

2. The Petitioner David McCormick Company, Inc., which had been known as Ernest Tubb Record Shops, Inc. until it formally changed its name immediately following the August 18, 2020 purchase transaction by the Respondents that is the subject of this action, is a Tennessee corporation. David McCormick is the President and sole stockholder of the David McCormick Company, Inc. Up until August 18, 2020, David McCormick Company, Inc. was the actual owner of the business known as the Ernest Tubb Record Shop located at 417 Broadway, Nashville, Davidson County, Tennessee 37203. In order to avoid confusion and remain consistent with how this particular Petitioner was referred to in the August 18, 2020 purchase transaction documents, many of which are Exhibits to this Petition, the Petitioner David McCormick Company, Inc. hereinafter will be referred to in this Petition by its former name, “Ernest Tubb Record Shops, Inc.”

3. The Respondents JesseLee Jones and Emily Ann Cousins are husband and wife. They are citizens and residents of Davidson County, Tennessee. JesseLee Jones is both the Manager and a Member of the Respondents Honky Tonk Circus, LLC, a Tennessee limited liability company, and ETRS, LLC, also a Tennessee Limited liability company. The Respondent Emily Ann Cousins is also Member of the Respondents Honky Tonk Circus, LLC and ETRS, LLC.

4. As stated above, up until August 18, 2020, David McCormick, through his wholly-owned company, Ernest Tubb Record Shops, Inc., was the long-time owner of the Ernest Tubb Record Shop on Broadway in Nashville, TN. Over the years, Mr. McCormick came to develop a close and confidential relationship with the Respondent JesseLee Jones. Mr. Jones, in turn, is the owner of the business known as Robert’s Western World, located at 416B Broadway, Nashville, Davidson County, Tennessee. Robert’s Western World is located almost directly across Broadway from the Ernest Tubb Record Shop.

5. David McCormick's mental and psychological condition unfortunately deteriorated with the passing years. In large part, this was the result of his bipolar disorder. As Mr. McCormick's mental and psychological deterioration became worse, the Respondents JesseLee Jones and Emily Ann Cousins came to have greater influence and control over his daily life and financial affairs. Indeed, David McCormick was convinced by these Respondents that they could provide better care for him if he were to move into their guest house, which he did in the Spring of 2020. This move to the Respondents' guest house was in spite of the fact that Mr. McCormick had his own home in which to live. Also, and as a further manifestation of the Respondents' growing influence and control over David McCormick's life and financial affairs, Mr. McCormick came to execute, on April 1, 2020, a General Durable Power of Attorney appointing the Respondent JesseLee Jones as his attorney-in-fact. This General Durable Power of Attorney further provided that in the event JesseLee Jones should be unable to serve as Mr. McCormick's attorney-in-fact for any reason, the Respondent Emily Ann Cousins would be appointed to serve as his successor attorney-in-fact. A true and correct copy of this General Durable Power of Attorney is attached hereto as Exhibit 1.

6. A further manifestation of the Respondents' growing control and influence over David McCormick's life and financial affairs was his Last Will and Testament, which he came to execute on April 1, 2020 – the same day he executed the Power of Attorney. In doing so, Mr. McCormick actually named the Respondents JesseLee Jones and Emily Ann Cousins, neither of whom is related to him by blood, as his primary beneficiaries. In this respect, and although Mr. McCormick provided relatively modest bequests in his Will of \$10,000.00 each to his brother Phillip A. McCormick, his sister-in-law Betty K. McCormick, and Earline Huff, his long-time employee at the Ernest Tubb Record Shop, Mr. McCormick bequeathed the rest, residue, and remainder of his estate, ***including all of his real property and his complete and total interest in***

the Ernest Tubb Record Shop, to the Respondent JesseLee Jones, outright and free of trust. The Will further provided that in the event JesseLee Jones predeceased Mr. McCormick, then all of Mr. McCormick's *real property and business interests, including the Ernest Tubb Record Shop*, would be bequeathed to the Respondent Emily Ann Cousins, once again outright and free of trust. The Respondents JesseLee Jones and Emily Ann Cousins also were appointed as Mr. McCormick's Executor and Successor Executor respectively of the Will itself. A true and correct copy of this Last Will and Testament dated April 1, 2020 is attached hereto as Exhibit 2.

7. As stated above, David McCormick had been persuaded to reside, and actually was residing, in the guest house of the Respondents JesseLee Jones and Emily Ann Cousins at the time the above-referenced Power of Attorney and Last Will and Testament were executed, thus providing the Respondents with greater opportunity to exert their influence and control over Mr. McCormick's daily life and financial affairs. In moving in with these Respondents, David McCormick was led to believe that they were taking him in as his close friends and confidants. Moreover, all of this occurred at a time when Mr. McCormick was especially vulnerable due to his deteriorating mental condition. While David McCormick was of the belief that his close friends had taken him in order to demonstrate their care and concern for his wellbeing, and without any expectation of financial compensation on their part in return, the Respondents JesseLee Jones and Emily Ann Cousins in reality charged rent to Mr. McCormick for his stay in their guest house. In doing so, the Respondents used the Power of Attorney to access David McCormick's personal checking account and write rental checks to themselves and/or to their wholly owned companies. In this respect, David McCormick was totally unaware that for almost a year he was being charged rent by the very individuals he thought had taken him in as close friends and confidants during his time of need.

8. The Respondents JesseLee Jones and Emily Ann Cousins also used the April 1, 2020 Power of Attorney to make a number of fraudulent transfers and payments from Mr. McCormick's personal checking account in a way that directly benefitted themselves and clearly harmed Mr. McCormick. Among these fraudulent transfers and checks written from Mr. McCormick's personal checking account for the Respondents' own benefit was Check No. 1503 dated May 21, 2020, in the amount of \$3,150.00. In drawing this check, the Respondent JesseLee Jones and/or the Respondent Emily Ann Cousins caused David McCormick's *stamped* signature to be placed on the check and used it to pay for their own attorneys, i.e., the law firm of Hawkins Hogan PLC, which represented the Respondents JesseLee Jones, Emily Ann Cousins, Honky Tonk Circus, LLC and ETRS, LLC. This check to Hawkins Hogan PLC was drawn from David McCormick's personal checking account notwithstanding the fact that Hawkins Hogan PLC had done absolutely no work for Mr. McCormick. In other words, the Respondents JesseLee Jones and Emily Ann Cousins fraudulently used the personal funds of David McCormick to pay for their own legal expenses and/or the legal expenses of their wholly controlled companies -- the Respondents Honky Tonk Circus, LLC and ETRS, LLC. This action constitutes fraud, conversion, and a breach of the fiduciary duty of honesty and loyalty the Respondents owed to Mr. McCormick under the April 1, 2020 Power of Attorney. A true and correct copy of the \$3,150.00 check to Hawkins Hogan PLC referenced above in this paragraph, i.e., Check No. 1503 dated May 21, 2020, is attached hereto as Exhibit 3.

9. An even more egregious example of one of the fraudulent transfers or withdrawals the Respondents made from David McCormick's personal checking account occurred on August 14, 2020, at which time the Respondents arranged for a transfer in the amount of ***\$100,000.00*** from David McCormick's personal checking account to the Respondent Honky Tonk Circus, LLC. This particular transfer by the Respondents occurred just four (4) days before the closing (described in

greater detail in Paragraph 10 below) for the Respondents' purchase of David McCormick's business – the Ernest Tubb Record Shop on Broadway. Once again, this action by the Respondents constitutes fraud, conversion, and an egregious breach of the fiduciary duty of honesty and loyalty they owed to Mr. McCormick under the April 1, 2020 Power of Attorney. A true and correct copy of a letter dated July 6, 2021 setting forth several questionable transfers from David McCormick's personal funds following the April 1, 2020 Power of Attorney is attached hereto as Exhibit 4.

10. Perhaps the most glaring manifestation of the Respondents' control and influence over David McCormick's life and financial affairs was the purchase by the Respondents, on August 18, 2020, of Mr. McCormick's most valued possession – the Ernest Tubb Record Shop on Broadway. Mr. McCormick had owned the Record Shop for over 36 years, i.e., since 1984, and had worked for Mr. Ernest Tubb himself at the Record Shop for many years before that, i.e., since the early 1970's. As a result, David McCormick viewed the Record Shop as his personal responsibility to ensure Mr. Tubb's legacy in Music City and in the world of country music in general. That is why it was so important to David McCormick that he find the person or persons he believed would be absolutely true and faithful in continuing Ernest Tubb's legacy through the Record Shop. In this respect, the Respondents JesseLee Jones and Emily Ann Cousins used their close and confidential relationship with Mr. McCormick, as well as Mr. McCormick's impaired mental state at that time, to fraudulently induce David McCormick to come to believe that they were the perfect persons to ensure and protect Mr. Tubb's legacy through their purchase of the Ernest Tubb Record Shop.

11. On August 18, 2020, just four and a half months after the execution of the above-referenced Power of Attorney to the Respondents JesseLee Jones and Emily Ann Cousins and while Mr. McCormick was still living in their guest house, the closing took place regarding the Respondents' purchase of Mr. McCormick's long-held business – the Ernest Tubb Record Shop

on Broadway. This purchase of the Ernest Tubb Record Shop by the Respondents took place while David McCormick was still in the midst of his psychological impairment and under the Respondents' undue influence and control regarding his financial affairs. Moreover, the purchase price of the Ernest Tubb Record Shop was drastically below the fair market value of the property and business. The Petitioners allege, therefore, that the Respondents JesseLee Jones and Emily Ann Cousins once again breached their fiduciary duty of honesty and loyalty under the Power of Attorney and to always act in David McCormick's best interests. These Respondents fraudulently induced Mr. McCormick to sell his business to both themselves and/or to the companies they wholly owned and controlled, i.e., the Respondents Honky Tonk Circus, LLC and ETRS, LLC, and at a sales price that was drastically less than fair market value. A true and correct copy of the Asset Purchase Agreement dated August 18, 2020 is attached hereto as Exhibit 5.

12. In addition to the Asset Purchase Agreement, a number of other complex, transactional documents were executed regarding the Respondents' August 18, 2020 purchase of David McCormick's Ernest Tubb Record Shop. These documents included, but are not limited to, two (2) separate Promissory Notes, a personal Guaranty given by the Respondents JesseLee Jones and Emily Cousins for the indebtedness and obligations of the Respondents Honky Tonk Circus, LLC and ETRS, LLC under the Purchase Agreement, a Deed of Trust, a Consulting Agreement with David McCormick, and a Closing Statement. True and correct copies of each of these documents are attached hereto respectively as Exhibits 6 through 11.

13. The two (2) Promissory Notes referenced above in Paragraph 12 provided for monthly payments to be made by the Respondent purchasers over a period of twenty years. Following the August 18, 2020 closing on the purchase transaction however, the Respondents intentionally failed and/or refused to pay the required monthly payments to David McCormick. Specifically, the two (2) August 18, 2020 Promissory Notes called for monthly payments to Mr.

McCormick in the respective amounts of \$29,128.06 and \$1,533.06, with the first payment under each Note due on September 1, 2020. Subsequent payments would be due on the 1st day of each successive month. These monthly payment obligations notwithstanding, the Respondents willfully, intentionally, and fraudulently failed and/or refused to make **any** such monthly payments for over nine (9) months. That is, the Respondents made no such payments to David McCormick for the 2020 months of September, October, November and December, and the 2021 months of January, February, March April, and May. Accordingly, on May 21, 2021 Mr. McCormick's representatives sent a Notice of Default to the Respondent JesseLee Jones to formally advise him of the default as well as David McCormick's intention to pursue all of his legal rights and remedies regarding the subject property and business. A copy of the Notice of Default also was sent to Hawkins Hogan PLC, the law firm that represented the Respondents in the purchase transaction. A true and correct copy of this Notice of Default dated May 21, 2021 is attached hereto as Exhibit 12.

14. Also, at some point following the above-referenced closing on the Respondents' purchase of David McCormick's Ernest Tubb Record Shop, the Respondents JesseLee Jones and Emily Ann Cousins apparently had no further reason for David McCormick to continue residing with them in their guest house or to otherwise continue to endear themselves to Mr. McCormick as his close and confidential friends. That is, their goal of purchasing Mr. McCormick's Record Shop now had been accomplished and they had no further need to ingratiate themselves to Mr. McCormick. Accordingly, these Respondents summarily moved Mr. McCormick to the Maybelle Carter Senior Living Center in Madison, TN. This was done over Mr. McCormick's vehement protests. Mr. McCormick also found himself at some point without his mobile telephone and computer, which had the effect of isolating him from his associates and even his family, including his brother Phillip McCormick, who later came to be appointed by this Court as David

McCormick's Conservator. The Petitioners submit that Respondents' actions in sending David McCormick away and isolating him from his family after their purchase of the Ernest Tubb Record Shop had been finalized, is further corroboration of their unlawful scheme and fraudulent inducement regarding their purchase of David McCormick's Record Shop.

15. In addition to their failure to make any of the above-referenced monthly payments to David McCormick from September 2020 through May 2021 under the two (2) Promissory Notes, the Respondents failed to make the June 1, 2021 monthly payment as well. Furthermore, the Respondents intentionally withheld and kept in their possession an April 5, 2021 refund check to David McCormick's company, i.e., to "David McCormick Company, Inc.," from the Tennessee Department of Revenue. This check, which was in the amount of \$19,605.51, was mailed by the Tennessee Department of Revenue to David McCormick Company, Inc. at the address of his former business, i.e., the Ernest Tubb Record Shop at 417 Broadway, Nashville, Tennessee 37203. When David McCormick's representatives learned of the existence of this refund check to Mr. McCormick, repeated requests were made to the Respondents for the check to be forwarded to him. These requests notwithstanding, the Respondents intentionally and fraudulently retained the check in their possession for at least two months. The check finally was mailed to Mr. McCormick on or about June 16, 2021. True and correct copies of the April 14, 2021 letter from the Tennessee Department of Revenue as well as the April 5, 2021 check itself in the amount of \$19,605.51 are attached hereto as Collective Exhibit 13.

16. Following the May 21, 2021 Notice of Default from David McCormick's representatives, as referenced above in Paragraph 13, the Respondents, through their attorney Miller Hogan of Hawkins Hogan PLC, responded (more than three weeks later) with a letter dated June 16, 2021 enclosing three (3) checks totaling \$610,746.33. These three (3) checks allegedly represented the Respondents' belated awakening and attempt to cure the 10-month condition of

default by purporting to 1) bring the larger of the two (2) Promissory Notes current, 2) completely pay off the smaller of the two (2) Promissory Notes, and 3) pay David McCormick what the Respondents calculated they owed him under the August 18, 2020 Consulting Agreement. Upon receipt of these three (3) checks from the Respondents, David McCormick, through counsel, immediately returned the checks pursuant to a letter dated June 22, 2021.

17. The Respondents refused however, to accept the return of the three (3) checks totaling \$610,746.33. Pursuant to a letter dated June 30, 2021 from their attorney Miller Hogan of Hogan Hawkins PLC, a true and correct copy of which is attached hereto as Exhibit 14, the Respondents returned the three (3) checks and advised that they would not accept any further attempts by David McCormick or the Petitioner Phillip A. McCormick to return the checks or any others. The Respondents also enclosed a fourth check with that same letter in the amount of \$29,128.06, purportedly representing the July 1, 2021 payment due under the larger Promissory Note. A fifth check in that same amount, i.e., \$29,128.06, was subsequently delivered by the Respondents for the August 1, 2021 payment under the larger Promissory Note. When these fourth and fifth checks in the amounts of \$29,128.06 respectively are added to the three checks referenced above totaling \$610,746.33, the collective total is \$669,002.45. Since the Respondents have made it clear they will refuse to accept any further attempts by the Petitioners and David McCormick to return the checks, the Petitioners hereby respectfully request permission of this Court to deposit these funds with the Clerk of the Court pending further determination by the Court.

18. Based on all of the above, the Petitioners allege that the Respondents JesseLee Jones and Emily Ann Cousins used the April 1, 2020 Power of Attorney to make fraudulent and unlawful transfers from David McCormick's personal funds for their own personal benefit. In doing so, these Respondents breached their fiduciary duty to Mr. McCormick under the Power of Attorney and also committed fraud and conversion. Moreover, the April 1, 2020 Power of Attorney

and the April 1, 2020 Last Will and Testament were the products of the undue influence and control these Respondents had and actually exercised over David McCormick, especially in light of his diminished capacity due to his impaired mental and psychological condition.

19. The Petitioners further allege that the August 18, 2020 closing on the Ernest Tubb Record Shop, which took place just four and a half months after the Power of Attorney and Last Will and Testament were executed, was the product of the continued undue influence and control the Respondents had and actually exercised over David McCormick.

20. The Petitioners further allege that the Respondents fraudulently induced David McCormick to sell the Ernest Tubb Record Shop to them. In this respect, the Respondents JesseLee Jones and Emily Ann Cousins used their close and confidential relationship with Mr. McCormick, as well as Mr. McCormick's impaired mental state, to fraudulently induce David McCormick to come to believe that they were the perfect persons to ensure and protect Ernest Tubb's legacy and, in turn, to purchase the Ernest Tubb Record Shop on Broadway. Accordingly, justice and equity demand that the Purchase Asset Agreement and all related purchase documents be rescinded.

21. The Petitioners further allege that the Respondents breached the actual terms of the purchase transaction by failing to make the required monthly payments to David McCormick for over ten (10) months following the date of closing.

22. The Petitioners further allege that Respondents are liable to the Petitioners for damages and attorney's fees for their willful and intentional breach of the Purchase Asset Agreement, Promissory Notes, Consulting Agreement, and all other transactional documents relating to the Respondents' purchase of the Ernest Tubb Record Shop in Nashville, TN.

23. Any and all property of David McCormick currently held by the Respondents, including but not limited to the Ernest Tubb Record Shop and the real property on which that

business is situated, should be deemed to be held in a constructive or resulting trust under the Conservatorship established by this Court for the benefit of David McCormick.

24. The Respondents also have acted in a civil conspiracy in unlawfully and fraudulently converting David McCormick's property and business for their own use and financially exploiting Mr. McCormick. The Respondents are, therefore, jointly and severally liable to the Petitioners for damages and attorney's fees in this matter.

WHEREFORE, the Petitioners pray for the following relief:

1. That the Purchase Asset Agreement and all agreements relating to the purchase by the Respondents of the Ernest Tubb Record Shop, including the real property on which it is situated, be rescinded, and that all property of David McCormick held by the Respondents be immediately returned to David McCormick through his Conservatorship.

2. That the Respondents be ordered to file an accounting with this Court for any and all payments and amounts transferred from David McCormick's personal and business funds during the time that the General Durable Power of Attorney was in effect.

3. That the Respondents be ordered to pay compensatory damages to the Petitioners for their fraudulent and wrongful acts as set out above, including their breach of the Purchase Agreement and the related purchase documents.

4. That the Respondents be ordered to pay the Petitioners punitive damages for their fraudulent and wrongful acts in an amount to be determined by the finder of fact.

5. That the Respondents be ordered to pay and/or reimburse all attorney's fees incurred by the Petitioners to recover David McCormick's business and property from the Respondents and/or to recover damages from the Respondents for their fraudulent and wrongful acts.

6. That the Respondents be held jointly and severally liable.

7. That the Petitioners be granted leave to deposit the five (5) checks referenced above in Paragraph 17 of this Petition (totaling \$669,002.45), along with any future checks/proceeds that may be paid by the Respondents to David McCormick under the larger Promissory Note in the future, with the Clerk of the Court.

8. For such other further general relief to which the Petitioners and David McCormick may be entitled.

Respectfully submitted,



A. Gregory Ramos, #10825
NORTH, PURSELL & RAMOS, PLC
Phillips Plaza, Suite 1850
414 Union Street
Nashville, TN 37219
(615) 255-2555
gramos@npratorneys.com
Attorney for the Petitioners



Casey W. Riggs, # 25657
RIGGS DAVIE, PLC
104 Continental Place, Suite 320
Brentwood, TN 37027
(615) 690-4402
criggs@riggsdaviae.com
Attorney for the Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Petition has been forwarded by U.S. Mail to:

William B. Hawkins, III
G. Miller Hogan, II
Hawkins Hogan, PLC
205 Seventh Ave. North, Suite 202
Nashville, Tennessee 37203
Attorneys for the Respondents

on this 6th day of August, 2021.



A. Gregory Ramos