

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,
Ohio Air Quality Development Authority
50 West Broad Street, Suite 1718
Columbus, OH 43215

Plaintiff,

v.

WILLARD & KELSEY SOLAR GROUP, LLC
1775 Progress Drive
Perrysburg, OH 43551

and

WILLARD & KELSEY SOLAR GROUP, LLC
c/o Matthew Cox, as agent for Service of Process
88 East Broad Street
Columbus, OH 43215

and

JAMES M. APPOLD
520 Riverside Drive
Rossford, OH 43460

and

MICHAEL J. CICAK
29897 St. Andrews Road
Perrysburg, OH 43551

and

JAMES E. HEIDNER
811 W. Wooster Street
Bowling Green, OH 43402

and

GARY T. FAYKOSH
436 South Ridge Drive
Perrysburg, OH 43551

Case No.

Commercial Court

Judge:

COMPLAINT

and

DEFENDANTS JOHN DOE

Names Unknown
Address Unknown

Defendants.

Plaintiff STATE OF OHIO, OHIO AIR QUALITY DEVELOPMENT AUTHORITY, by and through the Ohio Attorney General, for its Complaint against Defendants WILLARD & KELSEY SOLAR GROUP, LLC, JAMES M. APPOLD, MICHAEL J. CIIAK, JAMES E. HEIDNER, GARY T. FAYKOSH and Defendants JOHN DOE, names unknown, states as follows:

The Parties, General Allegations and Venue

1. Plaintiff State of Ohio, Ohio Air Quality Development Authority (“Authority”), is a state agency that provides funding under R.C §§ 166.01 - 166.35 and other Ohio statutes to fund projects that preserve the environment. The Authority is headquartered in Franklin County, Ohio.
2. Defendant Willard & Kelsey Solar Group, LLC (“WKS”) is a limited liability company organized under the laws of the State of Ohio, with its principal place of business located in Perrysburg, in Wood County, Ohio.
3. Defendant WKS entered into the transactions that are the subject of this complaint in Franklin County, Ohio.
4. Defendant James M. Appold (“Appold”) was a member/shareholder of WKS and the former President and principal shareholder of Consolidated Biscuit Company. Defendant Appold resides in Wood County, Ohio. He is also the owner or otherwise directly related to E-Z Pak, a business whose address and principal place of business are unknown.
5. Defendant James Heidner (“Heidner”) was a member/shareholder of WKS at all times relevant to the allegations of this complaint, and was the developer of certain intellectual property that was critical to a project to be funded by the Authority loan proceeds. Heidner currently resides in Wood County, Ohio.
6. Defendant Gary T. Faykosh (“Faykosh”) was a member/shareholder of WKS at all times relevant to the allegations of this complaint and was the developer of certain intellectual property that was critical to a project to be funded by the Authority proceeds. Faykosh currently resides in Wood County, Ohio and is a member/shareholder of Equinox Advanced Technologies, LLC, operating in Sandusky County, Ohio.

7. Defendant Michael Cicak (“Cicak”) was a member/shareholder of WKS at all times relevant to the allegations of this complaint, and was a principal negotiator of the transactions at issue herein. Cicak is a past officer of Glasstech, Inc. and Spring Grove Trading Co., LLC.
8. E-Z Pak, aka E-Z Pack, is a business entity of unknown organization, owned and/or controlled by Defendant Appold. E-Z Pak formerly operated at 4100 Meyer Lane, in McComb, Ohio 45858, but its operations at that location are, upon information and belief, discontinued and closed E-Z Pak and Consolidated Biscuit Company received disbursements of WKS funds during times relevant to the allegations of this complaint.
9. Defendants John Doe are individuals and/or business entities that obtained possession of assets material to the corporate formation of WKS and/or essential to the operations of WKS as a limited liability company, including intellectual and real property, but whose identity and/or form of business organization are not known to the Plaintiff at the present time.
10. Therefore, venue is proper in Hamilton County, Ohio. On or about February 14, 2013, Defendant WKS entered into an Agreed Judgment Entry, a copy of which is attached hereto as Exhibit A, in which WKS agreed and consented, *inter alia*, to venue in Hamilton County, Ohio in return for an agreement by Plaintiff to forebear from commencing a civil action against WKS at that time.
11. In early to mid-2007, regional representatives of the Ohio Department of Development (“DoD”) were contacted by Defendant Cicak and James Mitchell, the deceased former President of WKS, concerning the availability of state tax credits and other potentially available state loan money to fund the development of a new process to manufacture solar panels. For purposes of this complaint the development, operation and proposed expansion of the solar panel manufacturing operation of WKS will be referred to as “the Project.”
12. These discussions and later applications led to a preliminary application for a state tax credit, an application for assistance filed with the DoD and a March 2, 2009 application for financial assistance with Plaintiff Authority.
13. On or about July 9, 2010 WKS entered into a loan agreement (the “Authority Loan Agreement”) with the Authority pursuant to R.C. Ch. 166 for a loan not to exceed the amount of ten million dollars (\$10,000,000.00) (the “Authority Loan”) to be paid through an escrow agent. A true and correct copy of the Authority Loan Agreement is attached hereto as Exhibit B.
14. WKS executed a related promissory note dated July 9, 2010, and amended January 18, 2011 (collectively, the “Authority Note”). A true and correct copy of the Authority Note is attached hereto as Exhibit C. Defendant Cicak signed the Authority Loan and Note on behalf of WKS.

15. Defendant Cicak was authorized on behalf of WKS to sign the Authority Loan and Note.
16. The purpose of the Authority Loan and Note was to assist WKS in the purchase of necessary machinery and equipment for WKS.
17. WKS entered into a security agreement with the Authority on July 9, 2010, to secure repayment of the Authority Loan and the Authority Note (hereinafter, the "Security Agreement"). A true and correct copy of the Security Agreement is attached hereto as Exhibit D.
18. Pursuant to the Authority Loan Agreement, WKS received the sum of \$5.1 million dollars from the through the Authority's escrow agent, the Huntington Bank.
19. Through June 2013, representatives of WKS continued to represent to the Plaintiff Authority that the company had a good faith intention to repay the Authority Loan and Note and had valid business prospects. After June of 2013, and without notice to Plaintiff, WKS ceased all business operations.
20. WKS breached the terms of the Authority Loan Agreement and failed to pay the installments due to the Authority as agreed under the terms of the Authority Loan Agreement and the Authority Note. As a result of the breach, the full amount of the Authority Loan and the Authority Note became due and payable immediately. As a result of the breach, WKS owes the principal and remaining interest to the Plaintiff Authority, plus reasonable attorneys' fees, costs and interest, as provided in the Authority Loan and Note.

Count I - Breach of Contract

21. Plaintiff Authority renews and restates all of the allegations set forth in paragraphs 1 through 20 above and incorporates the same as if they were fully rewritten herein.
22. WKS agreed in the Authority Loan Agreement that it would not permit its debt to tangible net worth ratio (total liabilities/total equity, less intangible assets) to be greater than 2:1 at fiscal year-end 2011 and thereafter.
23. WKS also agreed in the Authority Loan Agreement that it would not permit the ratio of the sum of net income plus depreciation and amortization to the sum of interest paid, plus principal payments, plus capital expenditures to be less than 1.25:1 by the end of fiscal year 2011 and thereafter.
24. WKS breached both of the capitalization provisions referenced in previous paragraphs 22 and 23, thereby breaching the Authority Loan Agreement.
25. WKS also breached the Authority Loan Agreement and the Authority Note when it failed to pay any principal payments due. WKS made payments of interest in the amounts of \$1,476.71 on or about December 31, 2010, \$48,026.17 on or about March 11, 2011,

\$46,665.00 on or about June 30, 2011, \$46,665.00 on or about September 30, 2011, \$46,665.00 on or about December 31, 2011, and \$46,665.00 on or about March 31, 2011. Thereafter, WKS made no further payments. Fees required to be paid under the Authority Loan Agreement were also paid through September 30, 2011, but not thereafter. By such non-payment and default of payments due as agreed under the terms of the Authority Loan Agreement and the Authority Note, WKS is in default and breach of both the Authority Loan Agreement and the Authority Note.

26. The default by WKS of the Authority Loan Agreement and the Authority Note constitutes a breach of contract for which WKS is liable for all balances due thereunder.
27. By virtue of the default by WKS on the Authority Loan Agreement and the Authority Note, WKS is liable to Plaintiff in the amount of \$5.1 million dollars with interest thereon at the contract rate of at 10% from and after that date until paid.

Count II – Additional Breach of Contract For Failure to Create Jobs; Liquidated Damages

28. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 27 above and incorporates the same as if they were fully rewritten herein.
29. WKS agreed in Article IV, Section 4.1(a) of the Authority Loan Agreement that it would create four hundred fifty (450) jobs and employment opportunities at the Project site by September 30, 2012. The Project Site as defined on Exhibit C to the Authority Loan Agreement was located at 1775 Progress Drive, Perrysburg, OH 43551.
30. WKS agreed in Article IV, Section 4.1 of the Authority Loan Agreement that if it failed to create the promised jobs, for reasons other than market conditions, then it would be liable for liquidated damages equal to two times the cost for the job not created. The cost is defined in Article 1, Section 1.1 as \$22,222.23 per job. This agreed to term was intended as compensation to the State of Ohio for damages otherwise intangible.
31. WKS failed to create the jobs promised because it was severely undercapitalized, and did not have the certifications essential to marketing its production either domestically or in foreign markets.
32. WKS thereby failed to create the jobs promised for reasons other than market conditions, and is therefore liable in liquidated damages for each job not created.

Count III – Additional Breach of Contract; Attorneys' Fees and Late Fees

33. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 31 above and incorporates the same as if they were fully rewritten herein.
34. Article III, Section 3.11 of the Authority Loan Agreement provides that WKS shall reimburse the Authority's reasonable attorneys' fees and expenses in collecting a default

upon the Authority Loan Agreement and the Authority Note. Such amount is to earn interest at the same rate as loan advances made to WKS.

35. The Authority Note provides that interest shall be charged at the rate of ten percent (10%) per annum on the Authority Loan and Note. In addition, the Plaintiff is also entitled to payment of a late charge equal to five percent (5%) of the amount due for each month during which the default exists.
36. As a result of the default by WKS on the Authority Loan Agreement and the Authority Note, the Plaintiff is entitled to attorneys' fees, expenses and late fees in accordance with the terms of the Authority Loan Agreement and the Authority Note.

Count IV – Breach of Security Agreement; Replevin

37. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 36 above and incorporates the same as if they were fully rewritten herein.
38. The Security Agreement was duly perfected by filing of a UCC Financing Statement with the office of the Ohio Secretary of State on or about July 27, 2010 (collectively, the "Security Agreements").
39. By virtue of the perfected Security Agreements, Plaintiff State of Ohio has the first and best right to possession of the collateral described therein otherwise known as the equipment belonging to WKS.
40. As a result of the default by WKS on the Authority Loan Agreement and the Authority Note, Plaintiff is entitled, to a judgment in replevin, to take possession of the personal property secured by the Security Agreements and ownership of the collateral that is secured by the Security Agreements.

Count V – Shareholder Liability

41. Plaintiff Authority renews and restates all of the allegations set forth in paragraphs 1 through 40 above and incorporates the same as if they were fully rewritten herein.
42. Appold, Heidner, Faykosh and Cicak (the "Individual Defendants") exercised dominion and control over the operations of WKS in a manner that was so complete that the limited liability company had no separate mind, will, or existence of its own.
43. Financial reports and records of WKS indicate that it failed to observe corporate formalities of a limited liability company, including regular board meetings and resolutions; lacked adequate capitalization; and failed to establish a functioning business operation. These failures were caused by the actions and/or conscious inaction of the Individual Defendants.

44. The control over the limited liability company by the Individual Defendants was exercised in such a manner that such conduct caused injury or unjust loss to the Plaintiff, and the Individual Defendants wrongly exercised control over WKS in such a manner as to commit fraudulent, illegal, unlawful or other unjust or inequitable acts.
45. WKS did not maintain checking accounts in 2007, a gross omission that indicates that the Individual Defendants did not intend to operate WKS as a separate and distinct limited liability company.
46. WKS has admitted in writing that prior to 2008, it did not have sufficient administrative personnel to have purchasing and accounting systems fully in place, an omission that indicates that the Individual Defendants did not intend to operate WKS as a separate and distinct limited liability company.
47. WKS did not maintain reliable or business-like records. This is further evidence that WKS was not operating as a legally proper separate and distinct limited liability company. The Individual Defendants are thereby liable both as Directors and Officers, and personally for the terms and amounts due and owing under the Authority Loan and Note.
48. WKS did not obtain the required certifications of its manufacturing process and product so that the product could be sold to domestic or international markets. Such certifications were critical to the ability of WKS to market its product, and therefore were essential to fulfilling its representations to the Authority and to ensure that WKS could fulfill its obligations under the Authority Loan Agreement and the Authority Note. Such certifications were also essential to fulfill the corporate purpose of WKS. The Individual Defendants failed to ensure that WKS obtained such certification thereby breaching the terms of the Authority Loan and Note, and preventing WKS from operating as a properly, independently functioning limited liability company.
49. Defendant Appold, treated the corporate assets of WKS as his own, thereby failing to respect the separate legal existence of WKS as a limited liability company.
50. Defendant Appold made a personal loan to WKS of approximately \$5,000,000 bearing an unconscionable interest rate of fifty percent (50%). Although, reportedly, this loan and the accumulated interest were later converted to equity, its existence and terms were inconsistent with the corporate form of a limited liability company and its shield of liability.
51. The Individual Defendants permitted a transfer of approximately \$1,800,000 from WKS to E-Z Pak and Consolidated Biscuit Company, both of which were businesses owned or controlled by Defendant Appold. Upon information and belief, neither E-Z Pak nor Consolidated Biscuit Company had any relation to the solar manufacturing operations of WKS. This intermingling of funds is inconsistent with WKS being operated as a separate and distinct limited liability company.

52. Baked goods from one or both of the businesses referenced in paragraph 51 were stored at the WKS Project Facility. The storage of baked goods did not further the corporate purposes of WKS as a limited liability company in any respect as it had nothing to do with the manufacture of solar panels.
53. Regardless of whether Consolidated Biscuit Company or E-Z Pak paid WKS for use of the Project Facility, or for the storage of baked goods as alleged in paragraph 53, the co-mingling of funds and facilities of WKS with those under the control of the Individual Defendants and with funds of other businesses owned and/or operated by Defendant Appold, demonstrates that WKS was not operating as a separate and distinct limited liability company.
54. Based upon representations made by Defendant Cicak and others affiliated with WKS, Plaintiff Authority believed that WKS had or would have title, ownership, custody and control of the land located at 1775 Progress Drive in Perrysburg, Ohio, on which WKS is situated and which was identified as the project site in the Authority Loan (the "Project Site") and the building ("Project Facility") existing upon the Project Site for the manufacturing and production of the project, development, production and sale of solar panels, that was to be funded by the Authority Loan proceeds (the "Project").
55. Prior to the adoption of an operating agreement for WKS, the Individual Defendants were future members of WKS who, at that time, published information making specific representations to prospective lenders (which included Plaintiff Authority) to encourage the funding for the Project. These representations were contained in a 32-page confidential proposal dated October 15, 2007 (the "Proposal").
56. Other documents submitted to Plaintiff Authority prior to the execution of the Authority Loan Agreement and Authority Note stated that the Project Site and the Project Facility were owned by WKS and this was not true. Financial documents of WKS submitted to Plaintiff Authority in support of the application for the Authority Loan identified the Project Site and Project Facility as assets of WKS and indicated that a loan had been obtained to pay for one hundred percent (100%) of the purchase cost of said assets.
57. The WKS financial statement dated August 31, 2008, which was submitted to the Authority on October 13, 2008 in support of the application for the Authority Loan, stated that the loan amount for the purchase of the Project Site was \$7,480,000.00.
58. The Project Site and Project Facility were never owned by WKS. Records of Wood County, Ohio indicate that the Project Site, including all improvements thereon, is and was at the time the false representations described above were made, owned by an entity known as Spring Grove Trading Company, having been purchased by Spring Grove Trading Company from Delafoil, Inc., on February 22, 2008, for \$7,000,000. A page of a financial statement dated August 31, 2008 suggests real property valued at \$700,000 (sic) was to be purchased by WKS.

59. The deed to the Project Site on file in Wood County, Ohio list Defendant Cicak as the agent of Spring Grove Trading Company. Upon information and belief, Defendants Appold and Cicak have been the owners of Spring Grove Trading Company at all times relevant to the allegations of this complaint.
60. In lieu of any contribution at the time of formation, Defendants Heidner and Faykosh agreed to transfer to WKS all inventions, ideas, reports and other creative works as well as all patents, trademarks, copyrights, trade secrets or concepts which they possessed or to which they owned rights that related to the proprietary solar panel activity or processes of WKS.
61. Upon information and belief, some or all of the above-referenced intellectual property to be used by WKS was never transferred to WKS, but was instead placed into certain other companies that may include Willard Kelsey Solar Manufacturing Plant I, LLC, W & K Innovation, LLC, and Willard Kelsey Real Estate Holdings, LLC.
62. To the extent that any of the Individual Defendants were involved directly or indirectly with transfers of intellectual property essential to the Project to these or other entities, such transfers were fraudulent or unlawful as to Plaintiff Authority and were inconsistent with necessary and proper capitalization of WKS.
63. The promised transfer of intellectual and real property and capital contributions by Defendants Heidner and Faykosh were essential to the establishment of WKS as a limited liability company and to the success of WKS. The Individual Defendants knew, or should have known, that the failure to effectuate such transfers was inconsistent with the proper capitalization of WKS.
64. As a result of the representations made by the Individual Defendants to Plaintiff, Plaintiff Authority believed that the existence and capitalization of WKS as a limited liability company was proper and appropriate and Plaintiff Authority reasonably relied on such representations and belief to its detriment when it executed the Authority Loan and transferred the loan proceeds to WKS.
65. The corporate existence of WKS as a limited liability company should be disregarded as a result of the improper and fraudulent conduct of the Individual Defendants described above. Accordingly, the Individual Defendants are not entitled to the benefit of the corporate form of WKS as a limited liability company, also known as the corporate shield, and Individual Defendant is therefore jointly and severally liable in quasi-contract and in equity to repay the Authority Loan and Note, plus damages, attorneys' fees, costs, expenses, late fees and interest.

Count V - Breach of Fiduciary Duty

66. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 65 above and incorporates the same as if they were fully rewritten herein.
67. The Individual Defendants had fiduciary obligations to manage the Authority Loan proceeds in the possession of WKS for the benefit of the Project and to provide security for the Authority Loan as agreed, pursuant to their obligations as members/shareholders of WKS and pursuant to the requirements of R.C. §§ 166.01 - 166.35.
68. The Authority Loan Agreement provided that no portion of the Authority Loan proceeds would be used to pay any fee, kickback or consideration of any type to the members, officers, directors or employees of WKS.
69. WKS agreed to make a \$56 million dollar commitment of capital within eighteen (18) months of the Authority Loan and to ensure that a debt to tangible net worth ratio of 2:1 was maintained. WKS failed to do so. The failure to do so meant that WKS was severely undercapitalized, in such a manner so as to be inconsistent with being afforded the protections of as a limited liability company that would serve to limit the liability of the Individual Defendants. This also constitutes a further material breach of the Authority Loan Agreement. As such, the Individual Defendants are responsible jointly and severally for repayment of the Authority Loan and the Authority Note and are not entitled to member/shareholder immunity for the same.
70. Transfers to the control of at least one of Individual Defendants by WKS have been made in derogation of paragraph (l) of Article II Section 2.2 of the Authority Loan Agreement. An audit of the use of WKS Loan proceeds found that WKS transferred approximately \$1,800,000 to E-Z Pak and Consolidated Biscuit Company. These transfers indicate that WKS was not being operated as a separate and distinct legal liability corporation by the Individual Member/Shareholders, and as such as the Individual Defendants allowed such conduct, they are personally liable for the acts and debts of WKS, including that evidenced by the Authority Loan and Note.
71. The transfers by WKS to E-Z Pak (the "E-Z Pak Transfers") were made as follows:
- | | | |
|-----|---------|--------------|
| (a) | 3/31/07 | \$ 4,035.68 |
| (b) | 4/30/07 | \$ 8,415.16 |
| (c) | 5/31/07 | \$ 71,383.81 |
| (d) | 6/30/07 | \$ 21,401.79 |
| (e) | 7/31/07 | \$113,250.91 |
| (f) | 8/31/07 | \$ 14,369.66 |
| (g) | 9/30/07 | \$ 39,802.24 |

(h) 10/31/07	\$ 47,879.92
(i) 11/30/07	\$145,928.30
(j) 12/31/07	\$ 43,856.63
(k) 1/31/08	\$253,898.58
(l) 2/28/08	\$ 49,423.25
(m) 3/31/08	\$ 81,695.95
(n) 4/30/08	\$317,981.29
(o) 5/31/08	\$133,204.43
(p) 6/30/08	\$ 52,289.93
(q) 7/31/08	\$ 13,661.18
(r) 8/31/08	\$ 754.59

72. Based upon representations made by Defendant Cicak, the application and the other Individual Defendants collectively through the confidential October 15, 2007 Proposal, WKS was believed by Plaintiff Authority to have title, ownership, custody and control of Project Site and the Project Facility existing upon it for the manufacturing and production of the Project that was to be funded by the Authority Loan proceeds.
73. Upon information and belief, Defendant Appold has owned and/or controlled E-Z-Pak at all times relevant to the allegations of this complaint.
74. The transfers by WKS to Consolidated Biscuit Company (the “CBC Transfers”) were made without the consent of Plaintiff Authority. The following are two of the improper CBC Transfers:
- | | |
|--------------|--------------|
| (a) 12/31/08 | \$266,412.32 |
| (b) 12/31/08 | \$157,710.62 |
75. Upon information and belief, Defendant Appold owned and/or controlled Consolidated Biscuit Company at the time when the CBC Transfers were made by WKS.
76. By personally receiving or consenting to debt over and above that permitted by the 2:1 debt ratio agreed to in the Authority Loan, and by failing to secure the \$56 million dollar additional capital contribution for WKS, the Individual Defendants failed to properly manage WKS in furtherance of the stated goals of the Project, the Authority Loan Agreement and the Authority Note, or consistent with the corporate purposes of WKS as a limited liability company.
77. The Individual Defendants breached their fiduciary duty to Plaintiff Authority by not managing WKS in such a manner as to ensure proper capitalization and completion of the Project including acquisition of the necessary certifications. As such the Individual Defendants to WKS are liable in damages to the Plaintiff Authority for damages, including repayment of the Loan proceeds and sums due as liquidated damages.

Count VI – Civil Aiding and Abetting

78. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 78 above and incorporates the same as if they were fully rewritten herein.
79. The Individual Defendants had a duty to prevent unlawful transfers of Authority Loan proceeds to members of WKS or to other entities related to WKS or their members, to prevent transfers to shareholder/members of WKS in violation of Article II, Section 2.2 of the Authority Loan and to ensure that required capital contributions of \$56 million dollars were made to WKS.
80. The Individual Defendants breached their duty to Plaintiff Authority to manage WKS in a manner consistent with the fulfillment of the Project and to ensure repayment of the Authority Loan and Note.
81. In combination and/or individually, the Individual Defendants committed tortious acts as described above in violation of their duty to prevent unlawful transfers and in violation of their fiduciary duties to WKS and to Plaintiff Authority.
82. The Individual Defendants knew that each other's conduct constituted a breach of fiduciary duties and gave substantial assistance and/or encouragement to each other to perform such breaches of fiduciary duty that resulted in the failure of WKS to create jobs and to fulfill the terms of the Authority Loan Agreement and the Authority Note.
83. As a result of the foregoing actions and inaction, the Individual Defendants are liable to Plaintiff Authority for civil aiding and abetting. Plaintiff Authority is entitled to recover a judgment against the Individual Defendants jointly and severally for damage suffered by the State of Ohio for failure to complete the Project, failure to provide the promised jobs and for failure to repay the Authority Loan and the Authority Note, and/or any injuries sustained plus applicable attorneys' fees, costs, expenses, late fees and interest.

Count VII – Civil Conspiracy

84. Plaintiff renews and restates all of the allegations set forth in paragraphs 1 through 84 above and incorporates the same as if they were fully rewritten herein.
85. By allowing or participating in the fraudulent, unlawful or wrongful transfers of WKS assets and the severe undercapitalization of WKS as set forth above, the Individual Defendants participated in a malicious combination involving two or more persons which constituted a civil conspiracy, the result of which was the commission of a unlawful act by violation of R.C. §§ 166.01 - 166.35.
86. The malicious combination described in paragraph 86 above was established by a common understanding or design entered into by two or more persons to commit the unlawful act of

utilizing funds other than as provided by R.C. Chapter 166 and in violation of the terms of the Authority Loan. The combination described in paragraph 83 above caused the Individual Defendants to injure the interests of the Plaintiff in a way not competent for one alone, and resulted in actual damages to Plaintiff.

87. As a result of the foregoing malicious combination, the Individual Defendants are jointly and severally liable to Plaintiff Authority for their civil conspiracy. Plaintiff Authority is entitled to a recover a judgment against the Individual Defendants jointly and severally for the value of said transfers and/or any injury sustained plus applicable interest, attorneys' fees and costs. Plaintiff Authority is entitled to a recover a judgment against the Individual Defendants jointly and severally for damage suffered by the State of Ohio for failure to complete the Project, failure to provide the promised jobs and for failure to repay the Authority Loan and the Authority Note, and/or any injuries sustained plus applicable attorneys' fees, costs, expenses, late fees and interest.
88. To the extent that the Individual Defendants deliberately and intentionally concealed facts and/or engaged in willful and wanton conduct concerning the true financial condition of WKS, the control, possession and title of the necessary intellectual property by WKS to ensure completion of the Project, the acquisition of the necessary certifications to ensure that the manufactured solar panels could be sold domestically and internationally, so as to induce Plaintiff Authority to grant the loan, Plaintiff Authority is entitled to recover exemplary or punitive damages.

WHEREFORE, Plaintiff State of Ohio, Ohio Air Quality Development Authority, through the Ohio Attorney General, demands judgment in its favor against the Defendants as follows:

- A. Judgment against WKS on the Authority Loan Agreement and Authority Note in the amount of \$5.1 million dollars with interest at ten percent (10 %) from February 14, 2013 for breach of the Authority Loan Agreement and Authority Note;
- B. Judgment against the Defendants WKS, Appold, Cicak, Heidner and Faykosh, jointly and severally for the contractual late charges of five percent (5%) for each payment due, that being the entire Authority Loan and Authority Note balance in light of the breach of the Authority Loan Agreement and Authority Note and the entire unpaid balance having become due and payable.
- A. Judgment against the Defendants WKS, Appold, Cicak, Heidner and Faykosh, jointly and severally, for the costs of this action including attorneys' fees and expenses, together with interest as provided in the Authority Loan Agreement, Authority Note and Security Agreements;
- C. Judgment against Defendants Appold, Heidner, Cicak and Faykosh, jointly and severally, under shareholder liability for the damages sustained by Plaintiff for failing to establish and operate WKS as proper limited liability company.

- D. Judgment against Appold, Cicak, Heidner, and Faykosh jointly and severally for the damages sustained by Plaintiff Authority for failing to establish and operate as a business entity; and judgment against Appold, Cicak, Heidner, and Faykosh for the sums otherwise due to the Plaintiff Authority under the Authority Loan and Note.
- E. Judgment in replevin against the Defendants WKS, Appold, Cicak, Heidner and Faykosh, jointly and severally, for all collateral to which Plaintiff Authority is entitled as a result of the default of the WKS Loan pursuant to the Security Agreements;
- F. Judgment against all of the Defendants jointly and severally for the costs of this action including late fees, attorneys' fees, costs and expenses together with interest as provided in the Authority Loan, Authority Note and Security Agreements;
- G. Judgment against all Defendants WKS, Appold, Cicak, Heidner and Faykosh, jointly and severally, in the amount of \$20,000,007.00 as liquidated damages for the failure to create 450 new Ohio jobs.
- H. Judgment for such other relief including exemplary damages for any cause of action that by law allows imposition that the Court deems to be just and proper at law or in equity.

Respectfully submitted,

MICHAEL DEWINE (0009181)
ATTORNEY GENERAL OF OHIO

/s/ Joseph W. Shea

Joseph W. Shea III (0002758)

Special Counsel

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