

IN THE DISTRICT COURT OF IOWA IN AND FOR POLK COUNTY

SOUTHERN HOSPITALITY VENTURES,
INC., a Nebraska Corporation,

Plaintiff,

v.

NATHAN WARNER, an individual,

Defendant.

LAW NO. _____

PETITION

Plaintiff Southern Hospitality Ventures, Inc. a/k/a SHV, Inc. (“SHV”) states and alleges the following claims for relief against Defendant Nate Warner (“Mr. Warner”):

1. SHV is a Nebraska corporation duly authorized under Iowa law to conduct business in the State of Iowa.

2. Upon information and belief, Mr. Warner is an individual residing in Waukee, Dallas County, Iowa and is not a minor, incompetent person, or person in the military service so as to be entitled to the benefit of the Servicemembers Civil Relief Act of 2003 (50 U.S.C. Appx. § 501 *et seq.*). Upon information and belief, Mr. Warner can be served with process at 1030 Spruce Street, Waukee, IA 50263.

3. The causes of action set forth herein arose in Polk County, Iowa.

4. This suit is brought for the collection of amounts owed to SHV for which Mr. Warner has failed to pay.

FACTUAL ALLEGATIONS

5. On or about December 28, 2018, SHV offered Mr. Warner employment in the position of General Manager at the Raising Cane’s restaurant operated by SHV in West Des Moines, Iowa.

6. In connection with this offer, SHV offered Mr. Warner relocation assistance in the gross amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) (the "Relocation Benefits"), subject to the terms and conditions set forth in the Relocation Agreement entered into by and between SHV and Mr. Warner dated December 28, 2018 (the "Agreement"), of which a true and correct copy is attached hereto as Exhibit "A".

7. Under the Agreement, Mr. Warner agreed to repay the Relocation Benefits to SHV, pro-rated based on the number of months worked, in the event his employment with SHV terminated for any reason within eighteen (18) months of his relocation to West Des Moines, Iowa and the start of his employment.

8. Mr. Warner's employment with SHV began on or about March 6, 2019, and was terminated due to performance deficiencies approximately two (2) months later, on or about May 12, 2019.

9. Due to the fact that Mr. Warner did not work for the requisite eighteen (18) months, under the terms of the Agreement, Mr. Warner is required to pay-SHV the gross amount of Thirteen Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$13,333.33) (the "Amount Due"), as a pro-rated portion of the Relocation Benefits.

10. The Agreement provides that Mr. Warner must pay the Amount Due within three (3) months of the termination of his employment with SHV. This three (3) month period ended on August 13, 2019.

11. SHV has made numerous attempts to collect the Amount Due informally, including three (3) separate letters dated May 23, 2019; June 13, 2019; and August 13, 2019. As of the date of this filing, Mr. Warner has made no payment on the Amount Due and has offered no indication of an intent to repay the Amount Due voluntarily.

12. The Agreement further provides that SHV “shall be entitled to recover its reasonable attorneys’ fees should it initiate any suit, cause of action, or other proceeding to collect any amount owed” after August 12, 2019.

**CAUSE OF ACTION
BREACH OF CONTRACT**

13. SHV incorporates the foregoing paragraphs as if fully set forth herein.

14. SHV and Mr. Warner entered into the Agreement to provide Relocation Benefits to Mr. Warner in exchange for Mr. Warner’s promise to relocate to West Des Moines, Iowa and to satisfactorily perform his duties on behalf of SHV for a period of eighteen (18) months.

15. SHV paid the Relocation Benefits to Mr. Warner and otherwise performed its obligations under the Agreement.

16. Mr. Warner did not satisfactorily perform under the contract and his employment terminated approximately two (2) months after it commenced; therefore, Mr. Warner was obligated to repay a pro-rated amount of the Relocation Benefits within three (3) months of the end of his employment.

17. Mr. Warner has not paid any of the Amount Due as of the date of this filing.

18. Mr. Warner has breached the terms of the Agreement with SHV by refusing to pay the Amount Due (\$13,333.33) under the terms of the Agreement.

WHEREFORE, Southern Hospitality Ventures, Inc. prays for judgment in its favor and against Mr. Warner in the principal amount of \$13,333.33 plus accrued interest at the maximum legal rate, attorneys’ fees as provided under Iowa Code § 625.22, costs of this suit, and for such other and further relief as this Court deems just and equitable.

Dated this 29th day of October, 2019

SOUTHERN HOSPITALITY VENTURES, INC.,
Plaintiff,

By:  _____

John M. Lingelbach, #AT0004743
KOLEY JESSEN P.C., L.L.O.
1125 South 103rd Street, Suite 800
Omaha, NE 68124
(402) 390 9500
(402) 390 9005 (facsimile)
john.lingelbach@koleyjessen.com

Attorneys for Plaintiff.

4834-9275-7925.1

RAISING CANE'S RELOCATION AGREEMENT

In connection with the relocation of your employment to **West Des Moines, IA** SHV, Inc's ("Raising Cane's") wishes to extend to you certain payments and benefits for the purpose of providing assistance with respect to the change in your location of work. If you are interested in these relocation benefits, it is necessary for you to review and sign this Relocation Agreement ("Agreement") before the benefits can be extended.

I. EMPLOYMENT RELOCATION

Effective on or before April 2019 or immediately following the MIT Program completion, you agree to commence work in **West Des Moines**, in accordance with the following terms and conditions relating to the payment of relocation assistance benefits.

II. TERMS OF RELOCATION

In exchange for the sum of **\$15,000.00**, you agree to commence work in **West Des Moines, IA** by April 2019 or immediately following the MIT Program completion with your full relocation completed within 6 months of your effective start date as General Manager in Iowa.

In the event that you resign your employment for any reason whatsoever, or if you are terminated due to a violation of company policy, code of ethics violation, or for any other reason that could lead to involuntary discharge, within **18** months of your commencing work in **West Des Moines, IA** for SHV, Inc, you agree to repay to SHV, Inc a prorated portion of the Relocation Benefits provided to you by us, The Relocation Center or any third party relocation services company utilized by SHV, Inc. The amount to be repaid shall be prorated on a monthly basis such that for each full month during which you remained in the employ of Raising Cane's, the amount to be repaid shall be reduced by **one-eighteenth (1/18)** of the gross Relocation Benefits paid to you. You agree that you will repay the required amount via deductions from your final paycheck, unless prohibited by law. Should such deductions be prohibited by law or your final paycheck be insufficient to cover the full amount owed by you, you agree to repay the remaining balance within three (3) months following your resignation or termination. SHV, Inc shall be entitled to recover its reasonable attorneys' fees should it initiate any suit, cause of action, or other proceeding to collect any amount owed by you after such time.

You understand that barring your execution of this Relocation Agreement, SHV, Inc would not be obligated to provide you with these benefits in connection with the relocation of your position to **West Des Moines, IA**. Additionally, SHV, Inc assumes no obligation to move you back to a former location in the event of a resignation or termination. The Relocation Benefits are not intended to cover all of your out of pocket expenses for your relocation, and SHV, Inc has no liability beyond the Relocation Benefits listed above, despite your total expenses. The Relocation Benefits must be included in your gross income and may be subject to federal, state and local taxes. You are advised to speak to your own personal tax planner about the impact of your relocation on your tax liability.

III. GENERAL PROVISIONS

This Agreement contains the entire understanding between you and SHV, Inc with respect to the subject matter hereof and supersedes all other agreements, whether written, oral or implied, regarding the subject matter of this Agreement. You expressly acknowledge that this Agreement supersedes and replaces all representations, promises, offers and assurances provided to you in any offer made by SHV, Inc, oral or written. This Agreement may not be modified or terminated absent a writing signed by both parties. This Agreement is governed by and shall be construed in accordance with the laws of the State of Nebraska and the Federal Arbitration Act.

IV. ARBITRATION

ALL DISPUTES COVERED BY THIS AGREEMENT SHALL BE DECIDED BY AN ARBITRATOR AND NOT BY WAY OF COURT, JURY TRIAL, OR ANY OTHER ADJUDICATORY PROCEEDING. You and the Company agree that any dispute, controversy or claim arising out of or related to this Agreement, including the validity or enforceability of this provision regarding arbitration, shall be submitted to and decided by binding arbitration in Lincoln, Ne. Arbitration shall be administered under the laws of the state of Nebraska and federal law and in accordance with the Employment Arbitration Rules of the American Arbitration Association (“AAA”). Any arbitral award determination shall be final and binding upon you and the Company.

V. ACKNOWLEDGMENT AND AGREEMENT TO TERMS

I have read the foregoing Agreement, and I understand and acknowledge the significance and consequence of it and execute it voluntarily with full understanding of its consequences. **I further acknowledge that nothing in this Agreement is intended to alter the at-will nature of my employment relationship with SHV, Inc. I understand and agree that I am free to leave my employment with SHV, Inc at any time with or without cause or notice, and SHV, Inc retains the same right to terminate my employment at any time, with or without cause or notice.**

EXECUTED this 28th day of December 2018, Lincoln, Ne.

SHV, Inc
Crew Resources



Nate Warner