb7; Adversary Proceeding No. 13-03249). Andreas Papachristopoulos and James Papachristopoulos have objected to discharge and dischargeability. The Bankruptcy Court for the District of Oregon has granted relief from the debtor stay for the purpose of Andreas Papachristopoulos personally naming Matt King in counterclaims in the present proceeding. A copy of the Order is attached as Exhibit C.

38.

Under the Consulting Agreement, Andreas Papachristopoulos agreed to perform services in exchange for 50% of net profits for the first three years, 2010, 2011, and 2012, and 40% of net profits for the final two years, 2013 and 2014. The Consulting Agreement further provided that, for any new business brought in by Andreas Papachristopoulos, whether during the five-year term or after, he would be entitled to 50% of net profits for a period of 3 years from the date of the “first vessel's arrival.”

39.

Andreas Papachristopoulos would not have sold his shipping business to Matt King and Steve King for only the \$5,000 recited in the 2009 and 2011 agreements. Rather, the profits Andreas Papachristopoulos expected to receive under the 5-year consulting agreement constituted additional consideration for the sale.

40.

The 2009 and 2011 sales agreements list Matt King and Steve King as parties and recite that they would form a corporation. On information and belief, there was never a corporation organized. Rather, the only entity organized was plaintiff/counterclaim-defendant Orion Agency LLC (“Orion”). Following the formation of the LLC, there was no substantive change in how business was run.

41.

Despite the discussions regarding plaintiff purchasing NASA, Matt and Steve King intentionally approached Christos Efthimiadis directly and tried to convince him to sell NASA directly to them. Their express purpose was to cut Andreas Papachristopoulos out of the deal, so they would not have to pay him his share of bringing in the new NASA business. III

42.

After negotiations to purchase NASA on behalf of plaintiff were fruitless, Andreas Papachristopoulos offered to purchase NASA jointly with Matt King and Steve King. However, Matt King and Steve King continued to stonewall the deal so that neither Orion, nor the three men jointly, could purchase it. Efthimiadis decided to sell NASA to James Papachristopoulos, on the same terms he had offered to Orion (which terms Matt and Steve King had refused).

43

On or about July 11, 2013, Matt King and Steve King unilaterally cut all ties between Orion and Andreas Papachristopoulos, refusing to permit him to continue in his consultant duties or pay him compensation due under the Consulting Agreement, even while acknowledging the validity of the agreement.

44.

On information and belief, Matt King and Steve King failed to maintain proper separation of their personal financial affairs and those of Orion, and improperly depleted financial resources of Orion for personal use, preventing Andreas Papachristopoulos from obtaining full relief from Orion Agency LLC with regard to the present counterclaims. Additionally, Matt King and Steve King's actions as set forth above and below lacked good faith and constituted intentional misconduct and/or knowing violation of the law, and Matt King and Steve King improperly derived personal benefit from such actions. As such, Andreas Papachristopoulos is entitled to pierce the LLC veil and pursue claims against Matt King and Steve King directly as to any claims he has against Orion (in some cases, in addition to claims against Matt King and Steve King under a direct theory of recovery under the same claim, as set forth in greater detail below).

45.

With respect to the counterclaims set forth below, Matt King, Steve King, and Orion Agency LLC acted in concert with one another, such that they should be held jointly and severally liable.

FIRST COUNTERCLAIM OF ANDREAS PAPACHRISTOPOULOS

BREACH OF CONTRACT

AGAINST ORION AGENCY LLC, STEVE KING, AND MATT KING

46.

Andreas Papachristopoulos incorporates by reference the allegations of Paragraphs 36-45 as though set forth fully herein.

47.

Matt King, Steve King, and Orion had a contractual relationship with plaintiff, which they materially breached by terminating Andreas Papachristopoulos's services.

48.

1 In the alternative, Orion had a contractual relationship with Andreas Papachristopoulos, 2 which it materially breached by terminating Andreas Papachristopoulos's services. Based on 3 the conduct alleged herein, Andreas Papachristopoulos is entitled to pierce the LLC veil and hold 4 Matt King and Steve King personally liable.

49.

As a result of the material breach of the Consulting Agreement, Andreas Papachristopoulos suffered economic damages in the approximate amount of \$410,000.

**SECOND COUNTERCLAIM OF ANDREAS PAPACHRISTOPOULOS
BREACH OF IMPLIED CONTRACTUAL DUTY OF GOOD FAITH AND FAIR DEALING
AGAINST ORION AGENCY LLC, STEVE KING, AND MATT KING**

50.

Andreas Papachristopoulos incorporates by reference the allegations of Paragraphs 36-45 as though set forth fully herein.

51.

Andreas Papachristopoulos had a reasonable expectation under the terms of the Consulting Agreement that he would receive the specified percentage of profits that Orion would have paid him for the five-year term and, separately and additionally, that Orion would have made had it purchased NASA.

52.

Matt King, Steve King, and Orion had a contractual relationship with plaintiff. By terminating Andreas Papachristopoulos's services, not paying him, and preventing the purchase of NASA, Matt King, Steve King, and Orion failed to act in good faith towards Andreas Papachristopoulos and defeated his reasonable expectations under the contract.

53.

In the alternative, Orion had a contractual relationship with Andreas Papachristopoulos. Based on the conduct alleged herein, he is entitled to pierce the LLC veil and hold Matt King and Steve King personally liable.

54.

As a result of the breach of the implied contractual duty of good faith and fair dealing, Andreas Papachristopoulos suffered economic damages in the approximate amount of \$410,000.

**THIRD COUNTERCLAIM OF ANDREAS PAPACHRISTOPOULOS
ELDER FINANCIAL ABUSE, ORS 124.100 ET SEQ.
AGAINST ORION AGENCY LLC, MATT KING, AND STEVE KING**

55.

Andreas Papachristopoulos incorporates by reference the allegations of Paragraphs 36-45 as though set forth fully herein.

56.

At the time of all incidents alleged herein, Andreas Papachristopoulos was over 65 years of age.

57.

By unilaterally preventing Andreas Papachristopoulos from continuing to perform his work with Orion and from receiving the income to which he was entitled under the Consulting Agreement and diverting this income to themselves, Matt King, Steve King, and Orion wrongfully took or appropriated money from Andreas Papachristopoulos, in violation of [ORS 124.110\(a\)](#).

58.

Based on the conduct alleged herein, Matt King and Steve King acted in their personal capacities and are directly liable under the statute.

59.

1 In the alternative, Andreas Papachristopoulos is entitled to pierce the LLC veil and hold 2 Matt King and Steve King personally liable.

60.

As a result of the violation of [ORS 124.110\(a\)](#), Andreas Papachristopoulos suffered economic damages in the approximate amount of \$15,000. Pursuant to [ORS 124.100\(2\)\(a\)](#), Andreas Papachristopoulos is entitled to three times the amount of his economic damages or \$500, whichever is greater.

61.

Pursuant to [ORS 124.100\(2\)\(c\)](#), Andreas Papachristopoulos is entitled to his reasonable attorney fees.

**FOURTH COUNTERCLAIM OF ANDREAS PAPACHRISTOPOULOS
CONVERSION
AGAINST ORION AGENCY LLC, MATT KING, AND STEVE KING**

62.

Andreas Papachristopoulos incorporates by reference the allegations of Paragraphs 36-45 as though set forth fully herein.

63.

By unilaterally preventing Andreas Papachristopoulos from continuing to perform his work with OSA, and hence, from receiving the income to which he was entitled therefrom, and intentionally diverting these monies to themselves, Matt King, Steve King, and Orion converted property of Andreas Papachristopoulos.

64.

Based on the conduct alleged herein, Matt King and Steve King acted in the personal capacities and are directly liable to Andreas Papachristopoulos for conversion.

65.

In the alternative, Andreas Papachristopoulos is entitled to pierce the LLC veil and hold Matt King and Steve King personally liable.

66.

As a result of Matt King, Steve King, and Orion Agency LLC's conversion of his property, Andreas Papachristopoulos has suffered economic damages in the approximate amount of \$15,000

**FIFTH COUNTERCLAIM OF ANDREAS PAPACHRISTOPOULOS
INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS**

Count 1: Against Matt King and Steve King

67.

Andreas Papachristopoulos incorporates by reference the allegations of Paragraphs 36-45 as though set forth fully herein.

68.

Andreas Papachristopoulos had a business expectancy receiving his share of the profits from Orion purchasing NASA.

69.

Matt King and Steve King intentionally interfered with Andreas Papachristopoulos's business expectancy by the improper means of approaching Efthimiadis directly regarding the purchase of NASA, despite the fact that Andreas Papachristopoulos had introduced the opportunity, and with the improper purpose of diverting for themselves the financial benefit of acquiring NASA.

70.

As a result of Matt King and Steve King's interference, Andreas Papachristopoulos suffered economic damages in the approximate amount of \$395,000.

Count 2: Against Matt King only

71.

Matt King intentionally interfered with Andreas Papachristopoulos's business relationship with Orion through the improper means of advising Steve King, Orion's owner, not to pay him his share of profits for business in 2013 and sending notice terminating his services in July 2013.

72.

As a result of Matt King's interference, Andreas Papachristopoulos was damaged in the approximate amount of \$15,000.

SIXTH COUNTERCLAIM OF ANDREAS PAPACHRISTOPOULOS

UNJUST ENRICHMENT

AGAINST ORION AGENCY LLC, MATT KING, AND STEVE KING

73.

Andreas Papachristopoulos incorporates by reference the allegations of Paragraphs 36-45 as though set forth fully herein.

74.

. By improperly diverting the sums owing and due to Andreas Papachristopoulos to themselves, Orion Agency LLC, Matt King, and Steve King have acquired sums which justice requires they not retain.

75.

6 Orion Agency LLC, Matt King, and Steve King should be disgorged of any and all sums retained by them owing and due to Andreas Papachristopoulos, in the approximate amount of \$15,000.

76.

In the alternative, Andreas Papachristopoulos is entitled to a constructive trust in his favor with respect to any and all sums owing and due to Andreas Papachristopoulos, in the approximate amount of \$15,000.

By way of their **COUNTERCLAIM** against Orion Agency LLC, Steve King, and Matt King, defendants/counterclaim plaintiffs **JAMES PAPACHRISTOPOULOS, EFTHIMIADIS, and NASA** allege as follows:

FIRST COUNTERCLAIM OF JAMES PAPACHRISTOPOULOS, EFTHIMIADIS, and NASA

ATTORNEY FEES PURSUANT TO [ORS 20.105](#)

AGAINST ORION AGENCY LLC

77.

Plaintiff's claims against James Papachristopoulos, Efthimiadis, and NASA are lacking in legal and factual basis. Pursuant to [ORS 20.105](#), James Papachristopoulos, Efthimiadis, and NASA are entitled to their reasonable attorney fees and costs incurred in defending plaintiff's claims

WHEREFORE, defendants/counterclaim-plaintiffs, Andreas Papachristopoulos, James Papachristopoulos, Efthimiadis, and NASA pray as follows:

1. That plaintiff's complaint be dismissed with prejudice, that plaintiff take nothing thereby, and that defendants be awarded their costs and disbursements;

2. With respect to the COUNTERCLAIMS of ANDREAS PAPACHRISTOPOULOS:

a. On his FIRST COUNTERCLAIM, against Orion Agency LLC, Matt King, and Steve King, Breach of Contract: his economic damages, estimated at \$410,000.

b. On his SECOND COUNTERCLAIM, against Orion Agency LLC, Matt King, and Steve King, Breach of Implied Duty of Good Faith and Fair Dealing: his economic damages, estimated at \$410,000.

c. On his THIRD COUNTERCLAIM, against Orion Agency LLC, Matt King, and Steve King, **Elder** Financial **Abuse**:

i. His economic damages, estimated, at \$15,000, or \$500, whichever is greater, multiplied by three;

iii. His reasonable attorney fees.

d. On his FOURTH COUNTERCLAIM, against Orion Agency LLC, Matt King, and Steve King, Conversion:

i. His economic damages, estimated at \$15,000; and

e. On his FIFTH COUNTERCLAIM, Intentional Interference with Economic Relations:

i. On Count 1 (against Matt and Steve King): His economic damages, estimated at \$395,000; and

ii. On Count 2 (Against Matt King): His economic damages, estimated at \$15,000.

f. On his SIXTH COUNTERCLAIM, against Orion Agency LLC, Matt King, and Steve King, Unjust Enrichment:

i. His economic damages, estimated at \$15,000;

ii. In the alternative, imposition of a constructive trust on the amount of \$15,000.

3. With respect to the COUNTERCLAIM of JAMES PAPACHRISTOPOULOS, EFTHIMIADIS, and NASA:

a. For their attorney fees and costs incurred in defending plaintiff's claims. Dated this 24th day of March, 2014.

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