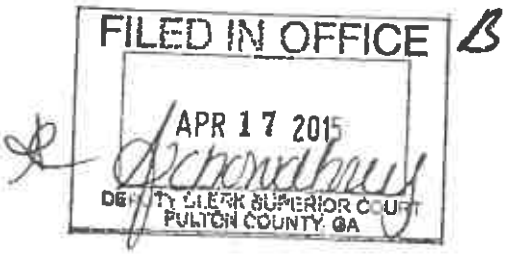
IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MICHAEL G. LALONDE	)	
	)	
Plaintiff	)	
	)	Civil Action File No. 2015CV259810
v.	)	
	)	
TAYLOR ENGLISH DUMA, LLP, MICHAEL H. TROTTER and AARON J. KOWAN	)	
	)	
Defendants.	)	



COMPLAINT

Plaintiff Michael G. Lalonde brings this action against Defendants Taylor English Duma, LLP, Michael H. Trotter and Aaron J. Kowan (collectively, the "Defendants") and shows the following:

Parties, Jurisdiction and Venue

1.

Plaintiff Michael G. ("Mike") Lalonde is a resident of the State of Georgia.

2.

Defendant Taylor English Duma, LLP ("Taylor English") is a Georgia limited liability partnership doing business as a law firm. At all relevant times Taylor English had its principal place of business at 1600 Parkwood Circle, Suite 400, Atlanta, Cobb County, GA.

3.

Defendant Michael H. Trotter is a citizen and resident of Fulton County, GA. Mr. Trotter is an attorney licensed under the State Bar of Georgia and, on information and belief, is currently practicing law with Defendant Taylor English. Further, Mr. Trotter was a partner in Taylor

English during the relevant events of this Complaint set forth below and was acting within the course and scope of his employment as a member and attorney of the Taylor English law firm.

4.

Defendant Aaron J. Kowan is a citizen and resident of Fulton County, GA. Mr. Kowan is an attorney licensed under the State Bar of Georgia. Mr. Kowan was an attorney employee of Taylor English during the relevant events of this Complaint set forth below and was acting within the course and scope of his employment as an attorney of the Taylor English law firm.

5.

Defendants are subject to the jurisdiction of this Court.

6.

Venue is proper in this Court.

Factual Background

7.

Plaintiff Mike Lalonde is an engineer and inventor who has a long history of innovations and inventions for himself and major companies such as Allied Signal - Aerospace, Rockwell International and Midland-Ross.

8.

After having been diagnosed with sleep apnea and having to utilize the prescribed cumbersome and noisy sleep apnea breathing apparatus (continuous positive airway pressure therapy "CPAP"), Mr. Lalonde in 2008 decided to invent a new CPAP device much smaller and more portable than anything available on the market. He founded a Georgia company, Nology, Inc., and began researching and building such a smaller more portable CPAP device, ultimately to be known as the Z1 CPAP (the "Invention").

9.

Mr. Lalonde devoted several years of work and finances to research and develop the Invention, working closely with the Mayo Clinic. He successfully filed numerous patent applications for his Invention and by 2010, the Invention was sufficiently developed to seek financial backing for production and marketing of the product.

10.

In 2010, PBM Capital Investments, LLC ("PBM") was identified as a potential investor and negotiations ensued between Mr. Lalonde and PBM for formation of a new company to be jointly owned by Mr. Lalonde and PBM to complete the commercial development of the Invention and marketing of same.

11.

Mr. Lalonde retained Defendants as attorneys to represent him and his interests in negotiating and drafting the documents necessary to consummate a business relationship between himself and PBM concerning the ownership, development and marketing of the Invention.

12.

Mr. Lalonde paid Defendants $60,000.00 in legal fees to protect his interests in the deal negotiations and documentation.

13.

As negotiated, Mr. Lalonde was to contribute his Invention and other assets with an agreed upon value of $2,136,138 as capital to a newly formed entity, Zephyr Labs, LLC. ("Zephyr"), and PBM was to invest up to five million dollars in Zephyr for the commercial development and marketing of the Invention.

14.

It was further agreed that, upon consummation of the transaction, PBM would own two thirds of Zephyr in the form of Preferred Class A units of Zephyr, Mr. Lalonde would own one third of Zephyr in the form of Common Class B units, and there would be a three member Board of Managers of Zephyr, with the Class A unit holder having the right to appoint two managers and the Class B unit holder the right to appoint one manager.

15.

From November 2010 to April 2011, terms of the agreement were negotiated among the parties, with Mr. Lalonde (and his company Nology) being represented by Defendants, and various drafts of the corporate documents necessary to effectuate the deal were exchanged between Defendants and counsel for PBM. Specifically, Defendants represented Plaintiff in the negotiation and drafting of the Zephyr Labs, LLC Limited Liability Company Agreement (the "Operating Agreement").

16.

In order to protect the interests of Mr. Lalonde as a minority unit holder of Zephyr, it was agreed by the parties, and Defendants understood, that the consent of Mr. Lalonde would be required to effectuate certain major events concerning Zephyr which would affect Mr. Lalonde's rights in Zephyr, such as selling, exchanging or disposing of the assets of the company not in the ordinary course of business, merging the company, filing bankruptcy by the company or dissolving the company. To this end, Defendants insisted upon terms in the Operating Agreement that a "Super Majority" of members of the Board of Managers of Zephyr (Super Majority being defined as a majority of managers appointed by Class A unit holders and a majority of those appointed by Class B unit holders) would be required to effectuate certain major events of the company as set forth above. Operating Agreement, Section 6.03.

17.

However, Defendants allowed a provision to exist in the Operating Agreement as executed by the parties that the dissolution of Zephyr could also be effectuated by a vote of unit holders holding a "Required Interest" of units (defined as "Members holding more than fifty percent (50%) of the issued and outstanding units of the Company"). Operating Agreement, Section 11.01. PBM at all times owned a majority of the issued and outstanding units of the Company.

18.

On or about April 20, 2011, (along with various other documents effectuating the transfer of the invention from Plaintiff to Zephyr and an employment agreement for Mr. Lalonde), the Operating Agreement was executed by Lalonde and PBM. A true and accurate copy of the Operating Agreement is attached as Exhibit "B" to the Affidavit of Patrick G. Jones ("Jones Aff."), which Affidavit is attached hereto as Exhibit "1".

19.

Product development of the Invention continued at Zephyr (which name was later changed to "Deshum Medical") after the closing of the transaction under the direction of Mr. Lalonde for the next two years. Mr. Lalonde guided efforts to obtain the critical clearance by the United States Food and Drug Administration ("FDA") for marketing of the Invention to consumers, including filing the application for clearance with the FDA in April 2012. Then, shortly after the FDA notified Zephyr it would soon be approving the Invention, the Board of Managers terminated the employment of Mr. Lalonde. After the FDA clearance was actually received by Zephyr, PBM unilaterally dissolved Zephyr by vote of its majority of units in Zephyr, which was the "Required Interest" of unit holders of Zephyr necessary to dissolve the company under the Operating Agreement.

20.

Zephyr was dissolved later in 2013 and all of the assets of Zephyr, including the Invention, were distributed to PBM as an "in kind" distribution to PBM in consideration of the liquidation preference under the Operating Agreement of Zephyr for the unreturned capital contributions of PBM in Zephyr. PBM then in turn transferred all of the assets to another company, newly formed and owned by PBM, Human Medical Design.

21.

No additional consideration was paid by PBM to Zephyr for the Invention and other assets of Zephyr.

22.

Within weeks after transfer of the Invention to PBM and then to Human Medical Design, PBM announced the introduction of the revolutionary Z-1 CPAP device, "the world's smallest and most portable CPAP machine" (*i.e.*, the Invention). Thereafter, the Invention has generated tens of millions of dollars of income to PBM and created great value in Human Medical Design and affiliated PBM owned companies.

23.

As a result of Defendants' negligence, Mr. Lalonde lost his Invention he had worked years to perfect and, *inter alia,* millions of dollars in income from the sales of his Invention, the capital appreciation of his ownership interests in Zephyr and his entire $2,136,136 unreturned capital account in Zephyr.

24.

As a result of the attorney-client relationship between Plaintiff and the Defendants, Defendants had a duty to represent Plaintiff with the reasonable care, skill, and diligence possessed and exercised by the attorneys generally in like and similar circumstances.

25.

Defendants' professional obligations to Plaintiff included, without limitation, the obligation to properly advise Plaintiff how to protect his interests in the creation of Zephyr as reflected by the Operating Agreement.

26.

Defendants acted below the standard of care of attorneys generally and were negligent in allowing the Operating Agreement to provide for the dissolution of Zephyr to occur based upon a simple majority vote of unit holders, *i.e.*, without the consent of Mr. Lalonde.

27.

Further, key in the ability of PBM to obtain the Invention and assets of Zephyr after dissolution without any further/other compensation to Zephyr, was the ability of a simple majority of the Board of Managers (which authority PBM always possessed) upon dissolution, to appoint an appraiser of their choosing to place a value upon assets to be distributed in kind to unit holders, which appraisal was absolutely binding upon the Company. By selecting an appraiser with obvious ties to PBM and obtaining an extremely low appraisal of the assets being distributed to PBM, PBM was able to prevent Mr. Lalonde from receiving his share of the true value of the assets distributed out of Zephyr.

28.

Defendants acted below the standard of care of attorneys generally and were negligent in allowing PBM under the Operating Agreement to appoint a valuation appraiser with binding authority through a simple majority action of the Board of Managers (which authority PBM always possessed).

29.

Pursuant to O.C.G.A §9-11-9.1, the Jones Affidavit sets forth at least one of the ways in

which the Defendants deviated from the applicable standard of care: to wit, allowing the Operating Agreement to provide for the dissolution of Zephyr to occur without the consent of Mr. Lalonde.

30.

As a proximate result of Defendants' wrongful conduct as aforesaid, Plaintiff has been deprived of millions of dollars in compensation to which he is entitled for his Invention and investment.

31.

Defendants' negligent and/or wrongful conduct as alleged herein constituted a breach by Defendants of their contract with Plaintiff.

32.

As a proximate result of Defendants' breach of contract, Plaintiff has suffered damages equal to the amounts he would have earned under the PBM Operating Agreement for the sales of his invention. Further, Plaintiff is entitled to recover the attorneys fees he paid to Defendants.

32.

Also as a result of Defendants' wrongful conduct, Plaintiff has been forced to incur substantial attorneys' fees and expenses for which fees and expenses Defendants are liable.

34.

Defendants have acted in bad faith, been stubbornly litigious and/or caused Plaintiff unnecessary trouble and expense, entitling Plaintiff to recover of Defendants his reasonable attorneys' fees and expenses incurred in bringing and prosecuting this action pursuant to O.C.G.A. § 13-6-11.

35.

Plaintiff is therefore entitled to recover from Defendants prejudgment interest on all

sums owed by Defendants.

WHEREFORE, Plaintiff prays that Judgment be entered against Defendants as follows:

1) Nominal damages;

2) Compensatory damages together with prejudgment interest thereon;

3) Plaintiff attorneys' fees and expenses incurred herein; and

4) Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

NOW COMES PLAINTIFF, by and through undersigned counsel, and demands a jury at the trial of this action with respect to all issues in this action which are subject to trial by jury.

LAMAR, ARCHER & COFRIN, LLP

Robert C. Lamar
GA State Bar No. 431175
Keith A. Pittman
GA State Bar No. 581270

50 Hurt Plaza, Suite 900
Atlanta, GA 30303
Telephone: 404-577-1777
Facsimile: 404-577-9490

Attorneys for Michael G. Lalonde