

FILED

2012 DEC 19 P 4 59

CIVIL DISTRICT COURT

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

NO.: 2012-11563

DIVISION "H-12"

KD GRETNAL PROPERTIES, L.L.C.

versus

DECATUR REALTY CORP. AND SIDNEY BACH

FILED: _____

DEPUTY CLERK

**AMENDED AND RESTATED VERIFIED PETITION
FOR PRELIMINARY AND PERMANENT INJUNCTION**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, KD GRETNAL PROPERTIES, L.L.C., in its capacity as shareholder of Decatur Realty Corp., who respectfully files this Amended and Restated Verified Petition for Preliminary and Permanent Injunction against defendants DECATUR REALTY CORP. and SIDNEY BACH (collectively, the "Defendants") upon representing as follows:

I. PARTIES

1. Plaintiff KD GRETNAL PROPERTIES, L.L.C. ("Plaintiff" or "KD Gretna") is a shareholder in Decatur Realty Corp. KD Gretna is a limited liability company organized under the laws of the State of Louisiana with a single member, Wayne Ducote ("Mr. Ducote") who is domiciled in the state of Florida.

2. Defendant DECATUR REALTY CORPORATION ("Decatur") is a corporation organized under the laws of the State of Louisiana with its principal place of business in New Orleans, Louisiana, in good standing in and authorized to do business in the State of Louisiana.

3. Defendant SIDNEY BACH ("Mr. Bach") is a natural person of the full age of majority, who, upon information and belief, is a citizen of the State of North Carolina and a resident of the city of Asheville, North Carolina. Mr. Bach has been the President and a Director of Decatur at all times relevant hereto.

II. JURISDICTION AND VENUE

4. Venue is proper in this Court under Article 74 of the Louisiana Code of Civil Procedure because the wrongful conduct sought to be enjoined will occur in this Parish.

5. Decatur was at all relevant times operating in this Parish with its principal place of business located in this Parish.

III. FACTS

General Information Regarding Decatur and Its Properties

6. Decatur owns two real estate assets: a building located at 413-15 Decatur Street, New Orleans, Louisiana (the “Building”) and a parking property located at 519 Conti Street, New Orleans, Louisiana (the “Parking Property”) (collectively, the “Decatur Properties”). Decatur’s only business is leasing out the Decatur Properties.

7. Plaintiff is a 40.56 percent shareholder in Decatur. Plaintiff’s shares were purchased on October 22, 2012 from the Succession of Dorothy Shaumburger (the “Succession”).

8. Mr. Bach owns the remaining 59.44 percent of shares in Decatur.

9. Plaintiff has two managers: Mr. Ducote and Yolande Bernard (“Ms. Bernard”).

10. Mr. Ducote has been actively and successfully involved in the parking business for 45 years and is extremely knowledgeable about that business. He owns or controls 1,000 parking spots in the greater New Orleans area and is also engaged in the parking business in southern Florida, where he employs 1,200 employees. Mr. Ducote is also actively involved in the commercial real estate business and has significant knowledge about that business.

11. Decatur has a sole Director: Mr. Bach. Decatur previously had two directors: Mr. Bach and his wife, Patricia Bach (“Mrs. Bach”). Mr. Bach served as Director as well as President, and Mrs. Bach served as Director and Vice-President/Secretary. Upon information and belief, Mrs. Bach resigned from her position as Director in December 2012, but was recently elected (and remains) Secretary and Treasurer of Decatur.

12. Decatur leases the Parking Property to a corporation called 519 Conti Street, Ltd. (“519 Conti”), of which Mr. Bach is the sole shareholder and Director. Upon information and

belief, 519 Conti has leased the Parking Property for almost ten years at a purported monthly rent of \$2,000 per month. Plaintiff lacks information regarding any terms of the lease other than the purported rent because Decatur has not provided Plaintiff with a copy of the current lease, despite its requests.

13. The market value of rent for the Parking Property significantly exceeds \$2,000 per month.

14. Upon information and belief, both the Building and the Parking Property leases expire on December 31, 2012.

Access to Books and Records

15. Prior to Plaintiff's purchase of the Succession's shares in Decatur, notwithstanding requests by the Succession, Decatur, acting through Mr. Bach, its President and Director, failed to provide the Succession with all of the corporation's required books and records. Instead, Decatur provided the Succession only with tax returns for certain years, as well as limited data regarding purported cash in the bank and proposed distributions. The Succession provided Plaintiff with copies of this limited set of documents when Plaintiff purchased the Succession's shares in Decatur. Between October 2012 and the present, Plaintiff has made numerous oral and written requests to review Decatur's books and records. Plaintiff has specifically requested copies of the existing books and accounting records of Decatur, along with its current and proposed leases and insurance policies for both the Building and the Parking Property. Decatur, through its counsel, has denied Plaintiff's requests.

The October Shareholders' Meeting

16. On October 1, 2012, Mr. Bach sent to the Succession a *Notice of Annual Shareholders' Meeting* for Decatur to be held on October 24, 2012 (the "October Shareholders' Meeting"), which provided a list of items to be discussed and/or voted upon at the October Shareholders' Meeting. See **Exhibit 1** hereto. One such item was:

To authorize the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a

change in the ownership of the Corporation's 60% majority shareholder interest[.]

17. The agenda was provided to Plaintiff upon purchase of the Succession's shares of Decatur.

18. The October Shareholders' Meeting was rescheduled for and held on October 23, 2012 in New Orleans, Louisiana. Present were Mr. Bach, Mrs. Bach, Mr. Ducote, and Ms. Bernard. At the meeting, a motion was made to authorize renewal of the lease of the Parking Property to 519 Conti at its current rate of \$2,000 per month. Mr. Ducote objected to the lease renewal. A vote on the motion was deferred until a future meeting. *See Exhibit 2* hereto.

The December Shareholders' Meeting and Procedural History

19. On December 3, 2012, Mr. Bach sent to Mr. Ducote a *Notice of Special Meeting of Shareholders*. The notice stated that a special meeting of the shareholders of Decatur would be held on December 17, 2012 in New Orleans, Louisiana in order to "elect a Director of the Corporation" (the "December Shareholders' Meeting"). *See Exhibit 3* hereto. Plaintiff received the written notice on December 4, 2012.

20. On December 5, 2012, Plaintiff informed counsel for Mr. Bach and Decatur that a shareholders' meeting would not be necessary if the only purpose was to elect Mr. Bach as the sole director of Decatur.

21. On December 7, 2012, Plaintiff requested that a shareholders' meeting be held during the week of December 10, 2012, or if the week of December 10 was not convenient, on December 17, 2012 as originally scheduled, and that all deferred items from the October meeting be added to the agenda for the December Shareholders' meeting, including (among other items) the renewal of the lease on the Parking Property. *See Exhibit 4* hereto.

22. On December 10, 2012, Mr. Ducote received a letter from counsel for Mr. Bach and Decatur stating that "[t]he Notice of the shareholders meeting on December 17, 2012, has, as its sole purpose, the election of a director for the Corporation. Sidney [Bach] and I are willing to meet with you and your attorney after the meeting to address the other items contained in your memo." *See Exhibit 5* hereto.

23. On December 12, 2012, Plaintiff filed the original Verified Petition for Injunctive Relief in this case (the "Petition"). The Petition sought to enjoin Decatur Realty Corporation and Sidney Bach, its majority shareholder and sole Director, from (a) renewing the lease of the Parking Property to 519 Conti; and/or (b) making any alterations to or destroying any of Decatur's books and records presently in the possession or control of Defendants. *See Exhibit 9* hereto.

24. On December 12, 2012, Plaintiff also filed a Motion for Temporary Restraining Order (the "Motion"), without seeking issuance of the temporary restraining order ("TRO"), and served the Motion upon Defendants. *See Exhibit 10* hereto. The TRO has not been issued.

25. On December 13, 2012, Defendants agreed not to enter into any lease on the Parking Property or the Building until after the December Shareholders' Meeting, and Plaintiff agreed to defer its request for a TRO until after the December Shareholders' Meeting.

26. On December 17, 2012, the December Shareholders' Meeting was held in New Orleans, Louisiana. Present were Mr. Bach, Mr. Ducote, Ms. Bernard, counsel for Mr. Bach and Decatur, and counsel for KD Gretna. A court reporter transcribed the proceedings. At the meeting, Mr. Bach re-elected himself as Decatur's sole Director. Upon information and belief, at a subsequent meeting of the Directors of Decatur, Mr. Bach re-elected himself President and elected his wife, Patricia Bach, Secretary and Treasurer.

27. During the December Shareholders' Meeting, the deferred items from the October meeting were perfunctorily discussed. With respect to the Parking Property, Mr. Ducote requested that Mr. Bach provide him, as Decatur's 40.56 percent shareholder, with information regarding the terms of any proposed new lease on the Parking Property or the Building. This request was denied.

28. On December 17, 2012, following the December Shareholders' Meeting, counsel for KD Gretna requested, via email to counsel for Decatur and Mr. Bach, that Mr. Ducote "be provided with the terms of any proposed parking lot lease, the value of which is less than \$7,500/mo., prior to its execution, such that Mr. Ducote can counter such a proposal with more money in rent for the corporation under the same terms that Mr. Bach may be considering." *See*

proposed lease(s) would constitute a breach of Mr. Bach's fiduciary duties to Decatur and its shareholders, including Plaintiff.

36. Mr. Bach is aware that maximizing the value to Decatur and its shareholders from the Parking Property is in the best interests of the corporation and its shareholders. He is likewise aware that Mr. Ducote requested an opportunity to counter any offer to lease the Parking Property for any amount less than \$7,500.00 per month.

37. Entering into any lease, and particularly a long-term lease, of the Parking Property that does not maximize the value to Decatur and its shareholders would constitute a breach of Mr. Bach's fiduciary duties to Decatur and its shareholders, including Plaintiff.

38. Entering into any lease, particularly a long-term lease, of the Parking Property and/or the Building without first providing Plaintiff with information regarding the terms of any proposed lease(s) could cause irreparable injury to Decatur and Plaintiff by placing an encumbrance on Decatur's properties that is not in the best interests of Decatur and its shareholders.

39. Entering into any lease, particularly a long-term lease, of the Parking Property that does not maximize the value to Decatur and its shareholders would cause irreparable injury to Decatur and Plaintiff by placing an encumbrance on the Parking Property that is not in the best interests of Decatur and its shareholders.

40. Plaintiff has not requested that the managing directors and/or the other shareholders of Decatur file suit to enjoin the actions described herein because such a request would be futile. Mr. Bach is the President and sole Director of Decatur as well as its controlling shareholder (and the only shareholder other than Plaintiff), it is Mr. Bach's conduct to date which has made this suit necessary, and it is his actions which Plaintiff seeks to enjoin.

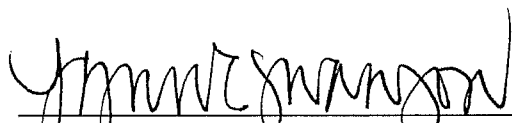
41. On December 19, 2012, counsel for KD Gretna, via email to counsel for Decatur and Mr. Bach, provided such counsel with notice of KD Gretna's intention to file this Amended and Restated Verified Petition for Preliminary and Permanent Injunction, along with a Second Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion for TRO") prohibiting the Defendants from (a) entering into any lease of the Parking Property or the

Building without first providing Plaintiff with information regarding the terms of any proposed lease(s); and/or (b) entering into a long-term lease of the Parking Property that does not maximize the value to Decatur and its shareholders. In addition, undersigned counsel intends to have the Motion for TRO set for hearing before Judge Robin Giarrusso, who is serving this week as the duty Judge for the Civil District Court of the Parish of Orleans, on Friday, December 21, 2012 at 10:00 a.m.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff KD Gretna prays, pursuant to Louisiana Code of Civil Procedure articles 615 and 3601, that after due proceedings are had, this Court grant a temporary restraining order and preliminary and permanent injunction in favor of Decatur Realty Corporation enjoining Decatur Realty Corporation and Sidney Bach, its majority shareholder and sole Director and President, from (a) entering into any lease of the Parking Property or the Building without first providing Plaintiff with information regarding the terms of any proposed lease(s); and/or (b) entering into a long-term lease of the Parking Property that does not maximize the value to Decatur and its shareholders.

Respectfully submitted,



GLADSTONE N. JONES (#22221), T.A.

LYNN SWANSON (#22650)

CATHERINE E. LASKY (#28652)

KERRY MURPHY (#31382)

**JONES, SWANSON, HUDDALL &
GARRISON, L.L.C.**

601 Poydras Street, Suite 2655

New Orleans, Louisiana 70130

Telephone: (504) 523-2500

Telecopier: (504) 523-2508

SHERIFF PLEASE SERVE:

Decatur Realty Corporation
Through its agent for service of process:
Crescent City Corporate Services, L.L.C.
701 Poydras St., Ste. 3600
New Orleans, LA 70139-7735

WILL SERVE VIA LONG ARM STATUTE

Sidney Bach
President
Decatur Realty Corporation
425 Kimberly Ave.
Asheville, NC 28804

**CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA**

NO.: 2012-11563

DIVISION "H-12"

KD GREтна PROPERTIES, L.L.C.

versus

DECATUR REALTY CORP. AND SIDNEY BACH

FILED: _____

**_____
DEPUTY CLERK**

VERIFICATION

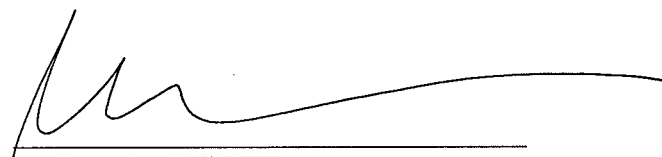
I, Wayne Ducote, in my capacity as a member and manager of KD Gretna Properties, L.L.C. ("KD Gretna"), attest that KD Gretna is currently and has been a shareholder of Decatur Realty Corporation ("Decatur") since October 22, 2012.

I, on behalf of KD Gretna Properties, L.L.C., attest that I requested that Sidney Bach provide me with access to the books and records of Decatur Realty Corporation, and he refused.

I, on behalf of KD Gretna, attest that I requested that Sidney Bach provide me with information regarding the terms of any proposed leases on the parking property and building owned by Decatur, and he refused.

I, on behalf of KD Gretna, attest that I requested that Sidney Bach provide me with the terms of any proposed parking property lease, the value of which is less than \$7,500 per month, prior to its execution, such that I, on behalf of KD Gretna, could counter such a proposal with more money in rent for the corporation under the same terms that Mr. Bach may be considering, and he refused.

In addition, I confirm that the factual allegations contained in the Amended Verified Petition for Preliminary and Permanent Injunction are true and correct to the best of my knowledge, information and belief.



WAYNE DUCOTE

Sworn to and subscribed before
me this 19 day of December, 2012.



NOTARY PUBLIC

LYNN E. SWANSON
NOTARY PUBLIC
STATE OF LOUISIANA
My Commission is issued for Life
Bar Roll Number 22650

Decatur Realty Corporation
425 Kimberly Avenue
Asheville, NC 28804

October 1, 2012

Succession of Dorothy Schaumburger
c/o William J. Oberhelman, Jr., Esq.
228 St. Charles Avenue, Suite 1138
New Orleans, LA 70130-2611

Ref. Decatur Realty Corporation
~~Notice of Annual Shareholders' Meeting~~

Dear Billy,

As indicated in my recent e-mail to you of September 27, 2012, also forwarded to you by fax, the 2012 Annual Meeting of the shareholders of Decatur Realty Corporation will be held on October 24, 2012 at 11:00 a.m. in the first floor office of the Corporation's building at 413-15 Decatur Street, New Orleans. Please note the time, date and place of the meeting so that you may attend and participate as attorney of record on behalf of the interests of the Succession of Dorothy Schaumburger.

At the meeting the following matters will be discussed and/or voted upon:

1. Proposed sale and transfer of the 60% majority interest in the Corporation
2. To nominate and elect the Officers and Directors of the Corporation to serve in such capacities from January 1, 2013 to December 31, 2013, or until such time as they may resign and are replaced prior to the expiration of their terms in the event of a change in ownership of the 60% majority interest in the Corporation.



William J. Oberhelman, Jr., Esq.

October 1, 2012

Page 2

3. To authorize the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest.
4. To discuss the estimated costs for necessary structural repairs to preserve the building at 413-15 Decatur and to authorize that such repairs to be undertaken at this time.
5. To discuss the recent increases in property tax assessments of the Corporation's properties by the Assessor of Orleans Parish.
6. To authorize the suspension of any further dividend payments by the Corporation for the year 2012 due to the anticipated costs for building repairs as well as the recent increases in assessments for property taxes that will become due in January 2013.
7. To authorize an increase in the Corporation's management fee to \$1,000 per month, exclusive of reimbursements for necessary expenses that may be incurred from time to time on behalf of the Corporation.
8. To consider any and all other matters which may be necessary and appropriate.

Sincerely,

Sidney M. Bach, President
Decatur Realty Corp.

By Certified Mail No. _____

Decatur Realty Corporation
Annual Shareholders' Meeting
10/24/2012 11:00 AM
413-15 Decatur New Orleans

Meeting Agenda
(see October 1, 2012 Notice of Meeting)
(ATTACHED)

Present: Sidney M. Bach, Pres./Director
Patricia E. Bach, Secty./Director
William J. Oberhelman, Jr, Esq. Attorney for the Succ. of Dorothy
Schaumburger

1. Discussion of proposed sale of the 60% Majority Interest in DRC.
2. Ratify the Minutes of the Special Meeting of the Shareholders of DRC held, after due notice, on January 18, 2012.
3. Nomination of Officers and Directors:

*Better
to resign
replace
with
me
resign*

Sidney M. Bach to serve as President & Director and Patricia E. Bach to serve as Vice-President-Secretary & Director of the Corporation from Jan. 1, 2013 to Dec. 31, 2013 or until such time as they may resign and are replaced prior to the expiration of their terms in the event of a change in the majority ownership of the Corporation.

Close the Nominations & Vote

FOR 60% AGAINST 40% ABSTAIN _____

4. Motion to authorize lease renewal of Conti St. parking lot (Notice of Meeting #3) *attached*

Discussion
Call for vote

FOR _____ AGAINST _____ ABSTAIN _____



-
5. Necessary structural repairs to preserve the building at 413-15 Decatur
Recent repair proposal

Motion to Authorize that Repair Proposal be accepted.
Discussion
Call for vote

6. Property tax assessments and increases

7. Suspension fo further dividend distributions to shareholders for year 2012
due to anticipated costs for necessary building repairs and payment of
increased property taxes due in January 2013.

8. Authorize increase in the Corp.'s management fee to \$1,000/month,
exclusive of reimbursements for corporate-related expenses incurred.
(see Meeting Notice, # 7)
attached

-
9. Authorize the Corporation to provide Officers and Directors liability
insurance coverage for its officers and directors, such coverage
not to exceed the sum of \$2,000,000.

10. Other business

Partners ✓
Hebbie Perrow - *Monthly* ~~#~~ 9
Annex *more than 3*
76
70
75
7 yrs.

DECATUR REALTY CORPORATION
425 Kimberly Avenue
Asheville, NC 28804

December 3, 2012

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

Wayne Ducote
Suite 2625
601 Poydras Street
New Orleans, LA 70170
(By FedEx Overnight Delivery)

Sidney M. Bach
(By Hand Delivery)

PLEASE TAKE NOTICE that a Special Meeting of the Shareholders of Decatur Realty Corporation will be held on Monday, December 17, 2012 at 11:00 AM in Suite 3600, One Shell Square, 701 Poydras Street, New Orleans.

The purpose of the Special Meeting will be to elect a Director of the Corporation.

DECATUR REALTY CORPORATION

By:

Patricia E. Bach
Patricia E. Bach, Secretary



Ashley Rice

From: Wayne ducote [wducote@aol.com]
Sent: Tuesday, December 11, 2012 2:19 PM
To: Ashley Rice
Subject: Fwd: Decatur Realty Corporation Shareholders' Meeting
Attachments: Decatur Realty Corporation.12.07.12.pdf; ATT00001.htm

EXHIBIT

tabbies

4

Begin forwarded message:

From: Wayne ducote <wducote@aol.com>
Subject: Decatur Realty Corporation Shareholders' Meeting
Date: December 7, 2012 3:36:34 PM CST
To: Mark Stein <mstein@lowestein.com>
Cc: Gladstone Jones <gjones@jonesswanson.com>, Lynn Swanson
<LSwanson@jonesswanson.com>

Mark,

I have attached a PDF version of my email below for you convenience.

You advised that the Shareholders meeting proposed for December 17, 2012, would have only one item on the agenda: to elect Sidney Bach as the sole director. However, I have reviewed again the October 1, 2012 notice of the Annual Shareholders meeting sent to my predecessors in title, and believe that a Shareholders meeting should be held immediately to discuss the items on that agenda that were deferred during our October 23 Shareholders meeting. The agenda presented for the meeting held October 23 included the following items to be presented for consideration to the Shareholders:

1. Proposed sale and transfer of the 60% majority interests in the Corporation.
2. Ratification of Minutes from the Special Meeting of the Shareholders of DRC held, after due notice, on January 18, 2012.
3. Nomination and election of the Officers and Directors of the Corporation to serve in such capacities from January 1, 2013, to December 31, 2013, or until such time as they may resign and/or are replaced prior to the expiration of their terms in the event of a change in ownership of the 60% majority interest in the Corporation.
4. Authorization for the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that

lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest.

5. Discussion of the estimated costs for necessary structural repairs to preserve the building at 413-415 Decatur and to authorize such repairs at this time.
6. Discussion of the recent increases in property tax assessments of the Corporation's properties by the Assessor of Orleans Parish.
7. Authorization for the suspension of any further dividend payments by the Corporation for the year 2012 due to the anticipated costs for building repairs as well as the recent increases in assessments for property taxes that will become due in January 2013.
8. Authorization for an increase in the Corporation's management fee to \$1,000.00 per month, exclusive of reimbursements for necessary expenses that may be incurred from time to time on behalf of the Corporation.
9. Authorization for the Corporation to provide Officers and Directors liability insurance coverage, such coverage not to exceed the sum of \$2,000,000.
10. Consideration of any and all other matters which may be necessary and appropriate.

At the October 23 Shareholders meeting, the minutes from the January 18, 2012, meeting (item 2) were ratified. Item 3 was addressed and two directors were elected: Sidney Bach and his wife. Discussions were held on items 6 and 7 but no action was necessary. Agenda item 8 was also discussed and approval was granted to increase the Corporation's management fee to \$1,000.00. Additionally, a vote was taken on item 9 to provide Officers and Directors with liability insurance coverage, which passed. Action on items 1, 4 and 5, however, was deferred until a future meeting.

I believe that we should have a Shareholders meeting immediately to discuss the unresolved issues from the October 23 meeting as well as to discuss the parking lot and building lease, as they are set to expire December 31, 2012. We should meet as soon as possible and before December 17, if possible. To that end, I am available to meet with Mr. Bach any day next week (December 10-14).

Please advise as soon as possible when the Shareholders meeting can be scheduled and provide me with a proposed agenda. Thank you.

Wayne Ducote

KD Gretna

Wayne Ducote
601 Poydras Street
Suite 2625
New Orleans, LA 70130
504-525-9017 office
970-948-4018 cell
wducote@aol.com

**KD Gretna
601 Poydras Street, Suite 2625
New Orleans, LA 70130
(504) 525-9017**

Friday, December 07, 2012

To: Mark Stein

RE: Decatur Realty Corporation Shareholders' meeting

Mark,

You advised that the Shareholders meeting proposed for December 17, 2012, would have only one item on the agenda: to elect Sidney Bach as the sole director. However, I have reviewed again the October 1, 2012 notice of the Annual Shareholders meeting sent to my predecessors in title, and believe that a Shareholders meeting should be held immediately to discuss the items on that agenda that were deferred during our October 23 Shareholders meeting. The agenda for the meeting held October 23 included the following items to be presented for consideration to the Shareholders:

1. Proposed sale and transfer of the 60% majority interests in the Corporation.
2. Ratification of Minutes from the Special Meeting of the Shareholders of DRC held, after due notice, on January 18, 2012.
3. Nomination and election of the Officers and Directors of the Corporation to serve in such capacities from January 1, 2013, to December 31, 2013, or until such time as they may resign and/or are replaced prior to the expiration of their terms in the event of a change in ownership of the 60% majority interest in the Corporation.
4. Authorization for the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest.
5. Discussion of the estimated costs for necessary structural repairs to preserve the building at 413-415 Decatur and to authorize such repairs at this time.
6. Discussion of the recent increases in property tax assessments of the Corporation's properties by the Assessor of Orleans Parish.
7. Authorization for the suspension of any further dividend payments by the Corporation for the year 2012 due to the anticipated costs for building repairs as well as the recent increases in assessments for property taxes that will become due in January 2013.

8. Authorization for an increase in the Corporation's management fee to \$1,000.00 per month, exclusive of reimbursements for necessary expenses that may be incurred from time to time on behalf of the Corporation.
9. Authorization for the Corporation to provide Officers and Directors liability insurance coverage, such coverage not to exceed the sum of \$2,000,000.
10. Consideration of any and all other matters which may be necessary and appropriate.

At the October 23 Shareholders meeting, the minutes from the January 18, 2012, meeting (item 2) were ratified. Item 3 was addressed and two directors were elected: Sidney Bach and his wife. Discussions were held on items 6 and 7 but no action was necessary. Agenda item 8 was also discussed and approval was granted to increase the Corporation's management fee to \$1,000.00. Additionally, a vote was taken on item 9 to provide Officers and Directors with liability insurance coverage, which passed. Action on items 1, 4 and 5, however, was deferred until a future meeting.

I believe that we should have a Shareholders meeting immediately to discuss the unresolved issues from the October 23 meeting as well as to discuss the parking lot and building lease, as they are set to expire December 31, 2012. We should meet as soon as possible and before December 17, if possible. To that end, I am available to meet with Mr. Bach any day next week (December 10-14).

Please advise as soon as possible when the Shareholders meeting can be scheduled and provide me with a proposed agenda. Thank you.

Wayne Ducote

LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER, L.L.P.

ATTORNEYS AT LAW

ONE SHELL SQUARE

SUITE 3500

701 POYDRAS STREET

NEW ORLEANS, LOUISIANA 70139-7785

WWW.LOWESTEIN.COM

TELEPHONE (504) 581-2450

FACSIMILE (504) 581-2461

WRITER'S E-MAIL:

mstein@lowestein.com

TERENCE L. HAUVER
(1847-29021)

OF COUNSEL
MARK S. GOLDSTEIN
ALICIA M. BENDANA
ELLEN WIDEN KESSLER

* LL.M. IN TAXATION

* BOARD CERTIFIED TAX ATTORNEY

* CERTIFIED BY THE LOUISIANA BOARD OF LEGAL SPECIALIZATION

* BOARD CERTIFIED FAMILY LAW SPECIALIST

* CERTIFIED BY THE LOUISIANA BOARD OF LEGAL SPECIALIZATION

* A PROFESSIONAL LAW CORPORATION

(1) ALSO ADMITTED IN TEXAS

(2) ALSO ADMITTED IN ILLINOIS

ROBERT C. LOWE
MARK S. STEIN**
MITCHELL A. HOFFMAN**
MICHAEL R. ALLWEISS**
MAX J. COHEN**
DAVID M. PRADOST
SUZETTE MARIE SMITH
MARYNELL L. FIGLIA
PAULA H. LEE
JEFFREY M. HOFFMAN
JAMES T. BUSENLENER**
GREGORY S. MARSIGLIA
KIM M. NGUYEN
MELVIN D. ALBRITTON
MELANIE C. LOCKETT
TYLER J. DOUGLAS

December 10, 2012

Wayne C. Ducote, Esq.
Park I, LLC
601 Poydras Street, Suite 2625
New Orleans, Louisiana 70130-6029

Re: Decatur Realty Corporation
Our File No. 8846-12419

Dear Wayne:

I am writing in response to your memo dated December 7, 2012, concerning Decatur Realty Corporation.

The Notice of the shareholders meeting on December 17, 2012, has, as its sole purpose, the election of a director for the Corporation.

Sidney and I are willing to meet with you and your attorney after the meeting to address the other items contained in your memo.

Very truly yours,



Mark S. Stein

MSS/apd

cc: Gladstone N. Jones, III, Esq.
Mr. Sidney Bach



Kerry Murphy

From: Lynn Swanson
Sent: Monday, December 17, 2012 1:04 PM
To: 'Stein, Mark'; Hoffman, Mitch (mhoffman@lowestein.com)
Cc: Gladstone Jones; Kerry Murphy
Subject: RE: Decatur Realty

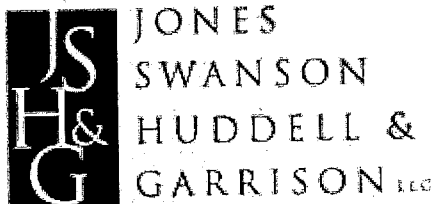
Mark and Mitch:

Mark, good to see you, and Mitch, nice to meet you this morning.

After Decatur Realty Corporation's shareholders' meeting this morning, I had a chance to discuss further the parking lot lease with Mr. Ducote. You all were clear during this morning's meeting that your client has no obligation to provide Mr. Ducote with any information with regard to that lease. Of course we do not agree with that position, and from a financial standpoint, it appears that generating as much income as possible from the parking lot is in the best interests of the corporation, particularly if the lease being contemplated is a long term lease. The \$4,000/mo. rent over a ten year term discussed by Mr. Ducote at today's shareholders' meeting was an offer he made, contemplating only the current lease as he understands it: \$2,000/mo. paid Mr. Bach's company, 519 Conti Street, Ltd., expiring at the end of this year. We hereby request that Mr. Ducote be provided with the terms of any proposed parking lot lease, the value of which is less than \$7,500/mo., prior to its execution, such that Mr. Ducote can counter such a proposal with more money in rent for the corporation under the same terms that Mr. Bach may be considering. Please confirm that Mr. Bach will agree to this request, which is clearly in the best interests of the corporation.

Finally, could you please provide me with the name of the court reporter that transcribed this mornings' shareholders' meeting?

Lynn E. Swanson
Attorney at Law



601 Poydras Street, Suite 2655 . New Orleans, Louisiana 70130 . Telephone: 504.523.2500 . Facsimile: 504.523.2508 .
LSwanson@jonesswanson.com . jonesswanson.com

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From: Hoffman, Mitch [<mailto:mhoffman@lowestein.com>]
Sent: Friday, December 14, 2012 3:09 PM
To: Lynn Swanson
Cc: Oufnac, Katherine; Stein, Mark; smbach@bellsouth.net
Subject: Decatur Realty



Lynn

We talked with Mr Bach and, at your request, we will add a discussion of the building lease to the agenda for Monday's meeting.

We will see you then.

Mitch

MITCHELL J. HOFFMAN
ATTORNEY

LOWE STEIN

HOFFMAN ALLWEISS & HAUVER, LLP
701 Poydras Street, Suite 3600
New Orleans, Louisiana 70139
Telephone: 504-581-2450
Direct Telephone: 504-589-0219
Facsimile: 504-581-2461
Direct Facsimile: 504-589-0250
Email: mhoffman@lowestein.com
www.lowestein.com

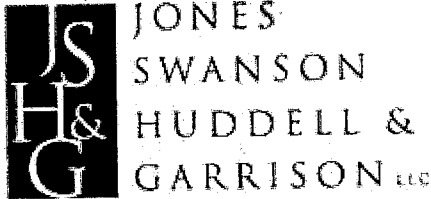
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Kerry Murphy

From: Lynn Swanson
Sent: Tuesday, December 18, 2012 2:01 PM
To: Wayne Ducote; Gladstone Jones; Kerry Murphy
Subject: FW: DRC

Lynn E. Swanson
Attorney at Law



601 Poydras Street, Suite 2655 . New Orleans, Louisiana 70130 . Telephone: 504.523.2500 . Facsimile: 504.523.2508 .
LSwanson@jonesswanson.com . jonesswanson.com

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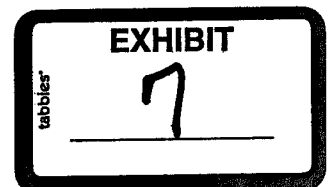
From: Stein, Mark [<mailto:mstein@lowestein.com>]
Sent: Tuesday, December 18, 2012 1:51 PM
To: Lynn Swanson
Cc: Hoffman, Mitch
Subject: RE: DRC

Wayne's request is denied. By the way, I once again reiterate that if you have any authority that your client is entitled to books and records of the corporation at this point, notwithstanding the provisions of La. R.S. 12:103D(1)(a), please let me know.

For the record, Wayne offered \$4,000 a month with no conditions prior to yesterday and on more than one previous occasion. He never told Decatur how he came up with that amount or what it was based on. Also neither Wayne nor you ever attempted to explain why the current lease is relevant to Wayne's offer, nor was it requested when Wayne first made the \$4000 offer.

I am trying to find the name of the court reporter – I lost his card, but will get it to you as soon as I can find it.

MARK S. STEIN
ATTORNEY



LOWE STEIN

HOFFMAN ALLWEISS & HAUVER, LLP
701 Poydras Street, Suite 3600
New Orleans, Louisiana 70139
Telephone: 504-581-2450
Facsimile: 504-581-2461
Direct Facsimile: 504-589-0233
Email: mstein@lowestein.com
www.lowestein.com

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From: Lynn Swanson [<mailto:LSwanson@jonesswanson.com>]
Sent: Tuesday, December 18, 2012 1:42 PM
To: Stein, Mark
Cc: Hoffman, Mitch
Subject: Re: DRC

Mark:

Have you had a chance today to speak to Mr. Bach?
Also, please provide me with the name of yesterday's court reporter. Thank you.

Lynn E. Swanson
Jones, Swanson, Huddell & Garrison, L.L.C.
601 Poydras Street, Suite 2655
New Orleans, Louisiana 70130
Telephone: 504.523.2500
Facsimile: 504.523.2508

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From: Stein, Mark [<mailto:mstein@lowestein.com>]
Sent: Monday, December 17, 2012 05:37 PM
To: Lynn Swanson
Cc: Hoffman, Mitch <mhoffman@lowestein.com>
Subject: DRC

Lynn

Sidney was on a plane this afternoon. I will talk to him tomorrow as soon as I can and get back to you.

MARK S. STEIN

ATTORNEY

LOWE STEIN

HOFFMAN ALLWEISS & HAUVER, LLP

701 Poydras Street, Suite 3600

New Orleans, Louisiana 70139

Telephone: 504-581-2450

Facsimile: 504-581-2461

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Email: mstein@lowestein.com

www.lowestein.com

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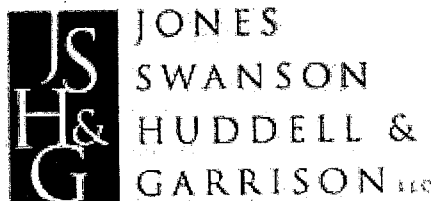
Kerry Murphy

From: Lynn Swanson
Sent: Wednesday, December 19, 2012 12:15 PM
To: 'Stein, Mark'
Cc: Hoffman, Mitch; Gladstone Jones; Kerry Murphy
Subject: RE: Decatur Realty

Mark:

I do not need the signed original.
Would you please advise whether a lease of the parking lot and a lease of the building have been negotiated and further, whether a lease of either has been entered into? Thank you.

Lynn E. Swanson
Attorney at Law



601 Poydras Street, Suite 2655 . New Orleans, Louisiana 70130 . Telephone: 504.523.2500 . Facsimile: 504.523.2508 .
LSwanson@jonesswanson.com . jonesswanson.com

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From: Stein, Mark [<mailto:mstein@lowestein.com>]
Sent: Wednesday, December 19, 2012 9:24 AM
To: Lynn Swanson
Cc: Hoffman, Mitch
Subject: Decatur Realty

Lynn

Please let me know if you want the signed original. If you do I will have it delivered to you as soon as I receive it from Sidney.

MARK S. STEIN

ATTORNEY

LOWE STEIN

HOFFMAN ALLWEISS & HAUVER, LLP
701 Poydras Street, Suite 3600
New Orleans, Louisiana 70139



Telephone: 504-581-2450
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STATE OF LOUISIANA

NO.: 2012-11563

SECTION “___”

DIVISION “___”

KD GRETNAL PROPERTIES, L.L.C.

H-12

versus

DECATUR REALTY CORP. AND SIDNEY BACH

FILED: _____

DEPUTY CLERK

VERIFIED PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION

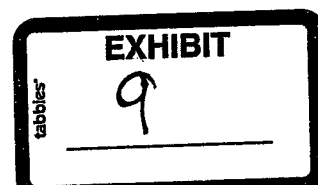
NOW INTO COURT, through undersigned counsel, comes Plaintiff, KD GRETNAL PROPERTIES, L.L.C., in its capacity as shareholder of Decatur Realty Corp., who respectfully files this Petition for Preliminary and Permanent Injunction against defendants DECATUR REALTY CORP. and SIDNEY BACH (collectively, the “Defendants”) upon representing as follows:

I. PARTIES

1. Plaintiff KD GRETNAL PROPERTIES, L.L.C. (“Plaintiff” or “KD Gretna”) is a shareholder in Decatur Realty Corp. KD Gretna is a limited liability company organized under the laws of the State of Louisiana with a single member, Wayne Ducote (“Mr. Ducote”) who is domiciled in the state of Florida.

2. Defendant DECATUR REALTY CORPORATION (“Decatur”) is a corporation organized under the laws of the State of Louisiana with its principal place of business in New Orleans, Louisiana, in good standing in and authorized to do business in the State of Louisiana.

3. Defendant SIDNEY BACH (“Mr. Bach”) is a natural person of the full age of majority, who, upon information and belief, is a citizen of the State of North Carolina and a resident of the city of Asheville, North Carolina. Mr. Bach has been the President and a director of Decatur at all times relevant hereto.



II. JURISDICTION AND VENUE

4. Venue is proper in this Court under Article 74 of the Louisiana Code of Civil Procedure because the wrongful conduct sought to be enjoined will occur in this Parish.

5. Decatur was at all relevant times operating in this Parish with its principal place of business located in this Parish.

III. FACTS

General Information Regarding Decatur and Its Properties

6. Decatur owns two real estate assets: a building located at 413-15 Decatur Street, New Orleans, Louisiana (the "Building") and a parking property located at 519 Conti Street, New Orleans, Louisiana (the "Parking Property") (collectively, the "Decatur Properties").

7. Plaintiff is a 40.56 percent shareholder in Decatur. Plaintiff's shares were purchased on October 22, 2012 from the Succession of Dorothy Shaumburger (the "Succession").

8. Mr. Bach owns the remaining 59.44 percent of shares in Decatur.

9. Plaintiff has two managers: Mr. Ducote and Yolande Bernard ("Ms. Bernard").

10. Decatur previously had two directors and officers: Mr. Bach and his wife, Patricia Bach ("Mrs. Bach"). Mr. Bach served as Director and President, and Mrs. Bach served as Director and Vice-President/Secretary. Upon information and belief, Mrs. Bach resigned from her position as Director in December 2012, leaving Mr. Bach the as the sole Director.

11. Decatur leases the Parking Property to a corporation called 519 Conti Street, Ltd. ("519 Conti"), of which Mr. Bach is the sole shareholder and Director. Upon information and belief, 519 Conti has leased the Parking Property for almost ten years at a purported monthly rent of \$2,000 per month. Plaintiff lacks information regarding any terms of the lease other than the purported rent because Decatur has not provided Plaintiff with a copy of the current lease and/or proposed renewal terms, despite its requests.

12. The market value of rent for the Parking Property significantly exceeds \$2,000 per month.

13. In correspondence dated October 30, 2012, Mr. Ducote, through his company KD Gretna, offered Decatur, through its President Mr. Bach, \$4,000 per month to lease the Parking Property – twice the purported current rent paid by 519 Conti. Mr. Bach rejected this offer.

14. The current lease of the Parking Property advances Mr. Bach's own personal financial interests rather than the interests of Decatur and its shareholders. Because the Parking Property is leased to Mr. Bach's own company for less than market value, Mr. Bach alone derives all benefits from the Parking Property rather than sharing such benefits with Plaintiff as Decatur's 40.56 percent shareholder. Mr. Bach also receives tax advantages through the lease arrangement. Because Decatur is a C corporation and 519 Conti an S corporation, the lease allows Mr. Bach to convert the revenue from the Parking Property to subchapter S income, which is taxed only at Mr. Bach's personal rate, rather than being taxed first at Decatur's C corporation rate and then again at Mr. Bach's personal rate as a dividend.

The October Shareholders' Meeting

15. On October 1, 2012, Mr. Bach sent to the Succession a *Notice of Annual Shareholders' Meeting* for Decatur to be held on October 24, 2012 (the "October Shareholders' Meeting"), which provided a list of items to be discussed and/or voted upon at the October Shareholders' Meeting. *See Exhibit 1* hereto. One such item was:

To authorize the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest[.]

16. The agenda was provided to Plaintiff upon purchase of the Succession's shares of Decatur.

17. The October Shareholders' Meeting was rescheduled for and held on October 23, 2012 in New Orleans, Louisiana. Present were Mr. Bach, Mrs. Bach, Mr. Ducote, and Ms. Bernard. At the meeting, a motion was made to authorize renewal of the lease of the Parking Property to 519 Conti at its current rate of \$2,000 per month. Mr. Ducote objected to the lease renewal. A vote on the motion was deferred until a future meeting. *See Exhibit 2* hereto.

The December Shareholders' Meeting

18. On December 3, 2012, Mr. Bach sent to Mr. Ducote a *Notice of Special Meeting of Shareholders*. The notice stated that a special meeting of the shareholders of Decatur would be held on December 17, 2012 in New Orleans, Louisiana in order to “elect a Director of the Corporation” (the “December Shareholders’ Meeting”). *See Exhibit 3* hereto. Plaintiff received the written notice on December 4, 2012.

19. On December 5, 2012, Plaintiff informed counsel for Mr. Bach and Decatur that a shareholder’s meeting would not be necessary if the only purpose was to elect Mr. Bach as the sole director of Decatur.

20. On December 7, 2012, Plaintiff requested that a shareholders’ meeting be held during the week of December 10, 2012, or if the week of December 10 was not convenient, on December 17, 2012 as originally scheduled, and that all deferred items from the October meeting be added to the agenda for the December Shareholders’ meeting, including (among other items) the renewal of the lease on the Parking Property. *See Exhibit 4* hereto.

21. On December 10, 2012, Mr. Ducote received a letter from counsel for Mr. Bach and Decatur stating that “[t]he Notice of the shareholders meeting on December 17, 2012, has, as its sole purpose, the election of a director for the Corporation. Sidney [Bach] and I are willing to meet with you and your attorney after the meeting to address the other items contained in your memo.” *See Exhibit 5* hereto.

22. Mr. Bach is currently the President and sole Director of Decatur, and upon information and belief, he will continue to be the President and sole Director of Decatur after the December Shareholders’ Meeting (the. Thus, he has the ability to unilaterally renew the lease of the Parking Property to 519 Conti. Upon information and belief, he intends to do so prior to or immediately following the December Shareholders’ Meeting.

Access to Books and Records

23. Prior to Plaintiff’s purchase of the Succession’s shares in Decatur, notwithstanding requests by the Succession, Decatur, acting through Mr. Bach, its President and Director, failed to provide the Succession with all of the corporation’s required books and

records but rather provided the Succession only with tax returns for certain years, as well as limited data regarding purported cash in the bank and proposed distributions. The Succession provided Plaintiff with copies of this limited set of documents when Plaintiff purchased the Succession's shares in Decatur.

24. Between October 2012 and the present, Plaintiff has made numerous oral and written requests to review Decatur's books and records. Plaintiff has specifically requested copies of the existing books and accounting records of Decatur, along with its current and proposed leases and insurance policies for both the Building and the Parking Property. Decatur, through its counsel, has denied Plaintiff's requests.

**Unlawful Actions and Irreparable Injury Will Occur Absent
A Temporary Restraining Order and Injunction**

25. Upon information and belief, absent injunctive relief, Mr. Bach, in his capacity as President and sole Director of Decatur, will unilaterally renew the lease of the Parking Property to 519 Conti prior to or immediately following the December Shareholders' Meeting.

26. Mr. Bach is aware that the market value rent on the Parking Property is more than \$2,000 per month and that a higher rental offer is available, as on October 30, 2012, Mr. Ducote, through his company KD Gretna, offered \$4,000 per month to lease the Parking Property.

27. As an officer and director of Decatur, Mr. Bach owes fiduciary duties to Decatur and its shareholders. La. Rev. Stat. § 12:91 ("Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and its shareholders, and shall discharge the duties of their respective positions in good faith..."). Renewing the lease of the Parking Property would constitute unlawful self-dealing and a breach of Mr. Bach's fiduciary duties to Decatur and its shareholders, including Plaintiff, because the lease is fundamentally unfair to Decatur and its shareholders and it is designed to benefit Mr. Bach's financial interests rather than the financial interests of Decatur. *See* La. Rev. Stat. §§ 12:84(A)(3) and 12:91.

28. Renewing the lease of the Parking Property would cause irreparable injury to Decatur and Plaintiff by placing an encumbrance on the Parking Property that is not in the best interest of Decatur and its shareholders.

29. Upon information and belief, absent injunctive relief, Mr. Bach intends to make alterations to Decatur's books and records before Plaintiff obtains access to such records. Such action would violate both Mr. Bach's fiduciary duties to the corporation and its shareholders and the requirement that the corporation maintain its books and records and make them available for shareholders' review. La. Rev. Stat. §§ 12:91 and 12:103.

30. Further, making alterations to Decatur's books and records would cause irreparable injury to Decatur and to Plaintiff by denying Plaintiff access to complete and accurate books and records to which it is entitled under Louisiana law.

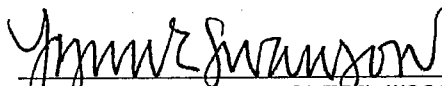
31. Plaintiff has made exhaustive efforts to attempt to prevent Mr. Bach, Decatur's sole officer and director, from renewing the lease of the Parking Property, including objecting to the renewal at the October Shareholders' Meeting; sending to Mr. Bach written correspondence offering to lease the Parking Property for double its current rent; and requesting that the lease renewal be included on the agenda for the December Shareholders' Meeting. Such efforts have not been successful.

32. Plaintiff has likewise made exhaustive efforts to obtain access to Decatur's books and records, making numerous oral and written requests of Decatur through Mr. Bach and his counsel for the opportunity to review Decatur's books and records. Decatur, through its counsel, has denied these requests.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff KD Gretna prays, pursuant to Louisiana Code of Civil Procedure articles 615 and 3601, that after due proceedings are had, this Court grant a temporary restraining order and preliminary and permanent injunction in favor of Decatur Realty Corporation enjoining Decatur Realty Corporation and Sidney Bach, its majority shareholder and sole director and officer, from (a) renewing the lease of the Parking Property to 519 Conti; and/or (b) making any alterations to or destroying any of Decatur's books and records presently in the possession or control of Defendants.

Respectfully submitted,



GLADSTONE N. JONES (#22221), T.A.

LYNN SWANSON (#22650)

KERRY MURPHY (#31382)

JONES, SWANSON, HUDDALL &
GARRISON, L.L.C.

601 Poydras Street, Suite 2655

New Orleans, Louisiana 70130

Telephone: (504) 523-2500

Telecopier: (504) 523-2508

SHERIFF PLEASE SERVE:

Decatur Realty Corporation
Through its agent for service of process:
Crescent City Corporate Services, L.L.C.
701 Poydras St., Ste. 3600
New Orleans, LA 70139-7735

WILL SERVE VIA LONG ARM STATUTE

Sidney Bach
President
Decatur Realty Corporation
425 Kimberly Ave.
Asheville, NC 28804

ORLEANS PARISH CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO.:

SECTION "____"

DIVISION "____"

KD GREтна PROPERTIES, L.L.C.

versus

DECATUR REALTY CORP. AND SIDNEY BACH

FILED: _____

DEPUTY CLERK

VERIFICATION

I, Wayne Ducote, in my capacity as a member and manager of KD Gretna Properties, L.L.C., attest that KD Gretna Properties, L.L.C. is currently and has been a shareholder of Decatur Realty Corp. since October 22, 2012.

I, on behalf of KD Gretna Properties, L.L.C., attest that I objected to the renewal of the lease on the parking property located at 519 Conti Street, New Orleans, Louisiana between Decatur Realty Corporation and 519 Conti, Ltd. and that I requested that Sidney Bach, President and sole director of Decatur Realty Corporation, lease the parking property to another entity at a higher rate than its purported current rate, and he refused.

I, on behalf of KD Gretna Properties, L.L.C., attest that I requested that Sidney Bach provide me with access to the books and records of Decatur Realty Corporation, and he refused.

In addition, I confirm that the factual allegations contained in the Petition for Preliminary and Permanent Injunction are true and correct to the best of my knowledge, information and belief.

Sworn to and subscribed before
me this 12 day of December, 2012.



NOTARY PUBLIC



WAYNE DUCOTE

LYNN E. SWANSON
NOTARY PUBLIC
STATE OF LOUISIANA
My Commission is issued for Life
Bar Roll Number 22650

Decatur Realty Corporation
425 Kimberly Avenue
Asheville, NC 28804

October 1, 2012

Succession of Dorothy Schaumburger
c/o William J. Oberhelman, Jr., Esq.
228 St. Charles Avenue, Suite 1138
New Orleans, LA 70130-2611

Ref. Decatur Realty Corporation
~~Notice of~~ Annual Shareholders' Meeting

Dear Billy,

As indicated in my recent e-mail to you of September 27, 2012, also forwarded to you by fax, the 2012 Annual Meeting of the shareholders of Decatur Realty Corporation will be held on October 24, 2012 at 11:00 a.m. in the first floor office of the Corporation's building at 413-15 Decatur Street, New Orleans. Please note the time, date and place of the meeting so that you may attend and participate as attorney of record on behalf of the interests of the Succession of Dorothy Schaumburger.

At the meeting the following matters will be discussed and/or voted upon:

1. Proposed sale and transfer of the 60% majority interest in the Corporation
2. To nominate and elect the Officers and Directors of the Corporation to serve in such capacities from January 1, 2013 to December 31, 2013, or until such time as they may resign and are replaced prior to the expiration of their terms in the event of a change in ownership of the 60% majority interest in the Corporation.



William J. Oberhelman, Jr., Esq.

October 1, 2012

Page 2

3. To authorize the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest.
4. To discuss the estimated costs for necessary structural repairs to preserve the building at 413-15 Decatur and to authorize that such repairs to be undertaken at this time.
5. To discuss the recent increases in property tax assessments of the Corporation's properties by the Assessor of Orleans Parish.
6. To authorize the suspension of any further dividend payments by the Corporation for the year 2012 due to the anticipated costs for building repairs as well as the recent increases in assessments for property taxes that will become due in January 2013.
7. To authorize an increase in the Corporation's management fee to \$1,000 per month, exclusive of reimbursements for necessary expenses that may be incurred from time to time on behalf of the Corporation.
8. To consider any and all other matters which may be necessary and appropriate.

Sincerely,

Sidney M. Bach, President
Decatur Realty Corp.

By Certified Mail No. _____

Decatur Realty Corporation
Annual Shareholders' Meeting
10/24/2012 11:00 AM
413-15 Decatur New Orleans

Meeting Agenda
(see October 1, 2012 Notice of Meeting)
(ATTACHED)

Present: Sidney M. Bach, Pres./Director
Patricia E. Bach, Secty./Director
William J. Oberhelman, Jr, Esq. Attorney for the Succ. of Dorothy
Schaumburger

1. Discussion of proposed sale of the 60% Majority Interest in DRC.
2. Ratify the Minutes of the Special Meeting of the Shareholders of DRC held, after due notice, on January 18, 2012.
3. Nomination of Officers and Directors:

*Letter to resign
or resign
replace
with
me
resign*

Sidney M. Bach to serve as President & Director and Patricia E. Bach to serve as Vice-President-Secretary & Director of the Corporation from Jan. 1, 2013 to Dec. 31, 2013 or until such time as they may resign and are replaced prior to the expiration of their terms in the event of a change in the majority ownership of the Corporation.

Close the Nominations & Vote

FOR 60% AGAINST 40% ABSTAIN _____

4. Motion to authorize lease renewal of Conti St. parking lot (Notice of Meeting #3) *attached*

Discussion
Call for vote

FOR _____ AGAINST _____ ABSTAIN _____



-
5. Necessary structural repairs to preserve the building at 413-15 Decatur
Recent repair proposal

Motion to Authorize that Repair Proposal be accepted.

Discussion

Call for vote

6. Property tax assessments and increases

7. Suspension of further dividend distributions to shareholders for year 2012
due to anticipated costs for necessary building repairs and payment of
increased property taxes due in January 2013.

8. Authorize increase in the Corp.'s management fee to \$1,000/month,
exclusive of reimbursements for corporate-related expenses incurred.
(see Meeting Notice, # 7)
attached

-
9. Authorize the Corporation to provide Officers and Directors liability
insurance coverage for its officers and directors, such coverage
not to exceed the sum of \$2,000,000.

10. Other business

Partners ✓
Hebbie Perrow - *Monthly* ~~#~~ 9
more than 3 yrs.
Annex 76
70
75

DECATUR REALTY CORPORATION
425 Kimberly Avenue
Asheville, NC 28804

December 3, 2012

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

Wayne Ducote
Suite 2625
601 Poydras Street
New Orleans, LA 70170
(By FedEx Overnight Delivery)

Sidney M. Bach
(By Hand Delivery)

PLEASE TAKE NOTICE that a Special Meeting of the Shareholders of Decatur Realty Corporation will be held on Monday, December 17, 2012 at 11:00 AM in Suite 3600, One Shell Square, 701 Poydras Street, New Orleans.

The purpose of the Special Meeting will be to elect a Director of the Corporation.

DECATUR REALTY CORPORATION

By: 

Patricia E. Bach, Secretary



Ashley Rice

EXHIBIT

tabbies

4

From: Wayne ducote [wducote@aol.com]
Sent: Tuesday, December 11, 2012 2:19 PM
To: Ashley Rice
Subject: Fwd: Decatur Realty Corporation Shareholders' Meeting
Attachments: Decatur Realty Corporation.12.07.12.pdf; ATT00001.htm

Begin forwarded message:

From: Wayne ducote <wducote@aol.com>
Subject: Decatur Realty Corporation Shareholders' Meeting
Date: December 7, 2012 3:36:34 PM CST
To: Mark Stein <mstein@lowestein.com>
Cc: Gladstone Jones <gjones@jonesswanson.com>, Lynn Swanson <LSwanson@jonesswanson.com>

Mark,

I have attached a PDF version of my email below for you convenience.

You advised that the Shareholders meeting proposed for December 17, 2012, would have only one item on the agenda: to elect Sidney Bach as the sole director. However, I have reviewed again the October 1, 2012 notice of the Annual Shareholders meeting sent to my predecessors in title, and believe that a Shareholders meeting should be held immediately to discuss the items on that agenda that were deferred during our October 23 Shareholders meeting. The agenda presented for the meeting held October 23 included the following items to be presented for consideration to the Shareholders:

1. Proposed sale and transfer of the 60% majority interests in the Corporation.
2. Ratification of Minutes from the Special Meeting of the Shareholders of DRC held, after due notice, on January 18, 2012.
3. Nomination and election of the Officers and Directors of the Corporation to serve in such capacities from January 1, 2013, to December 31, 2013, or until such time as they may resign and/or are replaced prior to the expiration of their terms in the event of a change in ownership of the 60% majority interest in the Corporation.
4. Authorization for the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that

lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest.

5. Discussion of the estimated costs for necessary structural repairs to preserve the building at 413-415 Decatur and to authorize such repairs at this time.
6. Discussion of the recent increases in property tax assessments of the Corporation's properties by the Assessor of Orleans Parish.
7. Authorization for the suspension of any further dividend payments by the Corporation for the year 2012 due to the anticipated costs for building repairs as well as the recent increases in assessments for property taxes that will become due in January 2013.
8. Authorization for an increase in the Corporation's management fee to \$1,000.00 per month, exclusive of reimbursements for necessary expenses that may be incurred from time to time on behalf of the Corporation.
9. Authorization for the Corporation to provide Officers and Directors liability insurance coverage, such coverage not to exceed the sum of \$2,000,000.
10. Consideration of any and all other matters which may be necessary and appropriate.

At the October 23 Shareholders meeting, the minutes from the January 18, 2012, meeting (item 2) were ratified. Item 3 was addressed and two directors were elected: Sidney Bach and his wife. Discussions were held on items 6 and 7 but no action was necessary. Agenda item 8 was also discussed and approval was granted to increase the Corporation's management fee to \$1,000.00. Additionally, a vote was taken on item 9 to provide Officers and Directors with liability insurance coverage, which passed. Action on items 1, 4 and 5, however, was deferred until a future meeting.

I believe that we should have a Shareholders meeting immediately to discuss the unresolved issues from the October 23 meeting as well as to discuss the parking lot and building lease, as they are set to expire December 31, 2012. We should meet as soon as possible and before December 17, if possible. To that end, I am available to meet with Mr. Bach any day next week (December 10-14).

Please advise as soon as possible when the Shareholders meeting can be scheduled and provide me with a proposed agenda. Thank you.

Wayne Ducote

KD Gretna

Wayne Ducote
601 Poydras Street
Suite 2625
New Orleans, LA 70130
504-525-9017 office
970-948-4018 cell
wducote@aol.com

**KD Gretna
601 Poydras Street, Suite 2625
New Orleans, LA 70130
(504) 525-9017**

Friday, December 07, 2012

To: Mark Stein

RE: Decatur Realty Corporation Shareholders' meeting

Mark,

You advised that the Shareholders meeting proposed for December 17, 2012, would have only one item on the agenda: to elect Sidney Bach as the sole director. However, I have reviewed again the October 1, 2012 notice of the Annual Shareholders meeting sent to my predecessors in title, and believe that a Shareholders meeting should be held immediately to discuss the items on that agenda that were deferred during our October 23 Shareholders meeting. The agenda for the meeting held October 23 included the following items to be presented for consideration to the Shareholders:

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3. Nomination and election of the Officers and Directors of the Corporation to serve in such capacities from January 1, 2013, to December 31, 2013, or until such time as they may resign and/or are replaced prior to the expiration of their terms in the event of a change in ownership of the 60% majority interest in the Corporation.
4. Authorization for the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest.
5. Discussion of the estimated costs for necessary structural repairs to preserve the building at 413-415 Decatur and to authorize such repairs at this time.
6. Discussion of the recent increases in property tax assessments of the Corporation's properties by the Assessor of Orleans Parish.
7. Authorization for the suspension of any further dividend payments by the Corporation for the year 2012 due to the anticipated costs for building repairs as well as the recent increases in assessments for property taxes that will become due in January 2013.

8. Authorization for an increase in the Corporation's management fee to \$1,000.00 per month, exclusive of reimbursements for necessary expenses that may be incurred from time to time on behalf of the Corporation.
9. Authorization for the Corporation to provide Officers and Directors liability insurance coverage, such coverage not to exceed the sum of \$2,000,000.
10. Consideration of any and all other matters which may be necessary and appropriate.

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I believe that we should have a Shareholders meeting immediately to discuss the unresolved issues from the October 23 meeting as well as to discuss the parking lot and building lease, as they are set to expire December 31, 2012. We should meet as soon as possible and before December 17, if possible. To that end, I am available to meet with Mr. Bach any day next week (December 10-14).

Please advise as soon as possible when the Shareholders meeting can be scheduled and provide me with a proposed agenda. Thank you.

Wayne Ducote

LOWE, STEIN, HOFFMAN, ALLWEISS & HAUVER, L.L.P.

ATTORNEYS AT LAW

ONE SHELL SQUARE

SUITE 3500

701 POYDRAS STREET

NEW ORLEANS, LOUISIANA 70139-7735

WWW.LOWESTEIN.COM

TELEPHONE (504) 581-2450

FACSIMILE (504) 581-2451

WRITER'S E-MAIL:

mstein@lowestein.com

TERENCE L. HAUVER
(1847-2002)

OF COUNSEL
MARK S. GOLDSTEIN
ALICIA M. BENDANA
ELLEN WIDEN KESSLER

* LL.M. IN TAXATION

* BOARD CERTIFIED TAX ATTORNEY

* CERTIFIED BY THE LOUISIANA BOARD OF LEGAL SPECIALIZATION

* BOARD CERTIFIED FAMILY LAW SPECIALIST

* CERTIFIED BY THE LOUISIANA BOARD OF LEGAL SPECIALIZATION

* A PROFESSIONAL LAW CORPORATION

(1) ALSO ADMITTED IN TEXAS

(2) ALSO ADMITTED IN ILLINOIS

ROBERT C. LOWE
MARK S. STEIN
MITCHELL J. HOFFMAN
MICHAEL R. ALLWEISS
MAX J. COHEN
DAVID M. PRADOST
SUZETTE MARIE SMITH
MARYNELL L. PIGLIA
PAULA H. LEE
JEFFREY M. HOFFMAN
JAMES T. BUSENLENER
GREGORY S. MARSIGLIA
KIM N. NGUYEN
MELVIN D. ALBRITTON
MELANIE C. LOCKETT
TYLER J. DOUGLAS

December 10, 2012

Wayne C. Ducote, Esq.
Park I, LLC
601 Poydras Street, Suite 2625
New Orleans, Louisiana 70130-6029

Re: Decatur Realty Corporation
Our File No. 8846-12419

Dear Wayne:

I am writing in response to your memo dated December 7, 2012, concerning Decatur Realty Corporation.

The Notice of the shareholders meeting on December 17, 2012, has, as its sole purpose, the election of a director for the Corporation.

Sidney and I are willing to meet with you and your attorney after the meeting to address the other items contained in your memo.

Very truly yours,



Mark S. Stein

MSS/apd

cc: Gladstone N. Jones, III, Esq.
Mr. Sidney Bach



STATE OF LOUISIANA

NO.: 202-11563

SECTION "___"

DIVISION "___"

KD GREтна PROPERTIES, L.L.C.

H-D

versus

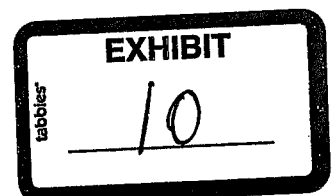
DECATUR REALTY CORP. AND SIDNEY BACH

FILED: _____

DEPUTY CLERK

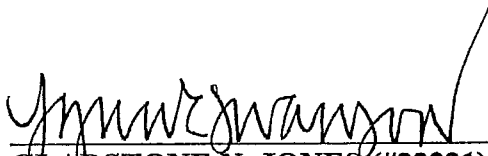
**MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, KD Gretna Properties, L.L.C., in its capacity as shareholder in Decatur Realty Corporation, which, pursuant to Louisiana Code of Civil Procedure articles 615, 3601, and 3602, respectfully moves this Court for a temporary restraining order and a preliminary injunction in favor of Decatur Realty Corporation enjoining Defendants, Decatur Realty Corporation ("Decatur") and Sidney Bach ("Mr. Bach"), from (a) renewing the lease of Decatur's parking property to 519 Conti Street, Ltd. ("519 Conti"), an entity owned and controlled by Mr. Bach; and/or (b) making any alterations to or destroying any of Decatur's books and records in Defendants' possession or control. As set forth more fully in the supporting memorandum filed herewith, Louisiana courts have long recognized that alleging irreparable harm is unnecessary where, as here, the movant is seeking to enjoin a party from committing an unlawful act. Renewal of the current lease would be an unlawful act in that it would be a clear breach of Mr. Bach's fiduciary duties to Decatur and its shareholders and would constitute unlawful self-dealing; the alteration of corporate books and records would breach Mr. Bach's fiduciary duties to Decatur and its shareholders as well as violate the Louisiana statute requiring a corporation to maintain its books and records and make them available to its shareholders. Thus, these actions should be enjoined even absent a showing of irreparable harm. Finally, Plaintiff will in fact suffer irreparable harm if Defendants are not enjoined from taking the above actions.



WHEREFORE, Plaintiff prays that a temporary restraining order issue immediately and that defendants Decatur Realty Corporation and Sidney Bach be ordered to show cause why a preliminary injunction should not be issued prohibiting them from (a) renewing the lease of Decatur's parking property to 519 Conti; and/or (b) making any alterations to or destroying any of Decatur's books and records presently in the possession or control of Defendants.

Respectfully submitted,



GLADSTONE N. JONES (#22221), T.A.

LYNN SWANSON (#22650)

KERRY MURPHY (#31382)

JONES, SWANSON, HUDDALL &

GARRISON, L.L.C.

601 Poydras Street, Suite 2655

New Orleans, Louisiana 70130

Telephone: (504) 523-2500

Telecopier: (504) 523-2508

SHERIFF PLEASE SERVE:

Decatur Realty Corporation
Through its agent for service of process:
Crescent City Corporate Services, L.L.C.
701 Poydras St., Ste. 3600
New Orleans, LA 70139-7735

WILL SERVE VIA LONG ARM STATUTE

Sidney Bach
President
Decatur Realty Corporation
425 Kimberly Ave.
Asheville, NC 28804

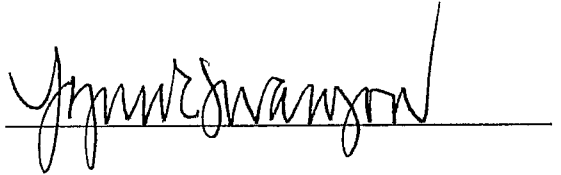
CERTIFICATE OF SERVICE

I hereby certify that I have requested sheriff service of the foregoing upon Decatur Realty Corporation via its agent for service of process, this 12th day of December, 2012.

I further hereby certify that I will serve the foregoing upon Sidney Bach in accordance with the Louisiana Long Arm Statute, La. R.S. § 13:3201, et seq., by depositing a certified copy of the foregoing in the United States mail, postage prepaid, via certified mail addressed to Sidney Bach at his home address, 425 Kimberly Ave., Asheville, NC 28804, this 12th day of December, 2012.

Finally, I hereby certify that the foregoing has been served upon the following known counsel for Decatur Realty Corporation and Sidney Bach by electronic mail and U.S. Mail, this 12th day of December, 2012.

Mark S. Stein
One Shell Square
701 Poydras St., Ste. 3600
New Orleans, Louisiana 70139

A handwritten signature in black ink, appearing to read "J. M. Swanson", is written over a horizontal line.

STATE OF LOUISIANA

NO.:

2012-11563

SECTION "___"

DIVISION "___"

KD GREтна PROPERTIES, L.L.C.

versus

DECATUR REALTY CORP. AND SIDNEY BACH

FILED: _____

DEPUTY CLERK

MEMORANDUM IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

MAY IT PLEASE THE COURT:

NOW COMES Plaintiff, KD Gretna Properties, L.L.C. ("Plaintiff" or "KD Gretna") who respectfully submits this Memorandum in support of its motion requesting that the Court issue a temporary restraining order and a preliminary injunction, pursuant to Louisiana Code of Civil Procedure articles 3601 and 3602, enjoining defendants Decatur Realty Corporation ("Decatur") and Sidney Bach ("Mr. Bach") (collectively, the "Defendants") from (a) renewing the lease of the parking property located at 519 Conti Street, New Orleans, Louisiana to 519 Conti Street, Ltd. ("519 Conti"), an entity owned and controlled by Mr. Bach; and/or (b) making any alterations to or destroying any of Decatur's books and records presently in the possession or control of Defendants.

Louisiana Code of Civil Procedure article 3601 specifically empowers the Court with the authority to issue a temporary restraining order and an injunction as requested by Plaintiff. Louisiana jurisprudence does not require a showing of irreparable harm where, as here, the movant is seeking to enjoin a party from committing an unlawful act. The lease renewal would be an unlawful act in that it would be a clear breach of Mr. Bach's fiduciary duties to Decatur and its shareholders and would constitute unlawful self-dealing; the alteration of corporate books and records would constitute a breach of Mr. Bach's fiduciary duties to Decatur and its shareholders and violate the corporation's statutory obligations to maintain such books and records and make them available for shareholder review. Thus, these actions should be enjoined even absent a showing of irreparable harm. While Louisiana law does not require Plaintiffs to

prove irreparable harm to seek the injunction in this case, Decatur and Plaintiff, its 40.56 percent shareholder, will in fact suffer irreparable harm if Defendants are not enjoined from engaging in self-dealing by renewing the lease on the Parking Property and altering or destroying any of Decatur's books and records presently in Defendants' possession or control.

Greater injury will be inflicted upon Plaintiff by the denial of preliminary injunctive relief than would be inflicted upon the defendants by granting such relief. With respect to the lease renewal, Plaintiff is Decatur's sole minority shareholder, owning 40.56 percent of the corporation, and would be subjected to the expense of lengthy and costly litigation to undo a transaction that was illegal and improper from the start. With respect to the alteration of books and records, the preliminary injunctive relief sought herein will protect Plaintiff's rights to review the books and records and will inflict no injury on the Defendants, who are lawfully required to maintain such books and records. The issuance of the injunctive relief sought by Plaintiff herein will conserve judicial resources. At a minimum, a temporary restraining order will give this Court time to decide whether the transactions contemplated by the Defendants are lawful and/or reasonable.

FACTUAL BACKGROUND

Decatur owns two real estate assets: a building located at 413-15 Decatur Street, New Orleans, Louisiana (the "Building") and a parking property located at 519 Conti Street, New Orleans, Louisiana (the "Parking Property") (collectively, the "Decatur Properties"). Plaintiff is a 40.56 percent shareholder in Decatur. Plaintiff's shares were purchased on October 22, 2012 from the Succession of Dorothy Shaumburger (the "Succession"). Mr. Bach owns the remaining 59.44 percent of shares in Decatur. Decatur previously had two directors and officers: Mr. Bach and his wife, Patricia Bach ("Mrs. Bach"). Mr. Bach served as Director and President, and Mrs. Bach served as Director and Vice-President/Secretary. Upon information and belief, Mrs. Bach resigned from her position as Director in December 2012, leaving Mr. Bach as the sole Director.

Upon information and belief, Decatur leases the Parking Property to a corporation called 519 Conti, of which Mr. Bach is the sole shareholder and Director. Upon information and belief, 519 Conti has leased the Parking Property for almost ten years at a purported monthly rent of \$2,000 per month – a rate significantly below market value. Plaintiff lacks information regarding any terms of the lease other than the purported rent because Decatur has not provided Plaintiff with a copy of the current lease and/or proposed renewal terms, despite its requests. In

correspondence dated October 30, 2012, Mr. Ducote, through his company KD Gretna, offered Decatur, through its President Mr. Bach, \$4,000 per month to lease the Parking Property – twice the purported current rent paid by 519 Conti. Mr. Bach rejected this offer.

The current lease of the Parking Property advances Mr. Bach's own personal financial interests rather than the interests of Decatur and its shareholders. Because the Parking Property is leased to Mr. Bach's own company for less than market value, Mr. Bach alone derives all benefits from the Parking Property rather than sharing such benefits with Plaintiff as Decatur's 40.56 percent shareholder. Mr. Bach also receives tax advantages through the lease arrangement. Because Decatur is a C corporation and 519 Conti an S corporation, the lease allows Mr. Bach to convert the revenue from the Parking Property to subchapter S income, which is taxed only at Mr. Bach's personal rate, rather than being taxed first at Decatur's C corporation rate and then again at Mr. Bach's personal rate as a dividend.

On October 1, 2012, Mr. Bach sent to the Succession a *Notice of Annual Shareholders' Meeting* for Decatur to be held on October 24, 2012 (the "October Shareholders' Meeting"), which provided a list of items to be discussed and/or voted upon at the October Shareholders' Meeting. *See Exhibit 1* to the Verified Petition for Preliminary and Permanent Injunction (the "Verified Petition"). One such item was:

To authorize the President of the Corporation to renew the current lease for the operation of its Conti Street parking lot for a period of one (1) year, subject to the right of the Corporation to cancel that lease upon giving a 30-day notice to the lessee in the event of a change in the ownership of the Corporation's 60% majority shareholder interest[.]

The agenda was provided to Plaintiff upon purchase of the Succession's shares of Decatur. The October Shareholders' Meeting was rescheduled for and held on October 23, 2012 in New Orleans, Louisiana. Present were Mr. Bach, Mrs. Bach, Mr. Ducote, and Ms. Bernard (a manager of KD Gretna). At the meeting, a motion was made to authorize renewal of the lease of the Parking Property to 519 Conti, at its current rate of \$2,000 per month. Mr. Ducote objected to the lease renewal. A vote on the motion was deferred until a future meeting. *See Verified Petition, Exhibit 2.*

On December 3, 2012, Mr. Bach sent to Mr. Ducote a *Notice of Special Meeting of Shareholders*. The notice stated that a special meeting of the shareholders of Decatur would be held on December 17, 2012 in New Orleans, Louisiana in order to "elect a Director of the Corporation" (the "December Shareholders' Meeting"). *See Exhibit 3* hereto. Plaintiff received

the written notice on December 4, 2012. On December 5, 2012, Plaintiff informed counsel for Mr. Bach and Decatur that a shareholder's meeting would not be necessary if the only purpose was to elect Mr. Bach as the sole director of Decatur. On December 7, 2012, Plaintiff requested that a shareholders' meeting be held during the week of December 10, 2012, or if the week of December 10 was not convenient, on December 17, 2012 as originally scheduled, and that all deferred items from the October meeting be added to the agenda for the December meeting, including (among other items) the renewal of the lease on the Parking Property. *See Exhibit 4* hereto. On December 10, 2012, Mr. Ducote received a letter from counsel for Mr. Bach and Decatur stating that "[t]he Notice of the shareholders meeting on December 17, 2012, has, as its sole purpose, the election of a director for the Corporation. Sidney [Bach] and I are willing to meet with you and your attorney after the meeting to address the other items contained in your memo." *See Verified Petition, Exhibit 5.*

Mr. Bach is currently the President and sole Director of Decatur, and upon information and belief, he will continue to be the President and sole Director of Decatur after the December Shareholders' Meeting. Thus, he has the ability to unilaterally renew the lease of the Parking Property to 519 Conti. Upon information and belief, he intends to do so prior to or immediately following the December Shareholders' Meeting.

Prior to Plaintiff's purchase of the Succession's shares in Decatur, notwithstanding requests by the Succession, Decatur, acting through Mr. Bach, its President and Director, failed to provide the Succession with all of the corporation's required books and records but rather provided the Succession only with tax returns for certain years, as well as limited data regarding purported cash in the bank and proposed distributions. The Succession provided Plaintiff with copies of this limited set of documents when Plaintiff purchased the Succession's shares in Decatur. Between October 2012 and the present, Plaintiff has made numerous oral and written requests to review Decatur's books and records. Plaintiff has specifically requested copies of the existing books and accounting records of Decatur, along with its current and proposed leases and insurance policies for both the Building and the Parking Property. Decatur, through its counsel, has denied Plaintiff's requests.

LAW AND ARGUMENT

Under Louisiana law, it is well-settled that, "[a] showing of irreparable injury is not necessary... when the conduct sought to be restrained is unconstitutional or unlawful, *i.e.*, when

the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or violation of a constitutional right.” *Barlow v. Town of Waterproof*, 45, 211, p. 7 (La. App. 3d Cir. 5/19/10), 39 So.3d 768, 773 (citing *Jurisich v. Jenkins*, 99–0076 (La.10/19/99), 749 So.2d 597); *see also Louisiana State Bar Ass’n v. Carr and Associates, Inc.*, 08-2114, p. 11-12 (La. App. 1 Cir. 5/8/09), 15 So.3d 158, 167 (noting that “Louisiana jurisprudence is replete with examples of a plaintiff requesting injunctive relief in order to prohibit a defendant from engaging in unlawful behavior...” and that in such cases, “[a] plaintiff is entitled to injunctive relief without the requisite showing of irreparable injury”) (listing such examples at fn. 7).

As an officer and director of Decatur, Mr. Bach owes fiduciary duties to Decatur and its shareholders. La. Rev. Stat. § 12:91 (“Section 91”). Section 91 provides, in pertinent part:

A. Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and its shareholders, and shall discharge the duties of their respective positions in good faith, and with that diligence, care, judgment, and skill which ordinary prudent men would exercise under similar circumstances in like positions; however, a director or officer shall not be held personally liable to the corporation or the shareholders thereof for monetary damages unless the director or officer acted in a grossly negligent manner as defined in Subsection B of this Section, or engaged in conduct which demonstrates a greater disregard of the duty of care than gross negligence, including but not limited to intentional tortious conduct or intentional breach of his duty of loyalty...

(emphasis added). Under Section 91, “gross negligence” is defined as “a reckless disregard of or a carelessness amounting to **indifference to the best interests of the corporation or the shareholders thereof.**” La. Rev. Stat. §12:91(B) (emphasis added). Importantly, the fiduciary duties of a corporation’s directors and officers are owed to all of its shareholders, including its minority shareholder(s). *See, e.g., Hirsch v. Cahn Elec. Co., Inc.*, 29,327 (La. App. 2 Cir. 5/9/97), 694 So. 2d 636, 642, *writ denied*, 97-1561 La. 10/3/97, 701 So. 2d 200 (in the context of a shareholder derivative action brought by a minority shareholder of a closely held corporation, recognizing that officers and directors had fiduciary duties to the corporation and the minority shareholder).

While not “all contract[s] or transaction[s] between a corporation and one or more of its directors or officers, or between a corporation and any other business... in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason[.]” such transactions *are* unlawful if they are not “fair as to the corporation as of the time it was authorized, approved or ratified[.]” La. Rev. Stat. § 12:84(A)(3).

A transaction between a corporation and one of its directors or officers “must be a good faith transaction, negotiated and confected at arms length[,]” and “[t]he fiduciary cannot take advantage of his position for his personal benefit to the detriment of the corporation or its shareholders.” *Spruiell v. Ludwig*, 568 So. 2d 133, 141 (La. Ct. App. 1990), *writ denied*, 573 So. 2d 1117 (La. 1991). Further, the fiduciary bears the burden of proving his good faith in entering into the transaction as well as the inherent fairness to the corporation. *Id.* (citing cases).

Here, Mr. Bach is the sole Director and officer of Decatur. The current lease of the Parking Property to 519 Conti advances Mr. Bach’s personal financial interests rather than the interests of Decatur and its shareholders. Because the Parking Property is leased to Mr. Bach’s own company for less than market value, Mr. Bach alone derives all benefits from the Parking Property rather than sharing such benefits with Plaintiff as Decatur’s 40.56 percent shareholder. Mr. Bach also receives tax advantages through the lease arrangement as outlined above. The renewal of that lease would likewise take advantage of Mr. Bach’s position as Decatur’s sole officer and Director for his own personal benefit.¹ Thus, Mr. Bach’s intended renewal of the lease on the Parking Property constitutes unlawful self dealing and a clear breach of his fiduciary duties to Decatur and its shareholders under Louisiana Revised Statutes sections 12:84 and 12:91.

In addition, any actions taken to alter and/or destroy any books or records of Decatur would violate Mr. Bach’s fiduciary duties to the corporation, La. Rev. Stat. § 12:91, as well as the statutory requirement that all corporations keep certain books and records and make them available for review by the corporation’s shareholders. Louisiana Revised Statute § 12:103 provides that “[e]very corporation *shall* keep at its registered office, or at its principal place of business in or outside of this state” certain books and records, which the courts have held includes the general ledger; cash journal of all receipts and deposits; cash journal of all disbursements showing the individual or corporation to whom funds were disbursed and the amount of disbursement; each unaudited quarterly financial statement reflecting revenues, their sources, and expenses; each audited financial statement; records of all proceedings of shareholders, directors and committees of the board including minutes, share register book, and all corporate records; and State and Federal tax returns. *See* La. Rev. Stat. § 12:103 and *Ales v.*

¹ The current lease and proposed renewal may also be unfair to Decatur and its shareholders in other ways – for example, by offering a right of first refusal to another entity owned and controlled by Mr. Bach. However, Plaintiff lacks information regarding any terms of the lease other than the purported rent because Decatur has not provided Plaintiff with a copy of the current lease and/or proposed renewal terms, despite its request.

Sewell, 2000-2017 (La. App. 4 Cir. 10/17/01), 800 So. 2d 36, 43 (citing *Matherne v. Heffron*, 496 So.2d 446, 448 (La. App. 1 Cir.1986)).

In circumstances such as those presented here, injunctive relief is appropriate even in the absence of irreparable harm. *See Barlow*, So.3d at 773; *Louisiana State Bar Ass'n*, 15 So.3d at 167. Mr. Bach's intention to renew the lease on the Parking Property to his own company at less than market value to advance his own financial interest constitutes blatant self-dealing and breach of his fiduciary duties to Decatur and its shareholders. Further, any actions taken to alter or destroy Decatur's books and records would breach Mr. Bach's fiduciary duties and would violate the statutory requirement that such books and records be maintained and made available to Decatur's shareholders. Mr. Bach's directives as a director and officer of Decatur are clear, and his fiduciary obligations under the law are equally clear: he must act to advance the best interests of the corporation and its shareholders rather than his own financial interests. His directives under the statute requiring retention of corporate books and records are equally clear. Permitting him to renew the lease on the Parking Property or alter Decatur's books and records would allow him to encroach directly upon those obligations. Thus, Plaintiff's request for injunctive relief should be granted.

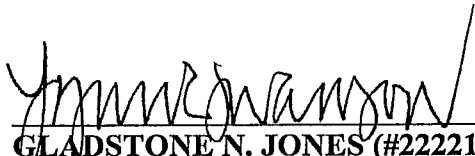
While it is not necessary for Plaintiff to show irreparable harm in this case, the actions Plaintiff seeks to enjoin would in fact cause irreparable harm to Decatur and to Plaintiff in its capacity as 40.56 percent shareholder in Decatur. First, renewing the lease of the Parking Property to 519 Conti, an entity owned and controlled by Mr. Bach, would cause irreparable injury to Decatur and to Plaintiff by placing an encumbrance on the Parking Property that is not in the best interest of Decatur and its shareholders. Further, any alterations to or destruction of Decatur's books and records would cause irreparable injury to Decatur as a corporation, as well as to Plaintiff, who would be permanently denied access to Decatur's complete and accurate books and records.

CONCLUSION

For the reasons addressed above, Plaintiff respectfully submits that this Court should enter an immediate temporary restraining order and further order defendants Decatur Realty Corporation and Sidney Bach to show cause why a preliminary injunction should not issue enjoining Decatur Realty Corporation from: (a) renewing the lease of the Parking Property to 519 Conti; and/or (b) making any alterations to or destroying any of Decatur's books and records

presently in the possession or control of Defendants.

Respectfully submitted,


GLADSTONE N. JONES (#22221), T.A.
LYNN SWANSON (#22650)
KERRY MURPHY (#31382)
JONES, SWANSON, HUDDALL &
GARRISON, L.L.C.
601 Poydras Street, Suite 2655
New Orleans, Louisiana 70130
Telephone: (504) 523-2500
Telecopier: (504) 523-2508

SHERIFF PLEASE SERVE:

Decatur Realty Corporation
Through its agent for service of process:
Crescent City Corporate Services, L.L.C.
701 Poydras St., Ste. 3600
New Orleans, LA 70139-7735

WILL SERVE VIA LONG ARM STATUTE

Sidney Bach
President
Decatur Realty Corporation
425 Kimberly Ave.
Asheville, NC 28804

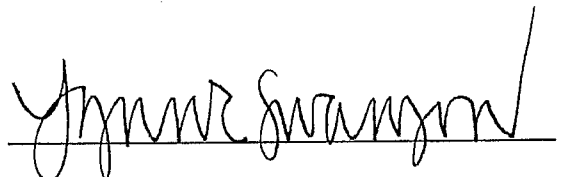
CERTIFICATE OF SERVICE

I hereby certify that I have requested sheriff service of the foregoing upon Decatur Realty Corporation via its agent for service of process, this 12th day of December, 2012.

I further hereby certify that I will serve the foregoing upon Sidney Bach in accordance with the Louisiana Long Arm Statute, La. R.S. § 13:3201, et seq., by depositing a certified copy of the foregoing in the United States mail, postage prepaid, via certified mail addressed to Sidney Bach at his home address, 425 Kimberly Ave., Asheville, NC 28804, this 12th day of December, 2012.

Finally, I hereby certify that the foregoing has been served upon the following known counsel for Decatur Realty Corporation and Sidney Bach by electronic mail and U.S. Mail, this 12th day of December, 2012.

Mark S. Stein
One Shell Square
701 Poydras St., Ste. 3600
New Orleans, Louisiana 70139



STATE OF LOUISIANA

NO.:

200-11563

SECTION "___"

KD GREтна PROPERTIES, L.L.C.

versus

DECATUR REALTY CORP. AND SIDNEY BACH

FILED

2012 DEC 12 P 3:12

CIVIL
DISTRICT COURT
DIVISION "___"

1712

FILED: _____

DEPUTY CLERK

TEMPORARY RESTRAINING ORDER AND RULE TO SHOW CAUSE

CONSIDERING THE FOREGOING Motion for Temporary Restraining Order and Preliminary Injunction, filed on behalf of KD Gretna Properties, L.L.C. ("Plaintiff") in its capacity as shareholder of Decatur Realty Corporation ("Decatur"), and for the reasons stated therein:

IT IS ORDERED that Defendants, Decatur and Sidney Bach, refrain from taking the following actions for _____ days from the date of this Order:

- (a) renewing the lease of the parking property located at 519 Conti Street, New Orleans, Louisiana to 519 Conti Street, Ltd.; and
- (b) making any alterations to Decatur's books and records and/or destroying any such records presently in the possession of Defendants.

IT IS FURTHER ORDERED that Defendants show cause on the _____ day of _____, 201__ at _____ a.m./p.m. why Plaintiff's temporary restraining order should not continue and a preliminary injunction should not issue enjoining Defendants from taking any of the above-listed actions.

New Orleans, Louisiana, this _____ day of December, 2012.

DISTRICT JUDGE