

IN THE CIRCUIT COURT FOR CECIL COUNTY

ULYSSES, LLC

\*

Plaintiff

\*

VS.

\*

CASE NO.: C-07-CV-17-000344

STEPHEN J. BAKER, ET AL

\*

Defendant

\*

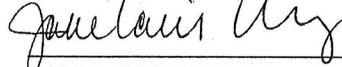
\* \* \* \* \*

**ORDER OF RECUSAL**

Upon review by CECIL COUNTY CIRCUIT COURT JUDGE Jane Cairns Murray, this 23<sup>rd</sup> day of August, 2017, The Honorable Jane Cairns Murray has now **RECUSED** herself from any participation in these cases; therefore, it is hereby

**ORDERED** that the above case be reassigned to another Judge for all future court proceedings.

08/24/2017 03:51:34 PM



JANE CAIRNS MURRAY  
CIRCUIT COURT JUDGE

ULYSSES, LLC

Plaintiff

vs

STEPHEN J. BAKER, et al

Defendants

\*  
\*  
\*  
\*  
\*

IN THE CIRCUIT COURT

FOR CECIL COUNTY

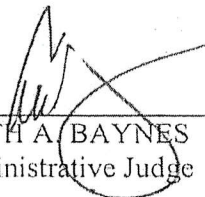
CASE NO. C-07-CV-17-344

\* \* \* \* \*

ORDER OF RECUSAL

Upon review of the above captioned matter, it is this 23rd day of August, 2017 hereby **ORDERED** that the Honorable Keith A. Baynes, Administrative Judge of the Circuit Court for Cecil County, is now **recused** from further participation in this matter; and,

**IT IS FURTHER ORDERED** that the above case be reassigned to another judge for all future court proceedings.

  
\_\_\_\_\_  
KEITH A. BAYNES  
Administrative Judge

ULYSSES, LLC

Plaintiff

v.

STEPHEN BAKER, et al.

Defendant

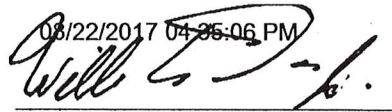
\* IN THE  
 \*  
 \* CIRCUIT COURT  
 \*  
 \* FOR  
 \*  
 \* CECIL COUNTY  
 \*  
 \*  
 \*  
 \* Case No. C-07-CV-17-344  
 \*

\*\*\*\*\*

**ORDER**

Upon review, Judge William W. Davis Jr. has this 22nd day of August 2017,  
RECUSED himself from any participation in this cause. It is hereby

ORDERED that the above-captioned case be reassigned to another judge for all  
future court proceedings.

08/22/2017 04:35:06 PM  


William W. Davis Jr., Judge

ULYSSES, LLC

Plaintiff

v.

STEPHEN BAKER, et al

Defendant

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

IN THE

CIRCUIT COURT

FOR

CECIL COUNTY

Case No.: C-07-CV-17-344

\*\*\*\*\*

**ORDER**

Upon review, Judge Brenda A. Sexton has this 17<sup>th</sup> day of August 2017,

**RECUSED** herself from any participation in this case; it is therefore,

**ORDERED** that the above-captioned case be reassigned to another judge for all future court proceedings.

08/17/2017 11:42:28 AM



\_\_\_\_\_  
Brenda A. Sexton, Judge

ULYSSES, LLC,

*Plaintiff*

v.

BAKER, et al.,

*Defendants*

\* \* \* \* \*

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

Case No.: 03-C-17-10304

*eg*

**ORDER**

Upon consideration of the pleadings and arguments presented in this matter and for the reasons set forth on the record during today's hearing, it is, on this 29<sup>th</sup> day of January, 2019, hereby;

**ORDERED** that the Defendants' Stephen J. Baker, Jay C. Emrey, III, and Kenneth W. Simmons' Motions for Summary Judgment (Papers # 23000, 26000, 36000) are hereby **GRANTED**; and it is further

**ORDERED** that this case is **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED** that any third-party claims are **DENIED AS MOOT**; and it is further

**ORDERED** that any post-judgment motions are to be filed by March 1<sup>st</sup>, 2019.

Judge COLLEEN A. CAVANAUGH  
Circuit Court for Baltimore County

*J. Emrey  
W. Riddle  
S. Longson  
J. Nushinov  
A. McCarthy  
Bakers Hill LLC*

FILED FEB 04 2019

*26000A  
23000A  
36000A  
39000 RB*

2/5 BL

ULYSSES, LLC

\*

IN THE

Plaintiff

\*

CIRCUIT COURT

Vs.

\*

FOR BALTIMORE COUNTY

STEPHEN J. BAKER, et al.

\*

CASE NO. 03-C-17-10304

Defendants

\*

\* \* \* \* \*

**DEFENDANT'S, MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO THIRD PARTY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Jay C. Emrey, III, Defendant, Pro-Se, files this Motion for Summary Judgment pursuant to Md. Rule 2-501 and says:

The original endeavor began with four individuals, the three Defendant guarantors and Third Party Defendant, McCarthy, who were united in a common purpose to acquire and develop real property into a "townhouse community" in Elkton, Maryland.

In 2008, the real estate market in Elkton, as with most of the country, began a decline that has lasted ten (10) years. One by one the members were forced to withdraw from Bakers Hill when their obligation to contribute operating capital exceeded their financial resources. The Defendant, Simmons, withdrew effective October 2, 2013, Emrey December 31, 2013 and Baker August 22, 2015 leaving McCarthy as the sole member of Bakers Hill. McCarthy as the Managing Member operated Bakers Hill and when the Megonigal Note became due (July 2016) he decided not to pay it off, yet all the while he was selling townhomes, collecting rent from the 30+ units rented and paying all other obligations of Bakers Hill.

BAKER, THOMEY & EMREY, P.A.  
ATTORNEYS AT LAW  
153 E. MAIN STREET  
ELKTON, MD 21921  
(410) 398-3536

FILED JAN 28 2019

36 000  
28 002

In essence, McCarthy allowed the Megonigal Note to go into default and then through his alter ego, Ulysses, LLC, paid it off and took an assignment of the Note so that he could proceed against three of the guarantors.

The Defendants submit that, at all times relevant hereto, it was an undisputed fact that the Defendants, Simmons, Baker and Emrey, assigned their respective membership interests in the Companies and were being indemnified by Alan McCarthy against:

*“any and all liability, claim of liability, or expense of the Companies arising after the Effective Date”.*

The companies included the Third Party Defendant Bakers Hill, LLC (Bakers Hill), Hickory Knoll rentals, LLC and Red Hill Construction, LLC (not parties).

The Megonigal Note represented a liability of Bakers Hill, and a contingent liability of the guarantors. The actual liability of the guarantors did not arise until after Bakers Hill defaulted in making final payment to Megonigal in July of 2016. During the period prior to July of 2016 and thereafter the Third Party Defendant, McCarthy, had complete control of the finances of Bakers Hill and, in his sole and absolute discretion, determined which creditors were paid and which creditors were not.

It continues to be the Defendant's position that McCarthy's indemnification of the guarantors included the Megonigal Note which, in July of 2016 became “an expense of the Company which arose after the effective date” of all three guarantors' assignments.

#### **The Megonigal Note Was Paid In Full**

Ulysses, LLC purchased the Megonigal Note for \$256,485.75, which resulted in payment in full. It is well settled that payment or satisfaction of the underlying debt discharges the guarantors. The principal debt was \$250,000.00 and accrued interest totaled \$6,472.25 on January 26, 2016. McCarthy (under the name of Ulysses, LLC a

solely owned limited liability company) took an assignment of the Note after it was paid in full thereby discharging the liability of the guarantors who guaranteed payment to Megonigal (not his heirs, successors or assigns).

### **The Note Extension Agreement Dated June 9, 2014 Lacked Consideration**

The Note Extension Agreement (Exhibit No. 5 to Plaintiff's Complaint) lacked consideration as to the Defendants Simmons and Emrey. Simmons withdrew in October of 2013 and Emrey withdrew in December 31, 2013. They assigned all membership interests in Bakers Hill to McCarthy contemporaneously with their withdrawal. When approached by McCarthy and asked to sign the Note Extension Agreement in June of 2014 neither Simmons nor Emrey had any proprietary interest in Bakers Hill but agreed to sign the extension in order to allow Bakers Hill to continue paying interest only on the Megonigal Note.

### **Can The Megonigal Note Be Assigned?**

Apparent from the terms set forth in the Allonge from Megonigal to Ulysses only the Note was assigned with no mention of the guarantee.

The Plaintiff alleges that the contractual right evidenced by the Megonigal Note can be assigned however there is no language in the Note or guarantee which permits the rights to flow to Megonigal's assigns. Furthermore, if the Note can be assigned, the obligation of the guarantors is extinguished or discharged by the payment in full of the Megonigal Note by Ulysses. It would have been prudent for Ulysses to have negotiated with the guarantors if they were to be obligated to the assignee or otherwise attempted to obtain their consent to the Assignment and re-allege their agreement to be bound as guarantors to the Assignee (Ulysses). The assignment altered the original agreement



contemplated by the guarantors who agreed to guarantee the debt of Bakers Hill which they expected Bakers Hill to pay. In fact Bakers Hill paid the interest on the Megonigal Note from July 2010 until July 2016. At that time, after obtaining the membership interests of the three Defendant guarantors, McCarthy had free rein to operate Bakers Hill, now as a single member limited liability company. He alone determined which bills got paid and when. He purposely allowed the Megonigal Note to go into default when it was due on July 21, 2016. In order to avoid the stigma of being a defendant in the suit instituted by Megonigal in the U.S. District Court for the District of Maryland (McCarthy was a member of the Cecil County Council and later successfully ran for County Executive). McCarthy through the Plaintiff, Ulysses, LLC, another single member limited liability company, paid Megonigal in full and proceeded to sue the three Defendants (but not Bakers Hill or Alan McCarthy). We can only assume that the Plaintiff neglected to sue Bakers Hill because the obligation of Bakers Hill was discharged when the Note was paid.

### **New Cause of Action**

Plaintiff argues, in its Response to Motion for Summary Judgment filed on January 16, 2019 that the defendants are not guarantors but, in fact, are sureties.

The Plaintiff's pleadings over the past year and a half have consistently and exclusively alleged that the Defendants are "guarantors"

It is patently unfair that the Plaintiff can, less than two weeks prior to trial, now allege that the guarantors are actually sureties. Such an action amounts to an amendment of the pleadings and would require leave of Court, Md. Rule 2-341(b). Instead, the Plaintiff seeks to circumvent the rules and allege in a responsive pleading that the defendants are sureties rather than guarantors.

This Defendant submits that the Plaintiff's reference to the defendants as "guarantors" throughout the proceedings amounts to an admission which the Plaintiff now is attempting to contradict. The Plaintiff and the Third Party Defendants, Bakers Hill and Alan McCarthy, should be estopped from now claiming that the Defendants are sureties.

### Equity

To permit Ulysses, LLC to collect from the guarantors would result in unjust enrichment to Bakers Hill, (now a Third Party Defendant), the original obligor and the entity that borrowed and spent the \$250,000.00.

The Court, in its sole discretion, may choose to apply equitable consideration when it feels that the application of rigid legal rules would work an injustice Hanley v. Steelman, 212 Md. 273, 129 A.2<sup>nd</sup> 132 (1957). In Hanley the Court found that a person should not be permitted to profit from his or her own wrongdoing. The attempt by McCarthy and Bakers Hill to evade liability on the Megonigal Note and to force the guarantors to pay Ulysses, LLC forms the basis for equitable relief. The maxim:

"equity regards that as done which in good conscience ought to be done" was stated in Johnson v. Long, 174 Md. 478, 199 A.2<sup>nd</sup> 459 (1938).

The application of this maxim would prohibit the Plaintiff from obtaining relief for unfair purposes i.e. a party cannot avail itself of a law made for its own protection so as to cause injury to another party or enrich itself at the other party's expense. Hyatt v. Romero, 190 Md. 500, 58 A.2<sup>nd</sup> 899 (1948). Boehm v. Boehm, 182 Md. 254, 34 A.2<sup>nd</sup> 447 (1943).

The equitable doctrine of "clean hands" applies here as a party who engages in wrongful or inequitable conduct should not be permitted to use the courts to obtain relief

or profit from their wrongdoing, *Mona vs. Mona Elec. Group, Inc.*, 176 Md. App. 672, 934 A.2<sup>nd</sup> 450 (2007).

Here McCarthy is engaging in inequitable conduct contrary to the clean hands doctrine which is intended to protect the Courts from having to endorse or reward inequitable conduct. *Jones vs. Anne Arundel County*, 69 A.3<sup>rd</sup> 426 (2013).

To permit the Plaintiff to recover against the Defendants would result in unjust enrichment to Bakers Hill and permit those whose conduct is inequitable to benefit from their actions.

#### **Novation**

This Defendant adopts the argument set forth in the Defendant Baker's Reply In Support of His Motion for Summary Judgment.

#### **Conclusion**

In conclusion, the Defendants submit that the Plaintiff's claim fails for the following reasons:

1. The Megonigal Note was paid in full and therefor the guarantors were released.
2. The Note Extension Agreement dated June 9, 2014 lacked consideration as to the Defendants Emrey and Simmons.
3. The Megonigal Note was not assignable without the guarantors consent.
4. The equitable doctrine of "unjust enrichment" (Third Party Defendant Bakers Hill, LLC) and "clean hands" prohibits the Plaintiff from recovering against the guarantors.

Based upon the foregoing, there are no material facts in dispute and the Defendants are entitled to judgment as matter of law.



The Marbury Building  
6225 Smith Ave., Suite 200-B  
Baltimore, Maryland 21209

T: 410.554.3600 F: 410.554.3636  
nusinovsmith.com

January 16, 2019

Clerk's Office  
Circuit Court for Baltimore County  
P. O. Box 6754  
Towson, MD 21285-6754

Re: *Ulysses, LLC v. Stephen J. Baker, et al.*  
In the Circuit Court for Baltimore County, Case No. 03-C-17-10304

Dear Sir or Madam:

Enclosed for filing in the above captioned matter is a Notice of Errata. Please date stamp the copy and return it to me in the enclosed envelope. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. McComas', with a long horizontal flourish extending to the right.

Lauren E. McComas

Enclosures: As stated

cc (w/encl.): William F. Riddle, Esq.  
Jay C. Emrey, III  
Michael R. Severino, Esq.  
Alexander P. Berg, Esq.  
Sarah E. Longston, Esq.

Similarly, Interrogatories Nos. 13-15 sought Baker's justification for his claim that McCarthy continued to owe fiduciary duties to Baker even after Baker's relationship with Baker's Hill ceased in August 2015. As Baker explained:

**Interrogatory No. 13:** If you contend that, after you assigned Alan J. McCarthy all your interest in the Company on or about August 27, 201[5], Alan J. McCarthy continued to owe you fiduciary duties as a former member of the Company, state with specificity all facts supporting that contention.

**Answer:**

.....  
*See* Answers Nos. 9 & 10. In further answer, Mr. McCarthy had agreed to pay Baker's Hill's debts as they came due, and also began receiving all the rental and sales income from the project, as well as money from a separate lawsuit.

Due to the alleged continuing liabilities of Defendant for Baker's Hill debts (which liability Defendant vehemently denies), as well as the indemnification (paragraph 3) and distribution (paragraph 7) provisions of the Assignment of Membership Rights agreement, Mr. McCarthy owed continuing fiduciary duties to Defendant to properly pay the Megonigal Note (for which Defendant is purportedly liable) in line with any other Baker's Hill liability, to not favor creditors who could attach Baker's Hill's or Mr. McCarthy's personal assets over the Megonigal Note, to comply with the indemnification provisions of the Assignment of Membership Rights agreement, not to place himself in a superior credit position (either secured or unsecured) by executing judgments against Baker's Hill while the Megonigal Note remained outstanding, to not to utilize a single-member limited liability company to purchase the Megonigal Note so that Mr. McCarthy can attempt to impose joint and several, and not *pro rata*, liability against the Defendants, and to seek through judicial means that Baker's Hill pay the Megonigal Note prior to filing suit against these Defendants.

*Id.* at Interrogatory No. 13.

Oddly, Third Party Defendants fault Baker (and Simmons and Emrey) for "not identify[ing] or supply[ing] any authority for the notion that a limited liability company



Kollman & Saucier, P.A.

January 28, 2019

**VIA EMAIL ONLY**

The Honorable Colleen A. Cavanaugh  
Circuit Court for Baltimore County  
County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204-0754

**Re: Ulysses, LLC v. Stephen J. Baker, et al.  
Case No.: 03-C-17-10304**

Dear Judge Cavanaugh:

This letter supplements Defendant Baker's motion for summary judgment, which is currently pending, and presents recently discovered evidence that conclusively shows Plaintiff's case is entirely without merit and should be dismissed prior to trial (scheduled for January 29 and 30, 2019). In the course of preparing for trial in the above matter, we have uncovered incontrovertible evidence produced by the Plaintiff, Ulysses, LLC ("Plaintiff") in response to discovery requests, which shows that the debt being sued upon in this matter was paid by the debtor in January 2017, thus extinguishing any guaranty. Plaintiff failed to allege that the underlying debt was paid, and instead claimed (without factual or legal justification) that Ulysses, LLC properly purchased the underlying debt and guaranties.

In a nutshell, Plaintiff seeks to enforce a guaranty previously made by the Defendants ensuring payment of a debt owed by Baker's Hill, LLC, to Willard E. Megonigal, Jr. under a promissory note (the "Megonigal Note"). It is this debt that forms the relief sought by Plaintiff. However, Baker's Hill, LLC paid that debt, as evidenced by a check from Baker's Hill, LLC, to Mr. Megonigal dated January 27, 2017, with a memo line stating "Megonigal Note PIF" (paid in full).

Notwithstanding, in the Complaint filed on behalf of Ulysses -- which is solely owned by Cecil County Executive Alan J. McCarthy -- against our client, Stephen J. Baker (the "Complaint"), Plaintiff alleges, "On January 26, 2017, Ulysses, LLC purchased the Note from Megonigal for the sum of \$256,485.75." Compl. ¶ 26. The Complaint further alleges that "Plaintiff Ulysses, LLC, as the current holder of the Note, has standing to enforce the personal guaranties." Compl. ¶ 29. These statements are contradicted by the documentary evidence. In reality, Plaintiff is a complete stranger to the transaction between Baker's Hill, LLC and Willard E. Megonigal, Jr. and lacks standing to pursue its single claim against Mr. Baker and the other Defendants.

Ulysses' standing in this case has been at issue since the beginning of the case, and Mr. Baker has long sought to review the documents on which Ulysses' claim of standing rests. Buried in the middle of the nearly 1100 pages of documents that were finally produced on January 9 is Ulysses page 00847, part of a monthly bank statement on which were copies of 4 checks (Check Numbers 156-159) drawn on Baker's Hill's operating account at Harford Bank and paid by the bank. Check number 159, dated January 27, 2017, was paid by **Baker's Hill, LLC** to Willard E. Megonigal, Jr., in the amount of \$256,485.75 -- the exact amount alleged to have been paid by Ulysses to Megonigal. See Attachment 1. The check is signed by Mr. McCarthy, and further includes the following note on the memo line in the same handwriting as the rest of the check: "Megonigal Note PIF." (The "PIF" obviously indicates that the Note was "Paid in Full"). The bank statement further reflects that the check was paid by Harford Bank on January 30, 2017. Thus, with its check number 159, Baker's Hill, LLC -- and **not** Ulysses -- paid the obligation under the Note to Mr. Megonigal in full, and its intention to do so is noted on the check. **Once the check was paid, the obligation under the Note was fully extinguished and simultaneously, so were the guaranties.** See 38 Am. Jur. 2d § 65 ("The guarantor's obligation ends when the debtor's obligation has been paid or otherwise satisfied. That liability is discharged if the underlying debt is paid in full[.]").

Moreover, at Bates numbers Ulysses 1333-34 (as part of documents produced just after midnight on January 27) are a few pages of Mr. McCarthy's bank statements and copies of checks he wrote in January 2017 from his PNC Bank accounts. Check number 2709 was written on January 26, 2017 and paid to the order of Baker's Hill in the amount of \$100,000. The check included the memo "loan for Megonigal payoff." In addition, check number 4722, also drawn on another of Mr. McCarthy's accounts at PNC Bank, is in the amount of \$156,485.75, and also paid to the order of Baker's Hill on the same day as check number 2709, and included the memo "Megonigal Note." Copies of these checks are enclosed as Attachment 2. Thus, the intention was clear: on January 26, 2017, Mr. McCarthy, personally and through McCarthy & Associates, deposited into the Baker's Hill bank account the exact amount that was **paid by Baker's Hill to Mr. Megonigal the very next day**, in full and final satisfaction of all amounts due on the Note, including interest.

There was never any intention to have Ulysses pay any amount with respect to the Note, and it never did. Indeed, Ulysses produced no evidence whatsoever that it paid anything for the Note. That is because its own documents demonstrate that **Ulysses is a complete stranger to the transaction, and Mr. McCarthy knows it.**

To be clear: (a) Ulysses never paid anything to Mr. Megonigal; (b) Ulysses never had any rights under the Note because there was no balance due under the Note when the then-meaningless Allonge was executed on January 30 once Baker's Hill's check had cleared; (c) as a complete stranger to the transaction between Baker's Hill and Mr. Megonigal, Ulysses has no standing to prosecute its sole claim; and (d) Mr. McCarthy knew all of that, because he signed all of the documents and coordinated the payment of the entire balance under the Note from Baker's Hill to Mr. Megonigal. In the face of this dispositive evidence, Mr. McCarthy has nevertheless proceeded to use the court system to prosecute his meritless claim.

Notwithstanding the clear import of the checks showing that Baker's Hill paid off the Megonigal Note in full and that Mr. McCarthy deposited money into Baker's Hill's account the day before, Mr. McCarthy, through Ulysses, stated under the penalties of perjury that Ulysses had paid Megonigal the sum of \$256,485.75 on January 27, 2017. *See Attachment 3: Ulysses' Answer to Interrogatory No. 8.* Yet, Mr. McCarthy knew at the time he gave this answer under oath that the claim is false: **Baker's Hill paid the Note in full on January 27, 2017.**

Under the circumstances, Defendant Baker requests that this Court grant Mr. Baker's motion for summary judgment, enter judgment in favor of Defendant Stephen Baker, and dismiss this case with prejudice. Mr. Baker reserves the right to move for sanctions and/or attorneys' fees.

Of course, we are prepared to address this matter in greater detail as an urgent preliminary matter tomorrow morning prior to any other matter being heard in this case.

Very truly yours,

*Michael R. Severino / qpb*

Michael R. Severino  
Sarah E. Longson  
Alexander P. Berg

Enclosures

cc: Norman L. Smith (nsmith@musinovsmith.com)  
Paul D. Raschke (praschke@musinovsmith.com)  
Lauren McComas (lmccomas@musinovsmith.com)  
Stephen J. Baker  
Jay C. Emrey, III (jtepa@comcast.net)  
William Riddle (riddlelaw@gmail.com)



Statement Date: 01/31/2017  
Account Number: [REDACTED] 3460

BAKERS HILL LLC 0316  
852 BIDDLE ST  
CHESAPEAKE CITY, MD 21915-1033

DATE: 12/25/16

PAY TO THE ORDER OF: The Peoples Bank \$ 6,500.00

Six Thousand Five Hundred and 00/100 DOLLARS

MEMO: 001011105255

\*000156\* 10550010701 3460\*

1/4/2017 156 \$6,500.00

BAKERS HILL LLC 0316  
852 BIDDLE ST  
CHESAPEAKE CITY, MD 21915-1033

DATE: 1/19/17

PAY TO THE ORDER OF: PNC BANK \$ 925.00

NINETY TWO AND 00/100 DOLLARS

MEMO: 001011105255

\*000157\* 10550010704 3460\*

1/19/2017 157 \$925.00

BAKERS HILL LLC 0316  
852 BIDDLE ST  
CHESAPEAKE CITY, MD 21915-1033

DATE: 1/26/2016

PAY TO THE ORDER OF: THE PEOPLES BANK \$ 6,500.00

SIX THOUSAND FIVE HUNDRED DOLLARS & 00/100

MEMO: 001011105255

\*000158\* 10550010701 3460\*

1/31/2017 158 \$6,500.00

BAKERS HILL LLC 0316  
852 BIDDLE ST  
CHESAPEAKE CITY, MD 21915-1033

DATE: 1/30/17

PAY TO THE ORDER OF: 1010101 F-Stringed IT \$ 256,485.75

Two Hundred Fifty Six Thousand Four Hundred Eighty Five and 75/100 DOLLARS

MEMO: 001011105255

\*000159\* 10550010701 3460\*

1/30/2017 159 \$256,485.75



ATTACHMENT 1

# Business Interest Checking

For 24-hour account information, sign on to [pnc.com/mybusiness/](http://pnc.com/mybusiness/)

For the period 01/01/2017 to 01/31/2017

ALAN J MCCARTHY

Primary account number: [REDACTED] 3288

Page 4 of 6

## Check Images

ALAN J MCCARTHY 1241  
MCCARTHY & ASSOCIATES  
443 EGGLE ST  
CHEAPLAKE CITY, MO 63016-1433

DATE 1/21/17

PAY TO THE ORDER OF Bakers Hill \$ 2000.00  
Two thousand and 00/100 DOLLARS & 00/100

PNC BANK  
PNC BANK NA

FOR DEPOSIT ONLY  
⑆002703⑆ ⑆054000030⑆ [REDACTED] 3288⑆

2703 \$2,000.00 01/03/2017

OPENED TO THE ACCOUNT OF THE ACCOUNT HOLDER BY THE ACCOUNT HOLDER ONLY

2703 \$2,000.00 01/03/2017

ALAN J MCCARTHY 1241  
MCCARTHY & ASSOCIATES  
443 EGGLE ST  
CHEAPLAKE CITY, MO 63016-1433

DATE 1/22/17

PAY TO THE ORDER OF PNC Bank \$ 3000.00  
Three thousand and 00/100 DOLLARS & 00/100

PNC BANK  
PNC BANK NA

FOR DEPOSIT ONLY  
⑆002704⑆ ⑆054000030⑆ [REDACTED] 3288⑆

2704 \$3,000.00 01/03/2017

20170103-004800490727-04000301005

2704 \$3,000.00 01/03/2017

ALAN J MCCARTHY 1241  
MCCARTHY & ASSOCIATES  
443 EGGLE ST  
CHEAPLAKE CITY, MO 63016-1433

DATE 1/17/17

PAY TO THE ORDER OF Bakers Hill \$ 1000.00  
One thousand and 00/100 DOLLARS & 00/100

PNC BANK  
PNC BANK NA

FOR DEPOSIT ONLY  
⑆002705⑆ ⑆054000030⑆ [REDACTED] 3288⑆

2705 \$1,000.00 01/17/2017

OPENED TO THE ACCOUNT OF THE ACCOUNT HOLDER BY THE ACCOUNT HOLDER ONLY

2705 \$1,000.00 01/17/2017

ALAN J MCCARTHY 1241  
MCCARTHY & ASSOCIATES  
443 EGGLE ST  
CHEAPLAKE CITY, MO 63016-1433

DATE 1/18/17

PAY TO THE ORDER OF Chad Deacon \$ 100.00  
One hundred and 00/100 DOLLARS & 00/100

PNC BANK  
PNC BANK NA

FOR DEPOSIT ONLY  
⑆002707⑆ ⑆054000030⑆ [REDACTED] 3288⑆

2707 \$100.00 01/30/2017

OPENED TO THE ACCOUNT OF THE ACCOUNT HOLDER BY THE ACCOUNT HOLDER ONLY

2707 \$100.00 01/30/2017

ALAN J MCCARTHY 1241  
MCCARTHY & ASSOCIATES  
443 EGGLE ST  
CHEAPLAKE CITY, MO 63016-1433

DATE 1/26/17

PAY TO THE ORDER OF Bakers Hill \$ 100,000.00  
One hundred thousand and 00/100 DOLLARS & 00/100

PNC BANK  
PNC BANK NA

FOR DEPOSIT ONLY  
⑆002709⑆ ⑆054000030⑆ [REDACTED] 3288⑆

2709 \$100,000.00 01/26/2017

OPENED TO THE ACCOUNT OF THE ACCOUNT HOLDER BY THE ACCOUNT HOLDER ONLY

2709 \$100,000.00 01/26/2017

Check Images continued on next page

ATTACHMENT 2

Ulysses01333



FORM186R-0111

# Performance Select Statement



For 24-hour information, sign on to PNC Bank Online Banking on pnc.com.

For the period 01/25/2017 to 02/22/2017

ALAN J MCCARTHY

Primary account number: [REDACTED] 8052

Page 5 of 8

## Check Images - continued

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/26/2017

PAY TO THE ORDER OF  
MAYORAL NISS

Fifty-Six Thousand Four Hundred Eighty-Five and 75/100

\$ 156,485.75

ALAN J MCCARTHY

⑆004722⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4722 \$156,485.75 01/26/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/24/2017

PAY TO THE ORDER OF  
Cecil Sol Conservation Dept

Forty-Two and 00/100

\$ 42.00

ALAN J MCCARTHY

⑆004723⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4723 \$42.00 02/06/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/27/2017

PAY TO THE ORDER OF  
JENNIFER LEPAGE

Two Hundred Twenty and 00/100

\$ 210.00

ALAN J MCCARTHY

⑆004724⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4724 \$210.00 01/31/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/28/2017

PAY TO THE ORDER OF  
Mick & Jackie McCarthy

ONE THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS & 40/100

\$ 1,378.41

ALAN J MCCARTHY

⑆004725⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4725 \$1,378.41 02/03/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/22/2017

PAY TO THE ORDER OF  
GODY'S LLC

Four Hundred and 00/100

\$ 400.00

ALAN J MCCARTHY

⑆004727⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4727 \$400.00 02/01/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/22/2017

PAY TO THE ORDER OF  
PNC Bank

Four Thousand and 00/100

\$ 4,000.00

ALAN J MCCARTHY

⑆004728⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4728 \$4,000.00 02/01/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/30/2017

PAY TO THE ORDER OF  
American Home and Hardware

Sixty and 33/100

\$ 60.36

ALAN J MCCARTHY

⑆004729⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4729 \$60.36 02/03/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

1/30/2017

PAY TO THE ORDER OF  
Robert Nease

One Hundred and 00/100

\$ 100.00

ALAN J MCCARTHY

⑆004730⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4730 \$100.00 02/03/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

2/1/2017

PAY TO THE ORDER OF  
PNC Bank

Five Hundred and 00/100

\$ 500.00

ALAN J MCCARTHY

⑆004731⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4731 \$500.00 02/03/2017

ALAN J MCCARTHY 0109  
802 BUCKLE ST  
CHESAPEAKE CITY, MD 21515-1033

2/2/2017

PAY TO THE ORDER OF  
JENNIFER LEPAGE

One Hundred Eighty and 00/100

\$ 180.00

ALAN J MCCARTHY

⑆004732⑆ ⑆054000030⑆ [REDACTED] 8052⑆

4732 \$180.00 02/08/2017



**KERR McDONALD, LLP**  
ATTORNEYS AT LAW  
111 SOUTH CALVERT STREET  
SUITE 1945  
BALTIMORE, MARYLAND 21202

(410) 539-2900  
FAX (410) 539-2956  
E-MAIL CKerr@KerrMcDonald.com

CHARLES M. KERR  
KATHLEEN M. McDONALD

ROBERT G. CASSILLY  
CRISTINA I. FLORES

December 20, 2016

**By Certified Mail/Return Receipt Requested & U.S. Mail**

Dr. Alan J. McCarthy  
652 Biddle Street  
Chesapeake City, MD 21915

Re: Megonigal v. Baker's Hill, LLC, et al.

Dear Dr. McCarthy:

I represent Willard E. Megonigal, Jr., with regard to the \$250,000 promissory note dated July 21, 2010, made by Baker's Hill, LLC, a copy of which is attached hereto as Exhibit A, and the note extension agreement, made June 14, 2014, a copy of which is attached hereto as Exhibit B. The principal balance on that note, per the note extension agreement, was due to be paid to Mr. Megonigal on July 21, 2016. Payment of that principal balance was not made on July 21, 2016. In addition, monthly interest of \$1,041 on that principal sum has not been paid to Mr. Megonigal since July 21, 2016, and interest in the total amount of \$5,205 will be due and owing to Mr. Megonigal as of December 21, 2016. Consequently, the note is in default, and the principal amount of \$250,000, plus the unpaid interest amount of \$5,205, for a total amount owed of \$255,205, will be unpaid and owing to Mr. Megonigal as of December 21, 2016. Please be advised that, on Mr. Megonigal's behalf, demand for payment is hereby made. If that total amount, made payable to Mr. Megonigal, is not received by me by December 30, 2016, an action will be filed by me on Mr. Megonigal's behalf against Baker's Hill, LLC, and Messrs. Thomey, Baker, Emrey, and Simmons, as the guarantors of that debt.

If you would like to discuss this matter, please call or send me a letter at my office address.

Very truly yours,

  
Charles M. Kerr

CMK: al  
Cc: Dwight E. Thomey, Esq.  
Mr. Stephen J. Baker  
Jay C. Emrey, III, Esq.  
Mr. Kenneth W. Simmons  
K21543.docx

Ulysses 01075

EXHIBIT 5

**ASSIGNMENT OF MEMBERSHIP RIGHTS  
BAKER'S HILL, LLC, HICKORY KNOLL RENTALS, LLC, RED HILL CONSTRUCTION, LLC**

THIS ASSIGNMENT OF LLC MEMBERSHIP INTEREST AND RIGHTS (this "Assignment") is made this 27 day of August, 2015 by and between STEPHEN J. BAKER (Individually "Assignor") and ALAN McCARTHY ("Assignee") and consented to by Baker's Hill, LLC, Hickory Knoll Rentals, LLC and Red Hill Construction, LLC.

**EXPLANATORY STATEMENT**

WHEREAS, the Assignor is the owner of Twenty-five percent (25%) Membership Interest, as defined in the Operating Agreement (the "Membership Right") in Baker's Hill, LLC, Hickory Knoll Rentals, LLC and Red Hill Construction, LLC, a Maryland limited liability companies (collectively the "Companies");

WHEREAS, Baker's Hill, LLC owns title to all that real property described in a deed recorded among the Land Records of Cecil County, Maryland in Liber 2342, folio 335, also known as "Final Major Subdivision Plat, Lots 1-84 Red Hill" which plat is recorded among the Land Records of Cecil County in PC No. 1109, folios 8-84 (the "Property"); Hickory Knoll Rentals, LLC owns certain of the improved lots therein, and Red Hill Construction, LLC has acted as bullder of certain of the lots therein; and

WHEREAS, Assignor is no longer in a position where he can make the required capital contributions necessary to continue the operations of the Companies; and

WHEREAS, Assignor desires to assign and convey all of his interests in and to the Companies to Assignee; and

NOW, THEREFORE, FOR AND IN CONSIDERATION of the payment by Assignee to the Assignor of the covenants, agreements and promises made herein and for other good and valuable consideration, the receipt and adequacy of which are acknowledged by each party, the parties agree as follows:

**1. ASSIGNMENT**

Effective as of August 1, 2015 (the "Effective Date") the Assignor assigns to the Assignee and the Assignee accepts and assumes from the Assignor: (a) 25% of the Membership Rights in each of the Companies (so that from and after the Effective Date, and until any other or further assignment made in accordance with the provisions of the Operating Agreements of the Companies, the Assignor shall not have any Membership Right, no Membership interest or title in the Companies, the Assignee shall have all Assignor's Membership Right, title and interest in the Companies, and (b) any and all right, title and interest which the Assignor has under the provisions of the Operating Agreement, or in and to any of the Companies' assets with respect to the Membership Rights so assigned. It is the full intention of the parties hereto that any and all assets, whether real, personal, tangible or intangible which relate to the Property are owned by the Companies, and are hereby directly granted to the Assignee as the rightful owner thereof.

**2. REPRESENTATIONS**

2.1 By Assignor. To induce the Assignee to accept the delivery of this assignment, the Assignor hereby represents and warrants the following to the Assignee that, on the date hereof and at the time of such delivery:

2.1.1 The Assignor is the sole and legal and beneficial owner of the 25% Membership Rights in the Companies. The Assignor has not sold, transferred, or encumbered any or all of the Membership Rights. Assignor has the full and sufficient right at law and in equity to transfer and assign all of his Membership Rights, and is transferring and assigning the Membership Rights to the Assignee

EXHIBIT  
C  
(Corrected)

free and clear of any and all right, title, or interest, liens or encumbrances of any other person or entity whatsoever.

2.1.2 The required written, signed consent of any member in the Companies to this Assignment has been obtained.

2.2 By Assignee. The Assignee covenants, warrants and represents to the Companies (a) that the Membership Right is being acquired for investment for the Assignee's own account and not with a view to offering it for sale or otherwise distributing it, after or in connection with such assignment to it, and (b) that the Assignee has read the Operating Agreement and agrees to be bound by the Operating Agreement.

2.3 By Each Party. Each party represents and warrants to the other that they have been duly authorized to execute and deliver this assignment, and to perform its obligations under this Assignment.

### 3. INDEMNIFICATION

3.1 The Assignee shall defend, indemnify, and hold harmless the Assignor against and from any and all liability, claim of liability, or expense arising out of (a) any default by the Assignee in performing its obligations under the provisions of the Operating Agreement occurring after the Effective Date, and (b) any and all liability, claim of liability, or expense of the Companies arising after the Effective Date.

3.2 The Assignor shall defend, indemnify, and hold harmless the Assignee against and from any and all liability, claim of liability, or expense arising out of ( a ) any default by the Assignor in performing its obligations, under the provisions of the Operating Agreement of each of the Companies occurring or arising prior to the Effective Date, and (b) any and all liability, claim of liability, or expense of the Companies accruing or arising prior to the Effective Date.

4. CONSENT OF COMPANIES. This Assignment is also intended to be, and hereby is, the embodiment of the Companies' consent to the Assignment.

5. NOTICES. Any notice, demand, consent, approval, request or other communication or documents to be provided hereunder to a party hereto shall be (a) in writing, and (b) deemed to have been provided (i) forty-eight (48) hours after being sent as certified or registered mail in the United States mail, postage pre-paid, return receipt requested, to the address of the party as the party may designate from time to time by notice to the other party, or (ii) upon being given by hand or other actual delivery to the party.

### 6. MISCELLANEOUS

6.1 Effectiveness. This Assignment shall become effective on and only on its execution and delivery by each party.

6.2 Complete Understanding. Subject to the provisions of the Operating Agreement, this Assignment represents the complete understanding between the parties as to the subject matter hereof, and supersedes all prior negotiations, representations, guarantees, warranties, promises, statements, or agreements, either written or oral, between the parties hereto as to the same.

6.3 Amendment. This Assignment may be amended by and only by an instrument executed and delivered by each party.

6.4 Waiver. No party shall be deemed to have waived any right that it holds hereunder unless the waiver is made expressly and in writing (and, without limiting the generality of the

foregoing, no delay or omission by any party in exercising any such right shall be deemed a waiver of its further exercise). No waiver shall be deemed a waiver as to any other instance or any other right.

6.5 **Applicable Law.** All questions concerning the construction, validity, and interpretation of this Agreement and the performance of the obligations imposed hereby shall be governed by the internal law, not the law of conflicts, of the State of Maryland. If any action or proceeding involving such questions arises under the Constitution, laws, or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it shall be brought in the United States District Court for the District of Maryland.

6.6 **Headings.** The headings of the Sections, subsections, paragraphs and sub paragraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

6.7 **Construction.** As used herein (a) the term "person" means a natural person, a trustee, a corporation, a partnership and any other form of legal entity; and (b) the reference made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph, or subparagraph of this Assignment.

6.8 **Assignment.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns hereunder.

6.9 **Severability.** No determination by any court, government body, or otherwise that any provision of this Assignment or any amendment hereof is invalid or unenforceable in any instance shall effect the validity or enforceability of (a) any other provision thereof, or (b) that provision in any circumstance not controlled by the determination. Each such provision shall be valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

6.10 **Further Assurances.** The parties shall cooperate with each other and shall execute and deliver, or cause to be delivered, all other instruments and shall take all other actions, as either party hereto may reasonably request from time to time in order to effectuate the provisions hereof.

6.11 **Assumption and Indemnification.** From and after the Effective Date, the Assignee shall (a) be bound by the provisions of the Operating Agreement, as if the Assignee were a party thereto and a Member of the Companies, and (b) indemnify the Companies against any expense incurred by it in connection with the Assignee's admission and substitution as a Member (including, by way of example rather than of limitation, any expense incurred in preparing and filing for record any amendment of the Operating Agreement, and any other instrument, if necessitated by the admission and substitution).

7. **Special Provisions; Distribution to the Assignee.** The Assignee and the Companies covenant, promise and agree that Assignor is entitled to receive and shall, if available from the net cash profits of the Companies, receive:

- a. A return of Assignor's investment in the Companies up to \$50,000.00 which Net Cash Profits that would otherwise go to Assignee once Assignee has received a return of 100% of all money Assignee has loaned and/or contributed to the Companies, as the same shall appear on the books and records of the Companies.
- b. The distribution, if any, to Assignee set forth in 7(a) above shall be subordinate and junior to distributions made on account of debts the Companies incur on and

after the Effective Date hereof, and shall be paid only after all liabilities the Companies incur after the date hereof (including debts that may be due to Members that arise after the date hereof) have been paid in full.

- c. Assignee agrees and acknowledges that the Companies ability to make any Distribution to Assignee is somewhat speculative, as the Companies are unable to fund any such obligation with the infusion of additional cash by other. Such infusion(s) of additional cash by others shall be senior and superior in classification as preferred creditors and shall be paid in full prior to the Companies realizing any Net Cash Profit.

IN WITNESS WHEREOF, each party hereto has executed and sealed this Agreement or caused it to be executed and sealed on its behalf by its duly authorized representatives, the day and year first above written.

WITNESS/ATTEST

*D. J. & Cheryl*  
*in to all*

---

---

---

---

---

---

ACCEPTED BY:

*Alan J. McCarthy*  
Alan J. McCarthy, Managing Member  
Bakers Hill, LLC

*Alan J. McCarthy*  
Alan J. McCarthy, Managing Member  
Hickory Knoll Rentals, LLC

*Alan J. McCarthy*  
Alan J. McCarthy, Managing Member  
Red Hill Construction, LLC

*Stephen J. Baker*  
Stephen J. Baker  
Assignor

*Alan J. McCarthy*  
Alan J. McCarthy  
Assignee