

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT
Case Type: Declaratory Judgment
Court File No. 62-CV-15-1822

Brian L. Kraut,

Plaintiff,

AMENDED COMPLAINT

v.

Perry Phillips, the unknown heirs of Perry Phillips,
and all other persons unknown claiming any
right, title, state, or lien in the real estate
described in the Complaint herein,

Defendant.

Plaintiff, Brian L. Kraut, as and for his Complaint against Defendant state and allege as follows:

1. That this action is brought pursuant to the provisions of Minnesota Statute Chapter 555, Uniform Declaratory Judgment Act.
2. Brian L. Kraut, Plaintiff, is a natural person who resides at 3944 Hoffman Road, White Bear Lake, MN 55110.
3. Perry Phillips, Defendant, is a natural person who resides at 794 McCutcheon Road, Hudson, WI 54016.
4. Plaintiff and Defendant did enter into an oral partnership agreement for the purpose of purchasing and rehabilitating single family homes for resale or lease. The name of the partnership was Metro Home Sales LLC.

5. That based on the communications and representations made by the Defendant, the Plaintiff understood that all properties that he located and later rehabilitated would be placed in the name of the partnership.

6. That the Plaintiff did locate a single family residence located at 679 Maryland Avenue East, City of Saint Paul, County of Ramsey, legally described as follows:

Lot 30 and the West ½ of Lot 31, Block 4, Stone & Morton's Addition

7. That after the partnership acquired the property the Plaintiff obtained all permits from the City of Saint Paul for work done to the property; made improvements to the property; and negotiated and oversaw all subcontractors who were hired by the partnership to make repairs to the property. That once the repairs were completed, he located and negotiated a lease with the tenants to the property.

8. That the Plaintiff then located a second home to be purchased by the partnership. This home would also be rehabilitated then either sold or leased. The second home was located at 749 Maryland Avenue East, City of Saint Paul, County of Ramsey, legally described as follows:

Lot 13, Block 11, Oakville Park, Ramsey County, Minnesota

9. That the purchase price of the property was \$30,000.00. Of that amount, Plaintiff, through his own funds and funds raised from family members, contributed \$29,000.00 towards the purchase price.

10. That after 749 Maryland Avenue East was acquired by the partnership, the Plaintiff made a number of repairs and improvements to the property including, but not limited to, installation of a new concrete slab; installation of a new roof; and installation of a new rear porch.

11. That in addition to advancing \$29,000.00 for the purchase of 749 Maryland Avenue East the Plaintiff has contributed labor in the repair and improvements in both homes with an estimated value of \$14,000.00 and has paid for material and outside labor used in the repair and improvements of both properties in the amount of \$15,500.00.

12. That all revenue generated by both properties has been retained by the Defendant and upon information and belief has been used by the Defendant for his own personal use.

13. That Defendant, on October 16, 2006 did obtain from a Land Mark Community Bank N.A., a line of credit in the original principal amount of \$32,945 and secured said line of credit by granting Land Mark Community Bank a mortgage against 679 Maryland Avenue E., St. Paul, MN.

14. That upon information and belief, Defendant has drawn on the line of credit granted by Land Mark Community Bank and has used the funds for personal purposes and not for partnership purposes.

COUNT 1: DECLARATION OF PARTNERSHIP

Plaintiff reincorporates the preceding paragraphs as if fully set forth herein.

15. That it was the intent of Plaintiff and Defendant to acquire both properties in the name of their partnership known as Metro Home Sales LLC. That all funds contributed by the Plaintiff towards the acquisition, repair and improvement of both properties was provided for the purpose of advancing the interests of the partnership. That all labor provided by the Plaintiff in repairing and improving both properties was provided for the purpose of advancing the interests of the partnership.

16. That by taking title to both properties in his own name the Defendant has breached the terms of the partnership agreement.

17. That Plaintiff requests an order of this Court finding that Metro Home Sales LLC is the fee holder of the property located at 679 Maryland Avenue East, St. Paul, MN and the property located at 749 Maryland Avenue East, St. Paul, MN free and clear of any interest of the Defendant, except for his interest in the partnership known as Metro Home Sales LLC.

COUNT 2: ACCOUNTING

Plaintiff reincorporates the preceding paragraphs as if fully set forth herein.

18. That all rental revenue or sale proceeds received from the renting or sale of the property located at 679 Maryland Avenue East, St. Paul, MN and 749 Maryland Avenue East, St. Paul, MN are the property of the partnership.

19. That as a partner the Plaintiff is entitled to an accounting from the Defendant of any and all revenue generated by the properties that have come into the hands of and retained by the Defendant.

20. Plaintiff requests an order of the Court ordering the Defendant to provide the Plaintiff with an accounting of all revenue generated by the properties, either from sale or lease, as well as an accounting of all costs, including by not limited to, real estate taxes and insurance incurred in operating the properties.

COUNT 3: UNJUST ENRICHMENT

Plaintiff reincorporates the preceding paragraphs as if fully set forth herein.

21. That Defendant has taken mortgages out against both properties and has retained all loan proceeds for his personal use. That upon information and belief Defendant has retained all rent and sales revenue generated by the properties for his own personal use.

22. That by retaining both the loan proceeds and revenue generated by the properties for his own personal use, the Defendant has unjustly enriched himself in excess of \$58,500.00.

23. That Plaintiff is entitled to judgment against Defendant in the amount in excess of \$58,500.00 as a result of Defendants unjust enrichment, together with all other incidental and consequential damage suffered by Plaintiff, and including interest, costs, disbursements and attorney's fees.

COUNT 4: EXPULSION OF A PARTNER

Plaintiff reincorporates the preceding paragraphs as if fully set forth herein.

24. That Minn. Stat. 323A.0404(b) imposes on a partner a duty of loyalty to the partnership which includes accounting to the partnership and holding all partnership property and profits as trustee on behalf of the partnership.

25. That Minn. Stat. 323A.0601 states: "A partner is dissociated from a partnership upon the occurrence of any of the following events:

(5) On application by the partnership and other partner, the partners expulsion by judicial determination because: ... (ii) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 323A.0404...

26. That Defendant, by his use of partnership assets to secure loans for his only personal benefit, and by retaining rents collected from leases of partnership property, has willfully and persistently breached the partnership agreement as well as his duties owed to the partnership. That said breaches represent materially breaches to the partnership agreement and the duties owed to the partnership.

27. That Plaintiff seeks an order of the court expelling Defendant from the partnership and permanently enjoining Defendant from exercising any of the power and authority granted

individuals who are partners in a partnership. This would include, but not be limited to, entering into any contract involving or affecting an asset of the partnership.

WHEREFORE, Plaintiff, Brian L. Kraut, prays for judgment of the Court as follows:

- 1. An order of this Court finding that Plaintiff and Defendant have entered a partnership entitled Metro Home Sales, LLC and that Plaintiff is the owner and holder of a 50% interest in said partnership, with Defendant being the owner and holder of the remaining 50% interest in said partnership;**
- 2. For an order determining adjudging and decreeing that Metro Home Sales, LLC is the owner and fee holder of real property located in the County of Ramsey, State of Minnesota, legally described as follows:

Lot 30 and the West ½ of Lot 31, Block 4, Stone & Morton's Addition

Plot 13, Block 11, Oakville Park, Ramsey County, Minnesota

That the Defendant has no right, title, interest, estate or lien in or upon said real property other than his interest as a partner of Metro Home Sales, LLC;**
- 3. For an order directing for the Defendant to provide Plaintiff with a complete accounting of all revenue received by the Defendant from the leasing or sale of the real property set forth above, as well as an accounting of all loan proceeds received by Defendant from loans which pledged the above described real property as security for said loans;**
- 4. Expelling Defendant as a partner of Metro Home Sales, LLC;**
- 5. For an order permanently enjoining Defendant, Perry Phillips, from exercising any power or authority as partner of Metro Home Sales, LLC, including, but not limited to, entering into any contract involving or affecting an asset of Metro Home Sales, LLC;**

6. For costs, disbursements and attorney's fees; and
7. For such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

KELLY & LEMMONS, P.A.

Dated: July 15, 2015



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Attorneys for Plaintiff

**ACKNOWLEDGMENT REQUIRED BY
MINNESOTA STATUTE, SECTION 549.211, SUBDIVISION 2**

The undersigned hereby acknowledges that pursuant to Minnesota Statute, section 549.211, subdivision 2, costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass or commit a fraud upon the Court.



Chad D. Lemmons

Dated this 15 day of July, 2015