

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

CLIFFORD K. BRAMBLE, JR., and  
KIRK PARKS,

Plaintiffs,

v.

KEVIN L. RATHBUN,

Defendant.

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CIVIL ACTION  
NO. 2018CV301230

COMPLAINT FOR DECLARATORY JUDGMENT

Pursuant to O.C.G.A. § 9-4-1 *et seq.*, Plaintiffs Clifford K. Bramble, Jr., (“Bramble”) and Kirk Parks (“Parks,” and collectively with Bramble, “Plaintiffs”) file their Complaint for Declaratory Judgment (“Complaint”) against Defendant Kevin L. Rathbun (“Rathbun”), and show that Plaintiffs are entitled to a declaration by this Court that Rathbun is not permitted to exercise any purchase option to buy Plaintiffs’ respective ownership interests in Kevin Rathbun Steak, LLC (“KRS”), Krog Bar LLC (“Krog Bar”), SteakBar, LLC (“SteakBar”), and 154 Krog Street, LLC (“154 Krog,” and collectively with KRS, Krog Bar, and Steak Bar, the “Companies”) and that Rathbun’s purported assignments of interest of Bramble and Parks’ interests in the Companies are void.

PRELIMINARY STATEMENT

1.

This case concerns a dispute between three members, Bramble, Parks, and Rathbun who own varying portions of each of the Companies, which operate successful restaurants

in and around Atlanta, Georgia. Since 2009, Bramble and Parks, in addition to being members in the Companies, were also employed and paid a salary by KRS. Parks, in December 2016, and Bramble, in December 2017, resigned their employment with KRS.

## 2.

In January 2018, Rathbun notified Bramble and Parks that, as a result of their resignations, he intended to purchase their membership interests in KRS, Krog Bar, and SteakBar pursuant to certain termination provisions contained in each of the Companies' operating agreements. Rathbun also notified Bramble and Parks that he was purchasing their interests in Krog, and that he hired a third-party appraisal to determine the value of Bramble and Parks' shares. On February 1, 2018, Rathbun, through his attorney, sent a second letter and attached executed checks—for amounts significantly below the fair market value of these entities—to buy-out Bramble and Parks' shares in KRS, Krog Bar, and SteakBar. He also executed what Rathbun claimed to be assignments of interests on behalf of Bramble and Parks indicating that Bramble and Parks had transferred their shares in KRS, Krog Bar, and SteakBar to Rathbun.

## 3.

Rathbun had no right under the Companies' operating agreements to purchase Bramble and Parks' shares in the Companies. Alternatively, Rathbun violated the procedures set forth in each operating agreement for purchasing another members' shares. Accordingly, Rathbun's "assignments of interest" on behalf of Bramble and Parks transferring Bramble and Parks' interests in the Companies to Rathbun are void, and Bramble and Parks remain members and owners in each of the Companies.

**PARTIES, JURISDICTION, SERVICE OF PROCESS, AND VENUE**

**4.**

Plaintiff Bramble is a Georgia resident residing at 5241 Edgerton Drive, Norcross, Georgia 30092.

**5.**

Plaintiff Parks is a Georgia resident residing at 791 Field Street, Atlanta, Georgia 30316.

**6.**

Defendant Rathbun is a Georgia resident residing at 1751 Wildwood Road NE, Atlanta, Georgia 30306 and is subject to the jurisdiction of this court.

**7.**

Defendant Rathbun can be served with legal process through delivery of the Summons and Complaint in this action to him at his residence.

**8.**

Venue is proper in this Court because Rathbun resides in Fulton County, Georgia.

**STATEMENT OF RELEVANT FACTS**

**THE OPERATING AGREEMENTS**

**9.**

In 2005, Rathbun, Bramble, and Parks formed Krog Bar and executed an operating agreement.

**10.**

Rathbun owns 51% of Krog Bar, Bramble owns 29%, and Parks owns 20%.

**11.**

In 2006, Rathbun formed KRS and 154 Krog for the purpose of operating restaurants in Atlanta, Georgia, and the members executed operating agreements for each.

**12.**

Rathbun holds 51% of KRS and 154 Krog.

**13.**

Bramble holds 31% of KRS and 33% of 154 Krog.

**14.**

Parks holds 14% of KRS and 16% of 154 Krog.

**15.**

A fourth member, Al Parnell, holds 4% of KRS.

**16.**

In 2012, Rathbun, Bramble, and Parks formed SteakBar and executed an operating agreement.

**17.**

Rathbun owns 51% of SteakBar, Bramble owns 23%, Parks owns 22%, and Parnell owns 4%.

**18.**

The operating agreements of the Companies established that Rathbun, Bramble, and Parks held "Class A Membership Interests" and that Parnell held a "Class B Membership Interest."

**19.**

Rathbun, Bramble, and Parks were also named “Managers” of KRS, 154 Krog, and SteakBar.

**20.**

Rathbun was the sole “Manager” of Krog Bar.

**21.**

KRS’s operating agreement provides that Rathbun may elect to purchase a member’s interest in KRS upon termination of that member’s employment:

**11.3.2: Termination of Employment of a Class A Member.**

In the event of the termination of employment by the Company of a Class A Member other than Kevin Rathbun, then Kevin Rathbun first, and if Kevin Rathbun does not exercise such option then the Company second, shall have the option, exercisable by written notice (the “**Option Notice**”) delivered to the terminated Member within thirty (30) days after the termination of employment of such Member, to purchase all of the terminated Member’s Class A Membership Interest. If Kevin Rathbun or the Company exercises said option to purchase, the terminated Member shall sell, and the purchaser shall purchase, all of the Class A Membership Interest of the terminated Member (collectively the “**Affected Class A Membership Interest**”). The purchase price (the “**Buyout Price**”) for the Affected Class A Membership Interest shall be equal to the value of the terminated Member’s Capital Account as of the date of termination of such Member’s employment....

**22.**

SteakBar’s operating agreement contains an identical provision to that set forth in Paragraph 21 of this Complaint.

**23.**

Krog Bar’s operating agreement states:

**11.1.4. Termination of Employment.** Upon the termination of employment of a Unit Holder, voluntary or involuntary and for any reason, such terminated Unit Holder must promptly send a notice to the Company and to each Member and offer (or be deemed to have offered) to sell to the Company and to each Member, as indicated in this Section, all of the terminated Unit Holder's Units, at the Agreement Price and on the Agreement Terms.

**11.1.4.1.** The Company shall have thirty (30) days from such notice in which to elect to buy all or any of the Offered Units.

**11.1.4.2.** If the Company does not elect to buy in the aggregate all of the Offered Shares, then each Member (other than the Offering Unit Holder) of the Company shall have thirty (30) days from the expiration of the aforesaid thirty (30)-day option period to elect to buy all or any of the Offered Units as to which the Company did not exercise its aforesaid option. The Members may elect to buy such remaining Units of the Offered Units in proportion to their Relative Membership Unit Percentage (excluding the Offered Units), or in such other proportion as they shall agree upon.

**24.**

154 Krog's Operating Agreement contains the following language:

**11.3.2. Termination of Employment.** In the event of the termination of the employment of any Member other than Kevin Rathbun from Kevin Rathbun Steak, LLC, then the other Members shall have the option to acquire the Membership Interest of the terminated Member for a purchase price equal to the fair market value of such Membership Interest. The "fair market value" of the Membership Interest shall be the appraised value of the assets of the Company multiplied by the proportionate Membership interest of the terminating Member, without discount (if applicable) for the minority status of the terminated Member or a lack of marketability of such Membership Interest.

**25.**

Pursuant to each operating agreement, the members also contributed capital in the form of cash payments to each of the Companies in amounts set forth in each agreement.

### **THE COMPANIES**

#### **26.**

In 2009, Bramble and Parks became employees of KRS and received salaries therefrom.

#### **27.**

Prior to this time Bramble and Parks were employees of Rathbun's, LLC, which is an entity not at issue in this dispute.

#### **28.**

Since each of their formations, the Companies have generated significant profits through the operations of well-known Atlanta restaurants, Kevin Rathbun Steak, Krog Bar, and KR SteakBar.

#### **29.**

In addition, these restaurants have won numerous awards and received both local and national recognition.

#### **30.**

Also during this period, 154 Krog acquired valuable real estate interests around Atlanta for purposes of operating the restaurants.

### **RESIGNATIONS AND IMPROPER BUY-OUT ATTEMPTS**

#### **31.**

On September 1, 2016, Parks notified Rathbun that he was retiring from his

employment at KRS effective December 30, 2016.

**32.**

On December 1, 2017, Bramble sent a letter to Rathbun and emailed a copy to Parks indicating that he would be resigning his employment with KRS effective December 30, 2017. Bramble expressly stated the he was not relinquishing his membership status in KRS and that he reserved the right to return as an employee.

**33.**

On January 29, 2018, Rathbun, through his attorney, sent letters to Bramble and Parks stating that Bramble and Parks' resignations afforded Rathbun the right, under the Companies' operating agreements, to purchase their membership interests, and that he was exercising that right.

**34.**

On February 1, 2018, Rathbun sent a second set of letters claiming that Bramble's and Parks' membership interests in the KRS, Krog Bar, and Steak Bar must be turned over.

**35.**

Rathbun attached to the letters checks for \$513,312.00 to Bramble and \$193,941.00 to Parks, which purported to represent Bramble's and Parks' capital account balances and their share of the 2017 profits generated by those entities.

**36.**

These amounts fall far short of the fair market value of Bramble and Parks' interests in those entities.

**37.**



Rathbun also claimed that he was obtaining a third-party appraisal for the fair market value of Bramble and Parks' membership interests in 154 Krog to determine the value of their membership interests. To date, Bramble and Parks have not received any such appraisal.

**38.**

In addition, Rathbun attached to the February 1<sup>st</sup> letters a series of assignments of interests, which Rathbun executed on behalf of Bramble and Parks as their "attorney-in-fact," allegedly transferring Bramble and Parks' membership interests in the Companies to Rathbun.

**39.**

Rathbun's purported exercise of his option to purchase Bramble's interests in the Companies violated the Companies' operating agreements.

**40.**

For instance, Rathbun did not have the right to purchase Bramble's shares in KRS because Bramble resigned his employment with KRS while expressly reserving his membership interests in that entity; he was not terminated.

**41.**

Therefore, Rathbun was not permitted to exercise his purchase option with regard to Bramble's shares in 154 Krog.

**42.**

Additionally, Bramble was not an employee of SteakBar or Krog Bar. Thus, Bramble's resignation from KRS did not trigger Rathbun's purchase options in those

entities.

**43.**

In the alternative, Rathbun failed to follow the procedures set forth in each operating agreement related to the purchase of a terminated member's shares.

**44.**

As a result of the foregoing, the purported assignments of interest executed by Rathbun on behalf of Bramble was not authorized, and the assignments are void.

**45.**

Rathbun's purported exercise of his option to purchase Parks' interests in the Companies violated the Companies' operating agreements.

**46.**

For instance, Rathbun did not have the right to purchase Parks' shares in KRS because Park retired from his employment with KRS; he was not terminated.

**47.**

Therefore, Rathbun was not permitted to exercise his purchase option with regard to Park's shares in 154 Krog.

**48.**

Alternatively, Rathbun failed follow the procedures set forth in each operating agreement related to the purchase of a terminated member's shares. For example, Rathbun did not exercise his purchase option to obtain Park's shares in KRS within thirty (30) days after Park's retirement.

**49.**

Accordingly, Rathbun waived his right to purchase Parks' shares.

50.

In addition, Parks was not an employee of SteakBar or Krog Bar. Therefore, Parks' retirement from KRS did not trigger Rathbun's purchase options in those entities.

51.

For the foregoing reasons, Rathbun's act of executing assignments of interest on behalf of Parks was not authorized, and the assignments are void.

52.

Based on the Rathbun's failures and improper exercise of his purchase options, Bramble and Parks remain members in the Companies.

**COUNT ONE: DECLARATORY JUDGMENT (AS TO BRAMBLE)**

53.

Bramble incorporates into Count One all of the allegations contained in paragraphs 1-52 of this Complaint as though they were repeated verbatim in this paragraph.

54.

Rathbun was not permitted under the Companies' operating agreements to purchase Bramble's interests in the Companies' on February 1, 2018, or at any time.

55.

As a result, Rathbun's exercise of his option to purchase Bramble's shares in the Companies is void under the Companies' operating agreements.

56.

Further, Rathbun's execution of the purported assignments of interest on behalf

of Bramble was also void.

57.

This case involves an actual controversy of a judicable nature between the parties concerning their respective rights and legal relations under the Companies' operating agreements.

58.

A declaratory judgment by the Court, pursuant to O.C.G.A. §§ 9-4-1 *et seq.*, that Rathbun's exercise of his purchase options and the assignments of interest are void would terminate the uncertainty or controversy giving rise to this civil action.

59.

Bramble is in need of intervention by the Court to settle and afford relief from uncertainty and insecurity with respect to their rights, status, and legal relations with Rathbun relative to the Companies ownership, and the ends of justice require that the declaration be made.

**COUNT TWO: DECLARATORY JUDGMENT (AS TO PARKS)**

60.

Parks incorporates into Count Two all of the allegations contained in paragraphs 1-52 of this Complaint as though they were repeated verbatim in this paragraph.

61.

Rathbun was not permitted under the Companies' operating agreements to purchase Parks' interests in the Companies' on February 1, 2018, or at any time.

62.

As a result, Rathbun's exercise of his options to purchase Parks' interest in the Companies is void under the Companies' operating agreements.

**63.**

Further, Rathbun's execution of the purported assignments of interest on behalf of Parks was also void.

**64.**

This case involves an actual controversy of a judicable nature between the parties concerning their respective rights and legal relations under the Companies' operating agreements.

**65.**

A declaratory judgment by the Court, pursuant to O.C.G.A. §§ 9-4-1 *et seq.*, that Rathbun's exercise of his purchase options and the assignments of interest are void would terminate the uncertainty or controversy giving rise to this civil action.

**66.**

Parks is in need of intervention by the Court to settle and afford relief from uncertainty and insecurity with respect to their rights, status, and legal relations with Rathbun relative to the Companies ownership, and the ends of justice require that the declaration be made.

**COUNT THREE: ATTORNEY'S FEES AND EXPENSES OF LITIGATION**

**67.**

Plaintiffs incorporate into Count Two all of the allegations contained in paragraphs 1-66 of this Complaint as though they were repeated verbatim in this paragraph.

68.

As described herein, Rathbun has acted in bad faith, has been stubbornly litigious, and has caused Plaintiffs unnecessary trouble and expense, by, among other things, attempting to buy out Bramble's and Parks' membership interests in the Companies knowing he had no right to do so and by executing improper and unauthorized assignments of interest on behalf of Bramble and Parks.

69.

Therefore, pursuant to O.C.G.A. § 13-6-11, Plaintiffs are entitled to recover their expenses of litigation, including, without limitation, its reasonable attorney's fees, from Rathbun.

**PRAYER FOR RELIEF**

For the reasons set forth in this Complaint, Plaintiffs respectfully pray for the Court:

(a) To expeditiously make and enter a declaratory judgment that Rathbun's exercise of his purchase options to buy Bramble's interests in the Companies is void and Rathbun was not authorized to execute the assignments of interest on behalf of Bramble;

(b) To expeditiously make and enter a declaratory judgment that Rathbun's exercise of his purchase options to buy Parks' interests in the Companies is void and Rathbun was not authorized to execute the assignments of interest on behalf of Parks;

(c) To award Plaintiffs their expenses of litigation, including costs and reasonable attorney's fees; and

(d) To grant such other and further relief to Plaintiffs as the Court considers just and appropriate under the circumstances.

Respectfully submitted,

ARNALL GOLDEN GREGORY LLP

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