

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JOSEPH W. VAN TREECK,)
)
 Plaintiff,)
)
 vs.)
)
 THE CREAMERY CORPORATION)
 d/b/a MATANUSKA MAID DAIRY,)
)
 Defendant.)

Case No. 3AN-07-11347 Civil

ANSWER TO COUNTERCLAIM

For his answer to the defendant's counterclaim, Mr. Van Treeck follows the paragraph numbering of the Creamery Corporation's complaint.

1. Admits that he was the executive officer of the Creamery Corporation. Affirmatively alleges that he was hired by the board of directors of the corporation as an employee and was subject to dismissal by the board at any time. Admit that as an employee, he had duties as assigned that he carried out to the best of his ability. Deny the balance of Paragraph 1.

2. Admit that Mr. Van Treeck knew Mat Maid had significant financial difficulties as it approached the end. Deny the balance of paragraph 2.

3. Denied

4. Denied.

5. Denied.

6. Denied.

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7. Denied

8. Denied.

9. Denied.

10. Mr. Van Treeck answers paragraph 10 by incorporating in this paragraph his answers to the above allegations.

11. Denied

12. Denied

13. Denied.

14. Mr. Van Treeck answers paragraph 14 by incorporating in this paragraph his answers to the above allegations.

15. Admits that he was the executive officer of the Creamery Corporation. Affirmatively alleges that he was hired by the board of directors of the corporation as an employee and was subject to dismissal by the board at any time. Admit that as an employee, he had duties as assigned that he carried out to the best of his ability. Deny the balance of Paragraph 15.

16. Denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The complaint in counterclaim fails to state a claim upon which relief can be granted. Assuming mistakes are made by an executive of a corporation, an employee of the corporation is not liable for damages as a result of those mistakes unless the acts of the employee were intended to injure the corporation.

Second Affirmative Defense

The complaint in counterclaim fails to join indispensable parties.

Third Affirmative Defense

Mr. Van Treeck's actions as chief executive officer of the Creamery Corporation were within the range of reasonable business judgments allowed to an executive officer.

Fourth Affirmative Defense

Mr. Van Treeck's actions were within the range of policy directives set for him by the Board of Directors of the Creamery Corporation and that from time to time his acts were ratified by the board.

Fifth Affirmative Defense

Any claims that the Creamery Corporation might have were waived when Mr. Van Treeck's employment was terminated.

Sixth Affirmative Defense

Any losses to the Creamery Corporation were the result of economic factors out of the corporation's control or by acts by other employees, the board, the State of Alaska or other individuals in contributory negligence.

Seventh Affirmative Defense

Any claims against Mr. Van Treeck are barred by the statute of limitations.

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Ninth Affirmative Defense

The Creamery Corporation is estopped from raising any claim against Mr. Van Treeck by reason of its own conduct.

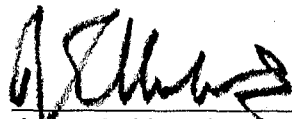
Tenth Affirmative Defense

The board of directors of the Creamery Corporation has not authorized the initiation of a law suit against Mr. Van Treeck.

Eleventh Affirmative Defense

Any claims against Mr. Van Treeck are covered by the Errors and Omissions Policy maintained by the Creamery, which insurer should be notified of this counterclaim and given a tender of defense.

Dated this 12 day of May, 2008.



John E. Havelock
Alaska Bar # 6101006
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the ANSWER TO COUNTERCLAIM was mailed/faxed/emailed this 12 day of May, 2008, to the following:

JON T. GIVENS
BANKSTON GRONNING O'HARA, P.C.
601 WEST 5TH AVE., STE 900
ANCHORAGE, AK 99501

By: 
Janet Rader