

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

HEIMANN VENTURES, LLC, a Nebraska
limited liability company, NICHOLAS
HEIMANN, and LORI HEIMANN,

Plaintiffs,

vs.

ROBERT D. HAMPTON and HampTAB II, LLC,
a Nebraska limited liability company,

Defendants.

CASE NO. CI 21-_____

COMPLAINT

COME NOW Heimann Ventures, LLC, a Nebraska limited liability company, Nicholas Heimann and Lori Heimann (“Plaintiffs”), by and through their attorneys, Daniel J. Epstein and Joel M. Carney of Goosmann Law Firm, PLC, and for Plaintiffs’ Complaint against Defendants, Robert D. Hampton and HampTAB II, LLC (“Defendants”), hereby state and allege as follows:

1. Plaintiff Heimann Ventures, LLC is a Nebraska limited liability company with its principal place of business in Omaha, Douglas County, Nebraska.
2. Plaintiffs Nicholas Heimann and Lori Heimann are residents of Sarpy County, Nebraska.
3. Plaintiffs Nicholas Heimann and Lori Heimann are the two members of Heimann Ventures, LLC.
4. Defendant Robert D. Hampton is a resident of Nebraska.
5. Defendant HampTAB II, LLC is a Nebraska limited liability company with its principal place of business in Omaha, Douglas County, Nebraska.

6. Defendant Robert D. Hampton is the sole Member of Defendant HampTAB II, LLC.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to Neb. Rev. Stat. §§ 24-302 and 25-536.

8. Venue is appropriate in Douglas County pursuant to Neb. Rev. Stat. § 25-403.01(1-3) since it is a county where a defendant resides, is the county where the cause of action arose and is the county where the transaction or some part of the transaction occurred out of which the cause of action arose.

ALLEGATIONS

9. Flatwater Lake Estates, LLC is a Nebraska limited liability company with its principal place of business in Douglas County, Nebraska (hereinafter “Flatwater Lake Estates”).

10. On April 8, 2021, Flatwater Lake Estates was formed by Plaintiffs and Defendants.

11. Flatwater Lake Estates’ purpose was to purchase and develop land near Valley, Nebraska, for a residential community.

12. Flatwater Lake Estates has two members, HampTAB II LLC and Heimann Ventures LLC, each owning 50% of the membership units in Flatwater Lake Estates.

13. Flatwater Lake Estates has two managers, HampTAB II LLC and Heimann Ventures LLC.

14. On or about April 8, 2021, Flatwater Lake Estates purchased property near Valley, Nebraska for the development of a residential community (hereinafter “Property”).

15. In making Capital Contributions to Flatwater Lake Estates, Plaintiffs made initial capital contributions of Two Million Dollars (\$2,000,000).

16. In making Capital contributions to Flatwater Lake Estates, Defendants made initial capital contributions of \$250,000 and “intellectual property” in the value of \$500,000.

17. In furtherance of Flatwater Lake Estates’ purpose, Flatwater Lake Estates retained Groundscapes, Inc. to prepare the Property by excavation and grading so the Property could be suitable for building, divided and sold as lots.

18. Groundscapes has performed excavation and grading on the Property over the last several months in the amount of approximately \$2,666,003.85, which \$1,780,640.07 remains open as of October 31, 2021.

19. Groundscapes has submitted invoices for its work at the Property to Flatwater Lake Estates.

20. Groundscapes has made demands upon Flatwater Lake Estates to pay the Groundscapes invoices.

21. As of the date of this lawsuit, Flatwater Lake Estates refuses to pay the Groundscapes invoices.

22. Pursuant to Section 6.2 of the Operating Agreement, “In the event there is more than one Manager, the rights and powers of the Managers hereunder shall be exercised by them by a majority-in-interest of the Managers; provided any one Manager alone may enter into transactions at values less than \$15,000.00”.

23. The Groundscapes invoices are more than \$15,000.00 and therefore require a majority of the Managers to approve payment for the invoices.

24. Plaintiffs have approved the Groundscapes invoices for payment, but Defendants have refused to approve the invoices for payment.

25. Plaintiffs have requested and demanded Defendants approve the Groundscapes invoices for payment, but Defendants have refused to approve the invoices for payment.

26. Defendants' refusal to approve the Groundscapes invoices threatens the continued existence of the residential development at the Property.

27. Upon information and belief, Defendants have paid for invoices for amounts less than \$15,000.

28. Plaintiffs have made requests for a full accounting for all matters related to Flatwater Lake Estates, but at the time of this lawsuit Defendants have refused to provide full access to the records and books of Flatwater Lake Estates and have failed and refused to provide a full accounting for Flatwater Lake Estates.

29. As late as last week, Plaintiffs have made requests of Defendants to add additional capital contributions to the LLC, but Defendants have refused.

30. Defendants' refusal to approve the Groundscapes invoices threatens the financial stability of the LLC.

31. Defendants' refusal to agree to additional capital contributions threatens the financial stability of the LLC.

32. Plaintiffs and Defendants, as co-managers of Flatwater Lake Estates, are deadlocked in the management of Flatwater Lake Estates.

33. Upon information and belief, Flatwater Lake Estates is incurring expenses and will owe the bank for interests and principal payments related to the purchase of the Property.

34. Defendants continued refusal to agree to additional capital contributions and to pay outstanding invoices threatens the financial stability of Flatwater Lake Estates.

35. Upon information and belief, Defendant Hampton is representing to potential purchasers of lots that there will be a bridge/causeway between Flatwater Lake Estates and a nearby residential development owned by him.

36. The Managers and Members of Flatwater Lake Estates have never approved or authorized the financing or construction of such a bridge/causeway.

37. Defendant Hampton's continued representations to potential purchasers of lots that there will be a bridge/causeway between Flatwater Lake Estates and a nearby residential development owned by him threatens Flatwater Lake Estates in potential future lawsuits by purchasers who may have relied upon these unauthorized representations.

FIRST CAUSE OF ACTION - ACCOUNTING

38. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 37 of the Complaint.

39. The Flatwater Lake Estates Operating Agreement provides in Section 10.1(a) "The Company shall maintain separate books of accounts for the Company which shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of the Company's business in accordance with this Agreement."

40. The Flatwater Lake Estates Operating Agreement provides in Section 10.1(b), in part, “Any Member (subject to reasonable requirements of the Company), at the Member’s own expense and upon reasonable notice and with reasonable frequency, may visit and inspect any of the properties of the Company and examine any information it may reasonably request and make copies of and abstracts from the financial and operating records and books of account of the Company, and discuss the affairs, finances and accounts of the Company with the Manager and the independent accountants of the Company, all at such reasonable times and as often as such Member may reasonably request.”

41. Plaintiffs have made reasonable requests of Defendants to inspect and copy the financial records of Flatwater Lake Estates.

42. Defendants have refused to fully comply with Plaintiffs’ requests to inspect and copy the financial records of Flatwater Lake Estates.

43. Upon information and belief, Defendants have retained bookkeepers to act in place of independent accountants for Flatwater Lake Estates.

WHEREFORE, Plaintiff requests this Court order Defendants to provide full access to all the financial and accounting records of Flatwater Lake Estates.

SECOND CAUSE OF ACTION – DECLARATORY JUDGMENT

44. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 43 of the Complaint.

45. Plaintiffs and Defendants, as the managers of Flatwater Lake Estates, are at a deadlock and an impasse regarding the management of the Company.

46. The Parties cannot agree on the payment of the Landscapes invoices.

47. The Parties cannot agree on additional contributions to Flatwater Lake Estates.

48. The Parties cannot agree on the funding, construction and/or authorization of a bridge/causeway between Flatwater Lake Estates and a nearby residential development owned by Defendant Hampton.

49. The parties are deadlocked and at an impasse on additional items regarding the operations of the Company.

WHEREFORE, Plaintiff requests this Court determine: (1) the Managers of Flatwater Lake Estates are at an impasse and deadlocked; (2) a judicial dissolution is required, and (3) the Court appoint a conservatorship to wind up the business of Flatwater Lake Estates and to make any necessary financial and business decisions in the interest of the Company.

THIRD CAUSE OF ACTION – DECLARATORY JUDGMENT

50. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 49 of the Complaint.

51. The Flatwater Lake Estates Operating Agreement provides in Section 7.5, in part, “Except as otherwise permitted in this Agreement or in the Act, a Member will be deemed to breach this Agreement if such Member (i) interferes in Company management, business, or affairs; ... A Member who breaches this Agreement ... may be expelled and have such Member’s Membership Units in the Company terminated by the Manager.”

52. Defendant HampTAB II, LLC’s refusal to authorize payment of the Groundscapes invoices puts the development at financial peril.

53. Defendant HampTAB II, LLC’s refusal to commit additional Capital Contributions to Flatwater Lake Estates puts the development at financial peril.

54. Defendant HampTAB II, LLC's actions interfere with the Company's management, business, and affairs and threaten the existence and purpose of the Company.

WHEREFORE, Plaintiffs requests this Court determine: (1) Defendant HampTAB II, LLC's actions interfere with the Company's management, business, and affairs; (2) Defendant HampTAB II, LLC's actions are a breach of the Flatwater Lake Estates Operating Agreement; (3) grounds exist to expel Defendant HampTAB II, LLC from Flatwater Lake Estates, and (4) order the remaining Managers to terminate Defendant HampTAB II, LLC's Units in Flatwater Lake Estates.

DATED: November 30, 2021.

HEIMANN VENTURES, LLC., a Nebraska
limited liability company, NICHOLAS
HEIMANN, and LORI HEIMANN, Plaintiffs

By: /s/ Daniel J. Epstein
Daniel J. Epstein, #21939
Joel M. Carney, #21922
GOOSMANN LAW FIRM, PLC
17838 Burke Street, Suite 250
Omaha, NE 68118
Telephone: (402) 280-7648
Email: EpsteinD@GoosmannLaw.com
CarneyJ@GoosmannLaw.com
Attorneys for Plaintiffs