

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

SCHULTZ REAL ESTATE DEV, LLC,)
a Missouri limited liability company,)

Case ID: _____

Plaintiff,)

v.)

NEBRASKA CROSSING LLC,)
a Nebraska limited liability company,)
NEBRASKA CROSSING MANAGEMENT)
COMPANY, LLC, a Nebraska limited liability)
company, GRETNA CROSSING, L.L.C., a)
Nebraska limited liability company, OMAHA)
OUTLETS, LLC, a Nebraska limited liability)
company, CENTURY DEVELOPMENT)
COMPANY, L.L.C., a Nebraska limited)
liability company, CROSSROADS VILLAGE,)
LLC, a Nebraska limited liability company,)
CROSSROADS MALL, LLC, a Nebraska)
limited liability company, MAIN STREET)
PARTNERS, LLC, a Nebraska limited liability)
company, OTB DESTINATION, LLC, an)
Arizona limited liability company, OTB)
ARIZONA, LLC, an Arizona limited liability)
company, FRANK R. KREJCI, and RODNEY)
YATES,)

COMPLAINT

Defendants.)

Plaintiff, Schultz Real Estate Dev, LLC, for its claims against Defendants states and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Schultz Real Estate Dev, LLC, is a Missouri limited liability company with its principal place of business in Prairie Village, Kansas.

2. Plaintiff's sole member, William A. Schultz, is a real estate broker licensed in the states of Nebraska, Kansas and Missouri.

3. Upon information and belief, Defendant Nebraska Crossing LLC (“Nebraska Crossing”) is a Nebraska limited liability company with its principal place of business and registered office located in Omaha, Douglas County, Nebraska.

4. Upon information and belief, Defendant Nebraska Crossing Management Company, LLC (“Nebraska Crossing Management”) is a Nebraska limited liability company with its principal place of business and registered office located in Omaha, Douglas County, Nebraska.

5. Upon information and belief, Defendant Gretna Crossing, L.L.C. (“Gretna Crossing”) is a Nebraska limited liability company with its principal place of business and registered office located in Omaha, Douglas County, Nebraska.

6. Upon information and belief, Defendant Omaha Outlets, LLC (“Omaha Outlets”) is a Nebraska limited liability company with its principal place of business located in Omaha, Douglas County, Nebraska.

7. Upon information and belief, Defendant Century Development Company, L.L.C. (“Century Development”) is a Nebraska limited liability company with its principal place of business and registered office located in Omaha, Douglas County, Nebraska.

8. Upon information and belief, Defendant Crossroads Village, LLC (“Crossroads Village”) is a Nebraska limited liability company with its principal place of business and registered office located in Gretna, Sarpy County, Nebraska.

9. Upon information and belief, Defendant Crossroads Mall, LLC (“Crossroads Mall”) is a Nebraska limited liability company with its principal place of business and registered office located in Omaha, Douglas County, Nebraska.

10. Upon information and belief, Defendant Main Street Partners, LLC (“Main Street Partners”) is a Nebraska limited liability company with its principal place of business and registered office located in Omaha, Douglas County, Nebraska.

11. Upon information and belief, Defendant OTB Destination, LLC (“OTB Destination”) is an Arizona limited liability company that transacts business in Nebraska.

12. Upon information and belief, Defendant OTB Arizona, LLC (“OTB Arizona”) is an Arizona limited liability company that transacts business in Nebraska.

13. Upon information and belief, Frank R. Krejci is a resident of Omaha, Douglas County, Nebraska.

14. Upon information and belief, Frank R. Krejci has an ownership interest in and the power to bind Nebraska Crossing, Nebraska Crossing Management, Gretna Crossing, Omaha Outlets, Century Development, Crossroads Mall, and Main Street Partners.

15. Upon information and belief, Rodney Yates is a resident of Utah who transacts business in Nebraska.

16. Upon information and belief, Rodney Yates has an ownership interest in and the power to bind Nebraska Crossing, Nebraska Crossing Management, Omaha Outlets, Crossroads Village, OTB Destination, and OTB Arizona.

17. Upon information and belief, Rodney Yates, Frank Krejci, and their various entities, Nebraska Crossing, Nebraska Crossing Management, Gretna Crossing, Omaha Outlets, Century Development, Crossroads Village, Crossroads Mall, Main Street Partners, OTB Destination, and OTB Arizona (the “Defendant Companies”), at all times relevant to this action were acting in concert, in a joint business enterprise for the purpose of developing the Nebraska

Crossing Outlets Mall in Gretna, Nebraska, and develop the Crossroads Mall in Omaha, Nebraska.

18. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-403.01(1), (2) and (3).

GENERAL ALLEGATIONS

19. On or about August 8, 2012, Plaintiff formally entered into an agreement with Rodney Yates, acting on behalf of the joint enterprise, to provide management services on an ongoing basis (the “Agreement”) for the benefit of the Defendants.

20. The Agreement was not for a defined duration, and Defendants or Plaintiff were free to terminate the Agreement at any time, with or without cause.

21. The Agreement, in part, was that Plaintiff would be paid a monthly fee (“Project Management Fee”) to provided management services on behalf of the joint enterprise to Nebraska Crossing LLC, Gretna Crossing LLC, OTB Destination LLC, Omaha Outlets LLC, and Nebraska Crossing Management LLC.

22. Plaintiff provided management services pursuant to the Agreement from March 2013 to August 2016.

23. Plaintiff received partial Project Management Fee payments from Defendants for management services provided from March 2013 through October 2015, but has not received any Project Management Fee payment from Defendants since October of 2015.

24. The Agreement also provided that Plaintiff would be paid a fee for each commercial lease agreement (“Lease Fee”) Plaintiff negotiated at the Nebraska Crossing Outlet Mall in Gretna, Nebraska and the Crossroads Mall Redevelopment Project in Omaha, Nebraska.

25. Plaintiff received partial Lease Fee payments from Defendants, but has not received payments for all the leases Plaintiff negotiated at Nebraska Crossing Outlet Mall in Gretna, Nebraska and the Crossroads Mall Redevelopment Project in Omaha, Nebraska.

26. In addition to the Lease Fee, and Management Fee, Plaintiff was directed by Rodney Yates and/or Frank Krejci to render additional specialized and valuable real estate development, business, and broker services to the Defendants from January 2012 until July 2016, including, but not limited to, the following services:

a. Negotiation and implementation of the 135-page Nebraska Crossing Redevelopment Agreement with the City of Gretna (the “Redevelopment Agreement”) at the direction of Rodney Yates and Frank Krejci from the summer of 2012 until April 2013 for the benefit of Nebraska Crossing LLC, OTB Destination LLC, Gretna Crossing LLC, Rodney Yates and Frank Krejci (collectively referred to herein as the “Nebraska Crossing Owners”);

i. More specifically, Plaintiff provided input, detailed analysis, and strategies to the Nebraska Crossing Owners in connection with the negotiation of the Redevelopment Agreement and other related documents. Plaintiff reviewed and analyzed multitudes of documents relating to the preparation and negotiation of the Redevelopment Agreement on behalf of the Nebraska Crossing Owners. Plaintiff, acting as the Nebraska Crossing Owners’ representative, directly communicated on a regular basis with city attorneys, city staff, city financial and engineering advisors, Owners’ financial advisors, Owners’ attorneys and Owners’ engineering and architectural professionals. Plaintiff further

assisted Owners with the implementation and performance of the Redevelopment Agreement and supporting documentation.

- b. Preparation of submissions to the City of Gretna at the direction of Rodney Yates and Frank Krejci from April 2013 through September 2015 for the benefit of the Nebraska Crossing Owners;
 - i. For example, Plaintiff provided detailed input and analysis of eligible expenses for Tax Increment Financing, LB562 Occupational Tax and LB1018 City Tax Rebates on a quarterly basis to the City of Gretna for review and payment. Plaintiff's services included, but were not limited to, analyzing and categorizing invoices to reconcile amounts, drafting and preparing acceptable submissions to the City of Gretna on behalf of the Nebraska Crossing Owners for review and approval, and participating in meetings with city officials for their review and approval.
- c. Negotiation and implementation of Multiple Loan Applications at the direction of Rodney Yates and Frank Krejci for the benefit of the Nebraska Crossing Owners;
 - i. More specifically, from the summer of 2013 through June 2016, Plaintiff provided input, detailed analysis, strategy to the Nebraska Crossing Owners on not less than seven (7) separate loan applications. Plaintiff's activities included participating in weekly calls, meeting with Nebraska Crossing Owners' financial advisors, gathering and analyzing supporting documentation for submission, negotiating directly with the banks on behalf of the Nebraska Crossing Owners, reviewing and providing

feedback on the loan documents, and coordinating the implementation of loan documents.

- d. Negotiation and acquisition of Sale Packages and Purchase Proposals at the direction of Rodney Yates for the benefit of the Nebraska Crossing Owners;
 - i. For example, from 2013 through 2016, Plaintiff participated in several meetings and site-tours with potential purchasers. Some meetings even required out-of-town travel. Plaintiff was involved in preparing, drafting and reviewing documentation on various purchase proposals. Plaintiff further provided input, detailed analysis and documentation review on two separate sale package offerings from January 2015 to June 2016.
- e. Coordination and resolution of Financial Audit and Partnership Issues at the direction of Rodney Yates for the benefit of the Nebraska Crossing Owners;
 - i. More specifically, Plaintiff provided detailed input and organized and compiled supporting documentation for audits performed in 2013 and 2014. Plaintiff participated in numerous meetings with auditors, Rodney Yates and other staff members, where Plaintiff provided documentation and analysis. Plaintiff also coordinated resolutions to partnership issues between Rodney Yates and Frank Krejci involving partnership operating agreements, dealings with employees and employee relations, vendors, lenders, and advisors from 2013 through June 2016.
- f. Negotiation of the Redevelopment Agreement with the City of Omaha and Crossroads Village LLC at the direction of Rodney Yates for the benefit of Crossroads Village LLC, Crossroads Mall LLC, Main Street Partners, LLC,

Rodney Yates and Frank Krejci (collectively referred to herein as the “Crossroads Owners”);

- i. More specifically, from Spring 2013 to June 2016, Plaintiff provided input, detailed analyses, strategy, coordination and documentation on Redevelopment Agreement and supporting issues and documentation. These services also included numerous telephone conferences and meetings, numerous analyses, applications, documentation and review thereof. Plaintiff, acting as a representative of the Crossroads Owners, directly communicated with city attorneys, city staff, professional advisors for city as well as the Crossroads Owner’s financial advisors, bankers and engineering and architect professionals on a regular basis.
- g. Negotiation and consummation of the Baer R E Holdings LLC acquisition at the direction of Rodney Yates and Frank Krejci for the benefit of the Crossroads Owners;
 - i. For example, from 2012 to 2014, Plaintiff provided support, strategy, documentation creation and review, performed in depth historical title research and review, provided direction, negotiation and successful resolution of Hobby Lobby Issue which lead to successful closing of Main Street Partners LLC acquisition of Baer R E Holdings real estate leasehold.
- h. Preparation for the Heritage Plaza Shopping Center acquisition by Crossroads Village LLC at the direction of Rodney Yates for the benefit of the Crossroads Owners and Century Development;

- i. More specifically, from 2013 to 2015, Plaintiff provided support, detailed analyses, contract preparation and review thereof. Plaintiff assisted the Crossroads Owners and Century Development in conducting due diligence for the Heritage Plaza purchase attempts and appraisal.
- i. Participation in legislative initiatives at the direction of Rodney Yates for the benefit of the Crossroads Owners;
 - i. Plaintiff provided support, analyses, documentation input and review regarding several legislative attempts intended to benefit the Crossroads Owners. Plaintiff participated in meetings and telephone conferences and communicated directly with lobbyists, lawyers, politicians and advisors on behalf of the Crossroads Owners.
- j. Negotiation and review of multiple contracts relating to vendors, hotel applications, the Sears buyout, the JV activities and lender requests at the direction of Rodney Yates for the benefit of the Crossroads Owners;
 - i. More specifically, from 2013 to June of 2016, Plaintiff prepared numerous documents, conducted multiple analyses, and negotiated different agreements for architects, engineers, hotel applications, OEA reviews, tax increment financing applications, Sears buyout strategy, documentation and review on behalf of the Crossroads Owners. Plaintiff further provided strategy, analyses, and documentation of JV activities including the Alberta Development, Kiewit Companies and others.
- k. Preparation and performance of various financial analyses at the direction of Rodney Yates for the benefit of the Crossroads Owners;

- i. For example, Plaintiff provided support, detailed input, and strategy in the preparation of multitudes of financial analyses at different stages for the overall project and separate components. Plaintiff also generated numerous reports and analyses for lenders such as Union Bank and Great Western Bank

27. Plaintiff provided these additional services at the direction of Frank Krejci and/or Rodney Yates, both acting on behalf of the joint enterprise, with the understanding that Plaintiff would be paid the value of these services.

28. Plaintiff last provided services to Defendants on July 13, 2016, when he was directed by Frank Krejci, acting on behalf of the joint enterprise, to attend a meeting at Gretna City Hall to review and discuss entitlement payments and processes on Defendants' behalf.

29. As of the date of this filing, there remains a total outstanding balance under the Agreement in the amount of \$714,974.00, as follows:

- a. Management Fees in the amount of \$80,000;
- b. Lease Fees in the amount of \$100,974.00; and
- c. Payment for additional services rendered in the amount of \$534,000.00.

30. Despite numerous demands for payment, Defendants have failed to pay Plaintiff all amounts owed under the Agreement.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

31. Plaintiff incorporates by reference paragraphs 1 through 30 and restates them as if fully set out herein. In addition, Plaintiff states and alleges as follows:

32. Rodney Yates, acting on behalf of the joint enterprise and with authority to bind the Defendants, entered into an Agreement with Plaintiff for Plaintiff to provide labor and

services to the Defendants, relating to the development of the Nebraska Crossing Outlets Mall in Gretna, Nebraska, and the Crossroads Mall in Omaha, Nebraska.

33. Plaintiff has fully performed all express and implied obligations under and pursuant to the terms of the Agreement or is otherwise excused from such performance.

34. The Defendants failed to perform their express and implied obligations under and pursuant to the Agreement with Plaintiff and materially breached and violated the terms of such Agreement for, among other things, retaining payment owed to Plaintiff for the services provided for the benefit of the Defendants.

35. As a direct and proximate result of the Defendants' breach of the Agreement, Plaintiff suffered damages in an amount not less than \$714,974.00.

WHEREFORE, Schultz Real Estate Dev, LLC prays for judgment against Defendants in an amount to be proven at trial, but not less than \$714,974.00, plus pre-judgment and post-judgment interest and costs as allowed by law, and any other remedy the Court deems just and equitable.

SECOND CLAIM FOR RELIEF
(Open Account)

36. Plaintiff incorporates by reference paragraphs 1 through 35 and restates them as if fully set out herein. In addition, Plaintiff states and alleges as follows:

37. In the alternative only, and only if and to the extent that the Court determines that Plaintiff is not entitled to recover any portion of its damages under the above Claims for Relief, then Plaintiff is entitled to recover under its Second Claim for Relief

38. Frank Krejci and/or Rodney Yates, acting on behalf of the joint enterprise and with authority to bind the Defendants, conducted a series of transactions whereby Plaintiff was directed to provide the services listed herein for the benefit of the Defendants.

39. Plaintiff provided the services requested by Defendants, various charges were made for these services, and the total outstanding due for these services provided is in the amount of \$714,974.00.

40. Despite numerous demands for payment, Defendants have failed, refused and/or neglected to pay Plaintiff all amounts currently due and owing for services rendered.

41. Plaintiff has performed all obligations on its part to be performed under the series of transactions.

42. Plaintiff has satisfied all condition precedents to Defendants' duty to make payment under the series of transactions.

43. As a direct and proximate result of Defendant's failure, refusal and/or neglect to pay all amounts owed, Plaintiff has been damaged in an amount not less than \$714,974.00.

WHEREFORE, Schultz Real Estate Dev, LLC prays for judgment against Defendants in an amount to be proven at trial, but not less than \$714,974.00, plus pre-judgment and post-judgment interest and costs as allowed by law, and any other remedy the Court deems just and equitable.

THIRD CLAIM FOR RELIEF
(Quantum Meruit/Unjust Enrichment)

44. Plaintiff incorporates by reference paragraphs 1 through 43 and restates them as if fully set out herein. In addition, Plaintiff states and alleges as follows:

45. In the alternative only, and only if and to the extent that the Court determines that Plaintiff is not entitled to recover any portion of its damages under the above Claims for Relief, then Plaintiff is entitled to recover under its Third Claim for Relief.

46. Frank Krejci and/or Rodney Yates, acting on behalf of the joint enterprise and with authority to bind the Defendants, directed Plaintiff to provide certain labor and services

for benefit of the Defendants. Plaintiff expected to be paid the agreed amount and/or the fair market value for such services.

47. Defendants knew or should have known that Plaintiff expected payment equal to the value of the labor and services that Plaintiff provided for the Defendants.

48. All Defendants received the benefit of the labor and services provided by Plaintiff, but Defendants have failed and refused to pay for the same.

49. Pursuant to the equitable doctrine of quantum meruit, Plaintiff is entitled to recover the reasonable value of the labor and services it provided for the benefit of the Defendants.

WHEREFORE, Schultz Real Estate Dev, LLC prays for judgment against Defendants in an amount to be proven at trial, but not less than \$714,974.00, plus pre-judgment and post-judgment interest and costs as allowed by law, and any other remedy the Court deems just and equitable.

DATED this 26th day of August, 2016.

SCHULTZ REAL ESTATE DEV, LLC, Plaintiff

By: s/ Audrey R. Svane
Bruce A. Smith, No. 20162
Audrey R. Svane, No. 25830
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
Telephone: (402) 437-8500
Facsimile: (402) 437-8558
bsmith@woodsaitken.com
asvane@woodsaitken.com

Its Attorneys