

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI  
Circuit Judge Division No. \_\_\_\_\_

**PEOPLES BANK & TRUST CO.,** )  
A Missouri Trust Company, )  
 )  
Plaintiff, )

vs. )

Cause No. \_\_\_\_\_

**TheTap L.L.C.,** )  
**d/b/a The Tap,** )  
Serve: )  
Jerome J. Berhorst, Registered Agent )  
626 Dunmore Place Drive )  
St. Charles, Missouri 63304, )

**JEROME J. BERHORST,** )  
626 Dunmore Place Drive )  
St. Charles, Missouri 63304 )

and )

**MARIA A. BERHORST,** )  
626 Dunmore Place Drive )  
St. Charles, Missouri 63304, )

Defendants. )

**COUNT I**  
**PETITION ON NOTE**

COMES NOW the Plaintiff, Peoples Bank & Trust Co., and for Count I of its cause of action states and alleges as follows:

1. The Plaintiff is a depository trust company, duly organized and existing under and by virtue of the laws of the State of Missouri, with its principal place of business located in Lincoln County, Missouri.

2. The Defendant, TheTap L.L.C. is a limited liability company duly organized and existing under the laws of the State of Missouri, doing business under the style and firm name “The Tap”, with its principal place of business located in St. Charles County, Missouri. Said Defendant shall hereinafter from time to time be referred to as “The Tap”.

3. The Defendants, Jerome J. Berhorst and Maria A. Berhorst, are husband and wife residing in St. Charles County, Missouri, both residing at 626 Dunmore Place Drive, St. Charles, Missouri 63304.

4. On or about March 16, 2015, Defendant, The Tap, acting by and through its duly authorized members executed and delivered to the Plaintiff its promissory note of that date, a copy of which is attached hereto as Exhibit “A” and incorporated by reference herein, whereby it promised to pay to Plaintiff, or its order, the sum of Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00), together with interest thereon from the date thereof at the rate of 5.250% per annum. Said sum, by the terms of said note, being payable in installments of accrued interest beginning on April 8, 2015, and then on the 8<sup>th</sup> day of each month thereafter with the entire balance of principal and any accrued but unpaid interest being due and payable on March 8, 2016.

5. Said promissory note provided that, upon default, including failure to pay the balance due thereunder at maturity, interest would accrue at the rate in effect prior to the default plus 5.000 percent, which makes a total interest rate after default of 10.250% per annum.

6. Said promissory note is in default in that March 8, 2016 has passed and the entire balance of principal and accrued interest due thereunder has not been paid in full.

7. After giving all offsets and credits due, there is currently due from Defendant, The Tap, under said promissory note, the principal sum of \$57,342.43, together with interest thereon at the rate of 10.250% per annum from and after October 13, 2016.

WHEREFORE, the Plaintiff prays judgment against Defendant, TheTap L.L.C., under this Count I for the principal sum of \$57,342.43, together with interest thereon at the rate of 10.250% per annum from and after October 13, 2016; for its costs expended herein; and for such other and further relief as the Court deems just.

**COUNT II**  
**PETITION ON NOTE**

COMES NOW Plaintiff, Peoples Bank & Trust Co., and for Count II of its cause of action, states and alleges as follows:

8. Plaintiff restates, realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 7, inclusive of Count I of this Petition.

9. On or about November 28, 2013, Defendant, The Tap, acting through its duly authorized members, executed and delivered to Plaintiff its promissory note of that date, a copy of which is attached hereto as Exhibit "B" and incorporated by reference herein, wherein it promised to pay to Plaintiff, or its order, the principal sum of Nine Hundred Fifty Thousand and 00/100 Dollars (\$950,000.00) together with interest thereon from the date thereof at the rate of 5.250% per annum. Said sum by the terms of said note was payable in 252 payments. Said payments were to consist of payment of accrued interest only beginning on December 8, 2013, and then on the 8<sup>th</sup> day of each month thereafter. Then, in installment payments of principal and interest in the amount of \$6,441.56 beginning on December 8, 2014 and on the 8<sup>th</sup> day of each month thereafter for 36

payments. Then, in amounts thereafter to be adjusted every 36 months to reflect changes in the interest rate.

10. On or about March 16, 2015, Plaintiff and Defendant entered into a written Debt Modification Agreement of that date, a copy of which is attached hereto as Exhibit "C" and incorporated by reference herein, modifying and amending some of the terms of the promissory note described in this Count II.

11. Said Modification Agreement modified the interest rate of the promissory note to 5.250% per annum until November 8, 2016. Thereafter, the interest rate would be subject to change as further described in the Modification Agreement.

12. Said Modification Agreement modified the repayment terms of the promissory note to provide that it would be repaid in 236 payments. The initial payment amount would be \$4,082.00 beginning on April 8, 2015, and on the 8<sup>th</sup> day of each month thereafter for 36 months. Thereafter the amount of each monthly payment would be subject to change to reflect changes in the interest rate as described in the Modification Agreement.

13. Said Modification Agreement provided that, upon default, interest would accrue on the unpaid principal balance at a rate equal to the rate in effect prior to the default plus 5.000 percent, until paid in full.

14. Said Modification Agreement provided that all terms and provisions of the original promissory note were to survive and remain in full force and effect except as specifically and expressly amended by the Modification Agreement.

15. The promissory note provided that if Defendant was in default on any other debt agreement Defendant had with Plaintiff, Defendant would be in default under the promissory note described in this Count II.

16. Defendant's default in repayment of the amount due under the promissory note described in Count I above therefore constituted default under the promissory note described in this Count II.

17. The promissory note described in this Count II provided that upon default, Plaintiff could make all or any part of the amount due under said note to be due and payable immediately.

18. As a result of Defendant's default, Plaintiff has declared the entire balance due under this promissory note to be due and payable immediately.

19. Plaintiff has made demand on Defendant to pay the entire balance due under said promissory note; but, in spite of such demand, Defendant has failed and refused and continues to fail and refuse to pay the balance due thereunder.

20. After giving all offsets and credits due, there is currently due to Plaintiff from Defendant, the Tap, under the terms of the promissory note described in this Count II, the principal sum of \$77,395.00, together with interest thereon at the rate of 10.250% per annum from and after October 17, 2016.

WHEREFORE, Plaintiff prays judgment against Defendant, TheTap L.L.C., under this Count II for the principal sum of \$77,395.00, together with interest thereon at the rate of 10.250% per annum from and after October 17, 2016; for its costs expended herein; and for such other and further relief as the Court deems just.

**COUNT III**  
**PETITION FOR REPLEVIN**

COMES NOW Plaintiff, Peoples Bank & Trust Co., and for Count III of its cause of action, states and alleges as follows:

21. Plaintiff restates, realleges and incorporates by this reference, as if fully set forth herein, Paragraphs 1 through 20, inclusive, of Counts I and II of this Petition.

22. On or about November 8, 2013, Defendant, The Tap, acting by and through its duly authorized members, executed and delivered to Plaintiff a Security Agreement of that date, a copy of which is attached hereto as Exhibit "D" and incorporated by reference herein, whereby it granted the Plaintiff a security interest in the following property:

All equipment including, but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. All equipment described in a list or schedule which [Defendant] might give to [Plaintiff] will also be included, but such a list is not necessary for a valid security interest in [Defendant's] equipment. "Equipment" means goods other than inventory, farm products, or consumer goods. The term "Equipment" is as defined by the Uniform Commercial Code and further as modified or amended by the laws of the jurisdiction which governs this transaction.

Also, all goods now or in the future affixed or attached to real estate. "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law. The "Fixtures" is as defined by the Uniform Commercial Code and further as modified or amended by the laws of the jurisdiction which governs this transaction.

23. The Plaintiff has caused its security interest in said property to be perfected by causing a Uniform Commercial Code Financing Statement (UCC-1) describing said property to be filed in the Office of the Secretary of State of Missouri. A copy of said UCC-1 is attached hereto as Exhibit "E" and incorporated by reference herein.

24. Said Security Agreement was executed and delivered to secure repayment of the promissory note dated November 8, 2018, executed by Defendant, The Tap, which is the promissory note described in Count II, above; and also to secure all other debts from Defendant to Plaintiff, which includes the promissory note dated March 16, 2015 executed by Defendant, The Tap, which is the promissory note described in Count I, above.

25. The Defendant's default in repayment of the indebtedness secured by said security agreement also constitutes default under the terms of the security agreement.

26. As a result of Defendant's default, the Plaintiff is entitled to immediate possession of the property described in said security agreement.

27. The Plaintiff has made demand on Defendants to surrender possession of said property to the Plaintiff, but, in spite of such demand, the Defendants have failed and refused and continue to fail and refuse to surrender possession of said property and are wrongfully and unlawfully retaining possession.

28. On information and belief, Plaintiff states that Defendants have or are attempting to sell some or all of the property described in said security agreement without Plaintiff's consent and for the purpose of preventing Plaintiff from obtaining possession of said property or the proceeds therefrom.

29. Plaintiff therefore believes that if immediate possession of said property is not secured, Plaintiff is in danger of not being able to obtain possession of said property for the purpose of applying the proceeds thereof in payment of the debts secured by said security agreement.

30. The Plaintiff believes that said property has a fair market value of approximately \$30,000.00.

31. Said property has not been seized from the Plaintiff under any legal process.

WHEREFORE, Plaintiff prays judgment against Defendants, TheTap L.L.C., Jerome J. Berhorst and Maria A. Berhorst, under this Count III for an Order of Delivery in Replevin for possession of the property described in Exhibit "D" attached hereto, or the value thereof, at the Plaintiff's election; for damages for its unlawful retention; for its costs expended herein; and for such other and further orders and relief as the Court deems just.

**COUNT IV**  
**PETITION AGAINST GUARANTORS ON NOTE**

32. Plaintiff restates, realleges and incorporates by this reference, as if fully set forth herein, Paragraphs 1 through 20, inclusive, of Counts I and II of this Petition.

33. On or about November 8, 2013, Defendants, Jerome J. Berhorst and Maria A. Berhorst, executed and delivered to Plaintiff their Guaranty agreement of that date, a copy of which is attached hereto as Exhibit "F" and incorporated by reference herein, whereby they unconditionally guaranteed the payment and performance of each and every debt, of every type and description, that Defendant, TheTap L.L.C., dba The Tap, may owe to Plaintiff whether owed on the date of such agreement or at any time in the future.

34. The Guaranty agreement described above was given as a precondition to Plaintiff's agreement to extend credit to Defendant, The Tap, and accept the promissory notes described in Counts I and II of this Petition.



35. Plaintiff has made demand upon Defendants, Jerome J. Berhorst and Maria A. Berhorst, for payment of the amounts due under the promissory notes described in Counts I and II of this Petition; but, in spite of such demand, said Defendants have failed and refused and continue to fail and refuse to pay the balance due to Plaintiff under said promissory notes.

36. There remains due to Plaintiff, under the promissory note described in Count I of this Petition, the principal sum of \$57,342.43, together with interest thereon at the rate of 10.250% per annum from and after October 13, 2016.

37. There remains due to Plaintiff, under the promissory note described in Count II of this Petition, the principal sum of \$77,395.00, together with interest thereon at the rate of 10.250% per annum from and after October 17, 2016.

38. The total principal amount due to Plaintiff from Defendants, Jerome J. Berhorst and Maria A. Berhorst, under the terms of said Guaranty agreement is \$134,737.43. In addition, interest is due on the principal balance of \$57,342.43 at the rate of 10.250% per annum from and after October 13, 2016; and interest is due on the principal balance of \$77,395.00 at the rate of 10.250% per annum from and after October 17, 2016.

39. Defendant Jerome J. Berhorst and Defendant Maria A. Berhorst are both engaged in civilian activities in St. Charles County, Missouri. Plaintiff therefore believes that neither Defendant is a member of the armed services of the United States of America.

WHEREFORE, Plaintiff prays judgment against Defendants, Jerome J. Berhorst and Maria A. Berhorst, jointly and severally, for the principal sum of \$134,737.43, and

for interest on the principal sum of \$57,342.43 at the rate of 10.250% per annum from and after October 13, 2016, and for interest on the principal sum of \$77,395.00 at the rate of 10.250% per annum from and after October 17, 2016; for its costs expended herein; and for such other and further relief as the Court deems just.

*Carla Angel*

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STATE OF MISSOURI     )  
  ) SS  
COUNTY OF LINCOLN    )

John H. Armstrong, being of lawful age, and having been first duly sworn upon his oath deposes and states that he is the Executive Vice President of Peoples Bank & Trust Co. and is authorized and empowered to make this affidavit on its behalf. He has read the foregoing Petition and examined the Exhibits attached thereto. The statements contained in said Petition are true and correct to the best of his knowledge, information and belief and the Exhibits attached thereto are true and complete copies of the original documents they purport to reproduce.

*John H. Armstrong*  
John H. Armstrong

Subscribed and sworn to before me on December 16, 2016.

*Anna Jacobs*

Notary Public

