

COPY

FILED

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
12 Cvs \_\_\_\_\_

2012 FEB 29 PM 12:39

IREDELL COUNTY

LaVonne R. Ekren, )  
IREDELL CO. O&C. )  
BY \_\_\_\_\_ )  
Plaintiff )

vs. )

C O M P L A I N T  
(Jury Trial Demanded)

K & E Real Estate Investments, )  
LLC; and Paul A. Konrady, )  
Individually, )  
Defendants )

Plaintiff, complaining of Defendants and for her claims for relief, says:

JURISDICTIONAL FACTS

1. Plaintiff is a citizen and resident of the State of Washington, with a home in Redmond, Washington.

2. Defendant, K & E Real Estate Investments, LLC (hereafter "K&E"), is a limited liability company created under the laws of North Carolina, with its principal office in Iredell County, North Carolina.

3. Defendant, Paul A. Konrady (hereafter "Konrady"), is a citizen and resident of the State of Washington, with a home in Kenmore, Washington.

4. This is an action brought pursuant to N.C. Gen. Stat. §57C-6-02 for judicial dissolution of Defendant K&E for the reasons hereafter stated.

5. This action is also brought by Plaintiff under the provisions of N.C. Gen. Stat. §57C-8-01 as a derivative action for the benefit of K&E for the reasons hereafter stated.

6. This Court has jurisdiction of the parties and the subject matter involved in this action.

#### OPERATIVE FACTS

1. Plaintiff, Konrady and Plaintiff's son, David S. Ekren, joined together in 2003 to form K&E; the Articles of Organization for K&E were filed in the office of the Secretary of state for North Carolina on June 5, 2003.

2. The purpose of K&E at the time of its organization was to engage, inter alia, in the purchase, the sale, and the leasing of real estate in Iredell and surrounding counties in North Carolina.

3. Initially, Plaintiff, Konrady and David S. Ekren each owned a 33-1/3% membership interest in K&E; the interest of David Ekren was redeemed prior to January 1, 2010, such that Plaintiff and Defendant Konrady were 50/50 members in ownership and control of K&E at all times pertinent hereto.

4. Plaintiff and Konrady at the times pertinent to this action controlled the affairs of K&E by mutual agreement from their homes in the State of Washington; they engaged attorneys, accountants and real estate agents in North Carolina to provide

professional assistance in the purchase, the sale, the leasing, and the annual accounting for K&E.

5. Konrady maintained the books and records of K&E; on information and belief, he prepared a monthly profit and loss statement for K&E, together with a balance sheet which reflected, from time to time, the net worth of K&E.

6. On information and belief, Konrady provided to the accountants for K&E the financial data regarding the operations of K&E for all fiscal years of its activities; the accountant then prepared the annual State and Federal income taxes for K&E, together with the Forms K-1 reflecting distributions to the members of K&E.

7. Prior to May, 2011, the books and records of K&E reflected the ownership by K&E of six pieces of real estate (with improvements) owned by K&E in Iredell, Mecklenburg and Catawba Counties, North Carolina. K&E was the grantee of those properties by separate Deeds recorded in the three counties where the six properties were located.

8. On information and belief, the six properties had been leased by K&E to separate tenants for each of the properties; on information and belief, the various leases were in written form describing in detail the terms and conditions of each lease.

9. Additionally, K&E prior to May, 2011, was the owner of a bank account into which all receipts of K&E were deposited,

and from which all disbursements for the benefit of K&E were made. Konrady had signature authority over the account.

10. On or about June 3, 2011, Konrady wrote Plaintiff a letter advising Plaintiff that Konrady had (1) conveyed to himself from K&E four of the six pieces of real estate owned by K&E and (2) had transferred from the K&E bank account to a bank account owned by Konrady the sum of \$20,000.

11. Konrady's letter to Plaintiff recited that "I will hold these properties in trust for the benefit of the company. I am now the sole person with the general management authority and power for these properties, which includes the authority to, but not limited to, hire vendors, increase/decrease debt, execute leases, list for sale or agree to sell these properties . . ."

12. Copies of the Deeds conveying the four tracts to Konrady are attached hereto as Exhibits 1, 2 and 3 (Exhibits 1 and 2 each for one tract, and Exhibit 3 for two tracts). The Deeds are not made to Konrady as Trustee for K&E, but rather to Konrady individually. None of the Deeds recites any consideration paid by Konrady to K&E for any of the properties.

13. A copy of the initial bank statement owned by Konrady individually, reflecting the opening of an account in the name of Paul Andrew Konrady Consulting at J.P. Morgan Chase Bank, N.A., in San Antonio, Texas, is attached hereto as Exhibit 4.

14. Both the conveyance of the real estate to Konrady and the opening of a bank account owned by Konrady using the funds of K&E are in violation of provisions of the Operating Agreement for K&E, which require the consent of all the members for any managers to convey assets of K&E to anyone. (Operating Agreement, §5.1, §5.2, §5.4.)

15. The conveyances of the real estate of K&E to Konrady and the transfer of K&E bank account funds to Konrady are further in violation of common law principles that a member in a limited liability company cannot convey to himself any assets of the company without the prior approval of all other members.

16. Plaintiff neither had knowledge of, nor did she approve, the conveyances of the real estate and the transfer of K&E funds to Konrady reflected on Exhibits 1, 2, 3 and 4 attached hereto.

17. Plaintiff has complained to Konrady, both in her individual capacity and as a member in K&E, about the referenced conveyances and transfer; she has taken the position that all of said transfers were improper and in violation of the Operating Agreement, and has demanded that the same be returned to K&E.

18. Konrady has refused to re-convey the four properties to K&E; he contends that the funds aggregating \$20,000 have been used, or are being used, to pay liabilities of K&E.

19. Plaintiff has requested copies of the leases which Konrady contends exist upon the four properties he conveyed to himself, together with the leases on the two properties still titled in the name of K&E; Konrady has provided a table denominated "Property/Lease Information" attached hereto as Exhibit 5, but has not provided to Plaintiff copies of the underlying written agreements constituting the leases.

20. On information and belief, the leases referred to above were prepared by or at the request of Konrady without the consent of Plaintiff, in violation of §§5.2 and 5.4 of the Operating Agreement.

21. As a predicate for the filing of this derivative action under N.C. Gen. Stat. §57C-8-01, Plaintiff shows as follows:

a. She was, and is, a member in K&E at all times involved in this action;

b. The Plaintiff through counsel in the State of Washington and in the State of North Carolina has sought to effect re-conveyance to K&E of the assets of K&E which Konrady conveyed to himself; those efforts have failed.

c. It would be futile for Plaintiff to request that K&E itself institute an action against Konrady to recoup the K&E assets, because of Konrady's conflict of interest in approving an action against himself.

d. Konrady is liable to K&E for conversion of the assets which he caused K&E to convey to himself.

e. Plaintiff has attempted by negotiations with Konrady and with his attorneys to cause the re-conveyance of the real estate to K&E and to reverse Konrady's withdrawal of funds from the bank account of K&E, all of which attempts have failed.

22. Plaintiff and Konrady are deadlocked in the control of K&E, and they are unable to break the deadlock; the business and affairs of K&E can no longer be conducted to the advantage of Plaintiff and Konrady generally, because of the deadlock.

23. Additionally, Konrady by conveying K&E assets to himself, both the four tracts of real estate and the funds of K&E, has misapplied those assets in violation of the Operating Agreement and the common law, which prohibits a member of a limited liability company to self-deal with the assets of the LLC.

FIRST CLAIM FOR RELIEF  
(Derivative Action)

24. Plaintiff incorporates herein by reference and makes a part hereof the allegations in paragraphs 1 - 23 above.

25. Plaintiff has the right under the provisions of N.C. Gen. Stat. §57C-8-01 to institute this civil action against Konrady personally, for and on behalf of K&E.

26. This derivative action is brought for the purpose of compelling the re-conveyance to K&E of the four pieces of real property which Konrady conveyed to himself by the originals of Exhibits 1, 2 and 3 attached hereto.

27. This derivative action is further brought (1) to prevent Konrady from effecting further transfer of K&E income and existing funds to himself, and (2) to compel the re-conveyance to K&E of the remaining balance of the \$20,000 Konrady withdrew from the K&E bank account on or about May 24, 2011.

28. Plaintiff further seeks by this derivative action to compel an accounting from Konrady for all income and all disbursements of K&E received or paid by K&E and Konrady over the period January 1, 2010, through the date that this action is resolved.

SECOND CLAIM FOR RELIEF  
(Judicial Dissolution of K&E)

29. Plaintiff incorporates herein and makes a part hereof by reference the allegations made in paragraphs 1 - 28 above.

30. Plaintiff and Defendant as the only members in K&E are hopelessly deadlocked in the management of the affairs of the company, and they are unable to break the deadlock.



31. The business and affairs of the company can no longer be conducted to the advantage of Plaintiff and Konrady, the only members in the company, because of the deadlock.

32. Liquidation is reasonably necessary for the protection of the rights or interests of the Plaintiff.

33. The assets of the company, at least to the extent of the real estate described in Exhibits 1, 2 and 3 attached hereto, and the \$20,000 identified on Exhibit 4, have been and are being misapplied.

34. Dissolution of K&E is a justifiable and appropriate remedy available to Plaintiff under the provisions of N.C. Gen. Stat. §57C-6-02.

Wherefore, Plaintiff prays as follows:

1. Under the provisions of N.C. Gen. Stat. §57C-8-01, that K&E have and recover from Konrady the assets of K&E which Konrady has conveyed to himself.

2. That Konrady be compelled to provide to K&E a full accounting of the income and the expenses received and paid by K&E, or by Konrady for the benefit of K&E, for the period January 1, 2010, through the date of the conclusion of this action.

3. Under the provisions of N.C. Gen. Stat. §57C-6-02, that the Court enter an Order dissolving K&E and directing a

distribution of the assets of K&E to Plaintiff and Konrady as their interest may appear.

4. Under the provisions of N.C. Gen. Stat. §57C-6-02.1, that the Court enter an injunction preventing Konrady from disposing of any K&E assets heretofore conveyed to himself absent further permission granted by the Court.

5. That, on Motion by the Plaintiff, the Court enter such other Orders as may be appropriate under N.C. Gen. Stat. §57C-6-02.1(c).

6. That the Court allow reasonable attorneys fees to be paid by Konrady to Plaintiff, as provided for in N.C. Gen. Stat. §57C-8-01(e).

7. For such other and further relief as to which Plaintiff and/or K&E may be entitled.

EISELE ASHBURN GREENE & CHAPMAN, PA

By: 

Douglas G. Eisele  
N.C. State Bar #4930  
Attorneys for Plaintiff  
P.O. Box 1108  
Statesville, NC 28687-1108  
Telephone: 704/878-6400  
FAX No.: 704/924-9727

State of Washington

County of King

Lavonne R. Ekren, being first duly sworn, deposes and says:

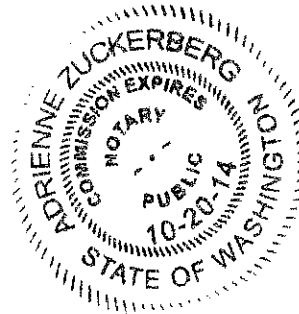
That she is the Plaintiff in the above-entitled action, and that she has read the foregoing Complaint and that the same is true of her own knowledge, except as to matters and things therein stated upon information and belief, and as to those, she believes them to be true.

Lavonne R. Ekren

Sworn to and subscribed before me, this  
23 day of February, 2012, said  
Affiant being personally known to me.

Adrienne Zuckerberg  
Notary Public

My commission expires 10/20/2014  
(Notary Seal)



PLAINTIFF'S EXHIBIT 1  
Blumberg No. 5113

Doc ID: 014481370002 Type: GRP  
Recorded: 06/03/2011 at 10:23:41 AM  
Fee Amt: \$22.00 Page 1 of 2  
Revenue Tax: \$0.00  
Instr# 201100038623  
Gaston, NC  
Susan S. Lockridge Register of Deeds  
BK 4564 PG 1726-1727

RECORDING FEE 22.00  
EXCISE TAX PAID 0.00

*1 Tract*  
*Anderson Court*

**NORTH CAROLINA SPECIAL WARRANTY DEED**

Excise Tax: 0 PAK Recording Time, Book and Page  
Tax Map No. Parcel Identifier No. 196094

Mail after recording to: Grantee  
This instrument was prepared by: Paul Konrady

THIS DEED made this 24 day of May, 2011 by and between

GRANTOR	GRANTEE
K&E Real Estate Investments, LLC 18810-71 Ave NE Kenmore, WA 98028-2615	Paul A. Konrady Mailing Address: 18810-71 Ave NE Kenmore, WA 98028-2615

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration of the sum of \$10.00 paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land and more particularly described as follows:

Being all of Lot 8 in Block A of OLEM COURSE AT CRAMER MOUNTAIN, as shown on plat thereof recorded in Plat Book 52 at page 86 in the Gaston County Public Registry  
Being the property known as 27 Anderson Court

All or a portion of the property hereinabove described was acquired by Grantor by instrument recorded in Book 4245, Page 109-171, Gaston County Registry.

A map showing the above described property is recorded in Plat Book 52, Page 86, and referenced within this instrument.

The above described property  does  does not include the primary residence of the Grantor.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

This conveyance is subject to all exceptions of record and shall not act as a release of any mortgages or other obligations secured by the property conveyed herein.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officer(s), the day and year first above written.

K&E Real Estate Investments, LLC

By: [Signature]  
Paul Konrady  
Title: Member/Manager

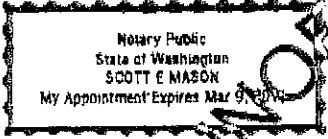
State of WASHINGTON, King COUNTY

I, the undersigned Notary Public of the County and State aforesaid, certify that Paul A. Konrady personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purposes therein expressed. Witness my hand and official stamp or seal, this the 24th day of May, 2011.

My Commission Expires: 03/09/2013

[Signature]  
Notary Public

Print Notary Name: Scott E Mason



UNOFFICIAL

PLAINTIFF'S  
EXHIBIT  
**2**  
Blumberg No. 5119

Type: CRP  
Recorded: 6/3/2011 8:18:18 AM  
Fee Amt: \$22.00 Page 1 of 2  
Revenue Tax: \$0.00  
Iredell County, NC  
Matthew J. McCall Register of Deeds

BK 2122 PG 462 - 463

*TRACT 475 S Main St*

**NORTH CAROLINA SPECIAL WARRANTY DEED**

*2*

Excise Tax: *0*

Recording Time, Book and Page

Tax Map No.

Parcel Identifier No.

Mail after recording to: Grantee

This instrument was prepared by: Paul Konrady

THIS DEED made this \_\_\_\_\_ day of May, 2011 by and between

GRANTOR	GRANTEE
K&E Real Estate Investments, LLC	Paul A. Konrady Mailing Address: 18810- 71 <sup>st</sup> Ave. NE Kenmore, WA 98028-2615

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration of the sum of \$10.00 paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lots or parcels of land and more particularly described as follows:

Being all of Lots 40, 41, 42, 43, 52, 53, 54, and 55 of F.T. LOFTIN SUBDIVISION, as shown on plat thereof recorded in Plat Book 3 at page 42 in the Iredell County Public Registry.  
Being the property known as 475 S. Main Street

All or a portion of the properties hereinabove described was acquired by Grantor by instrument recorded in Book 1758, Page 1703-1705, Iredell County Registry.

A map showing the above described property is recorded in Plat Book 3, Page 42, and referenced within this instrument.

The above described property  does  does not include the primary residence of the Grantor.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

This conveyance is subject to all exceptions of record and shall not act as a release of any mortgages or other obligations secured by the property conveyed herein.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officer(s), the day and year first above written.

K&E Real Estate Investments, LLC

By: [Signature]  
Paul Konrady  
Title: Member/Manager

State of WASHINGTON, King COUNTY

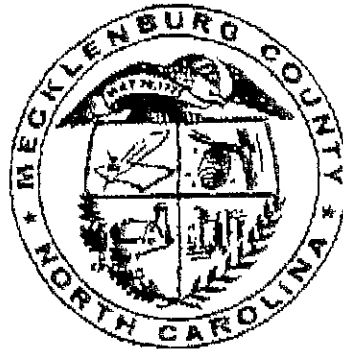
I, the undersigned Notary Public of the County and State aforesaid, certify that Paul A. Konrady personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purposes therein expressed. Witness my hand and official stamp or seal, this the 29th day of May, 2011.

My Commission Expires: 03/09/2015

[Signature]  
Notary Public

Print Notary Name: Scott E Mason





J. DAVID GRANBERRY  
REGISTER OF DEEDS, MECKLENBURG  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE, NC 28202

**PLEASE RETAIN YELLOW TRAILER PAGE**

It is part of the recorded document, and must be submitted with original for re-recording and/or cancellation.

.....

Filed For Registration: 06/03/2011 11:18:33 AM  
Book: RE 26521 Page: 558-560  
Document No.: 2011062782  
DEED 3 PGS \$22.00  
Recorder: TERESITA BYRUM



2011062782



PLAINTIFF'S EXHIBIT 3

FOR REGISTRATION J. DAVID GRANBERRY REGISTER OF DEEDS MECKLENBURG COUNTY, NC 2011 JUN 03 11:18:33 AM BK 26621 PG:668-669 FEE:522.00 INSTRUMENT # 2011062762

NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax: 0

Recording Time, Book and Page

Tax Map No.

Parcel Identifier No. Tract 1 Parcel 029-75-338 Tract 2 Parcel 005-09-202

Mail after recording to: Grantor

This instrument was prepared by: Paul Konrady

THIS DEED made this \_\_\_\_\_ day of May, 2011 by and between

Table with 2 columns: GRANTOR (K&E Real Estate Investments, LLC) and GRANTEE (Paul A. Konrady, Mailing Address: 18810- 71st Ave. NE, Kenmore, WA 98028-2615)

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration of the sum of \$10.00 paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lots or parcels of land and more particularly described as follows:

TRACT 1: Being all of Lot 38 in Block 40 of WHISTLER'S CHASE VILLAGE, HIGHLAND CREEK, TRACT E, as shown on plat thereof recorded in Plat Book 28 at page 737 in the Mecklenburg County Public Registry. Being the property known as 5130 Bentgrass Run Dr.

TRACT 2: Being all of Lot 9 of GLENRIDGE, Phase 1, Map 2, as shown on plat thereof recorded in Plat Book 32 at page 833 in the Mecklenburg County Public Registry. Being the property known as 19234 Coachman's Tract

All or a portion of the properties hereinabove described was acquired by Grantor by instrument recorded in Book 20849, Page 240-243, Mecklenburg County Registry.

The above described properties [ ] does [X] does not include the primary residence of the Grantor.

Handwritten initials/signature

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

This conveyance is subject to all exceptions of record and shall not act as a release of any mortgages or other obligations secured by the property conveyed herein.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officer(s), the day and year first above written.

K&E Real Estate Investments, LLC

By: [Signature]  
Paul Konrady  
Title: Member/Manager

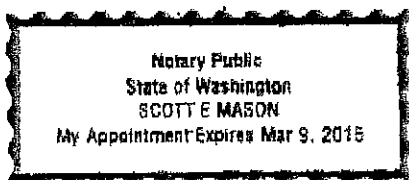
State of WASHINGTON, King COUNTY

I, the undersigned Notary Public of the County and State aforesaid, certify that Paul A. Konrady personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purposes therein expressed. Witness my hand and official stamp or seal, this the 29th day of May, 2011.

My Commission Expires: 03/09/2015

[Signature]  
Notary Public

Print Notary Name: Scott E Mason





JPMorgan Chase Bank, N.A.  
P O Box 659754  
San Antonio, TX 78265 - 9754

May 24, 2011 through May 31, 2011

**CUSTOMER SERVICE INFORMATION**

Web site: Chase.com  
Service Center: 1-800-242-7338  
Hearing Impaired: 1-800-242-7383  
Para Espanol: 1-888-622-4273  
International Calls: 1-713-262-1679

00000807 DRE 702 08C 15211 - NNNNNNNNNNN 1 00000000 60 0000  
PAUL ANDREW KONRADY CONSULTING  
18810 71ST AVE NE  
BOTHELL WA 98028-2615



**CHECKING SUMMARY**

Chase BusinessSelect Checking

	INSTANCES	AMOUNT
Beginning Balance		\$0.00
Deposits and Additions	2	20,100.00
Ending Balance	2	\$20,100.00

**DEPOSITS AND ADDITIONS**

DATE	DESCRIPTION	AMOUNT
05/24	Transfer From Chk Xxxxx5217	\$100.00
05/27	Deposit	20,000.00
Total Deposits and Additions		\$20,100.00

**DAILY ENDING BALANCE**

DATE	AMOUNT
05/24	\$100.00
05/27	20,100.00

**SERVICE CHARGE SUMMARY**

TRANSACTIONS FOR SERVICE FEE CALCULATION	NUMBER OF TRANSACTIONS
Checks Paid / Debits	0
Deposits / Credits	2
Deposited Items	0
Transaction Total	2

SERVICE FEE CALCULATION	AMOUNT
Service Fee	\$0.00
Service Fee Credit	\$0.00
Net Service Fee	\$0.00
Excessive Transaction Fees (Above 200)	\$0.00
Total Service Fees	\$0.00