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BY: ALAN WALKER
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Case No. C20192105
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

**ARIZONA SPORTS AND
ENTERTAINMENT COMMISSION, an
Arizona non-profit corporation,**

Plaintiff,

vs.

**TD4 TUCSON d/b/a NOVA HOME
LOANS ARIZONA BOWL, an Arizona
non-profit corporation, XYZ
CORPORATIONS I-V; ABC
PARTNERSHIPS I-V; JOHN AND JANE
DOES I-V.,**

Defendants.

Case No.

COMPLAINT

*(Breach of Contract, Breach of Covenant of
Good Faith and Fair Dealing, Unjust
Enrichment)*

Plaintiff Arizona Sports and Entertainment Commission ("ASEC" or "Plaintiff"), by and through undersigned counsel, hereby files its Complaint against Defendant TD4Tucson d/b/a Nova Home Loans Arizona Bowl ("Nova Home"), and hereby alleges as follows:

PARTIES

1. Plaintiff ASEC is an Arizona not-for-profit corporation authorized to do business, and is doing business in, the State of Arizona.

2. Defendant Nova Home is an Arizona not-for-profit corporation authorized to do business, and is doing business in, the State of Arizona.

1 3. The true names and capacities, whether individual, corporate or otherwise, of the
2 Defendants John and Jane Does I-V, ABC Partnerships I-V, and XYZ Corporations I-V, are
3 unknown to ASEC at this time. ASEC therefore, sues said Defendants by fictitious names, and
4 will ask leave to amend this complaint to state their true names and capacities at such time as the
5 same become known to the ASEC. Said individual Defendants are either residents or citizens of
6 the State of Arizona, or caused events to occur in the State of Arizona, out of which the claim
7 which is the subject of this Complaint arose. Said corporate Defendants are Arizona
8 corporations or foreign corporations, partnerships, joint ventures, or other legal entities, which
9 are doing business in Arizona or have caused events to occur in the State of Arizona out of
10 which the claim which is the subject of this Complaint arose.

11 **JURISDICTION, VENUE, TIER LEVEL**

12 4. Defendants have caused events to occur in Pima County, Arizona, which give rise
13 to Plaintiff ASEC's claims, and Plaintiff suffered damages in Pima County, Arizona.

14 5. This Court has jurisdiction over the claims set forth in this Complaint because the
15 claims relate to causes of action, the underlying acts and/or omissions for which occurred in, or
16 had their primary effect in, Pima County, Arizona. *See* A.R.S. § 12-123; *see also* Article VI § 14
17 of the Arizona Constitution.

18 6. Venue is proper in that the specific acts giving rise to the causes of action alleged
19 herein occurred in Pima County, Arizona. *See* A.R.S. § 12-401.

20 7. Section 23 of the Parties' agreement, as fully discussed herein, provides that, in
21 the event of any dispute arising out of the agreement, venue shall be in Pima County, Arizona.

22 8. Pursuant to Rule 26.2, Arizona Rules of Civil Procedure, this case is subject to the
23 discovery limits set forth in Tier 2.

24 **GENERAL ALLEGATIONS**

25 9. The ASEC is among the oldest sports commissions in the United States whose
26 mission is to enrich the Arizona communities through sports. Specifically, the ASEC works with

1 numerous businesses, organizations, and teams across the state of Arizona to bring regional,
2 national and international sporting events to the state.

3 10. To achieve its stated mission, the ASEC assists in the promotion of Arizona high
4 school, collegiate, and professional teams and events, and by supporting youth sport programs
5 and development.

6 11. ASEC's services include, but are not limited to: assistance with event preparation;
7 creation of sports-related events and attractions; event management; facility and site selection;
8 host site inspections; recruitment and management of volunteers; sports information resource
9 center; sports-related business relocation; and TV production/ linear and digital.

10 12. At all relevant times hereto, the ASEC was managed by its board of directors and
11 executive committee.

12 **The Arizona Bowl**

13 13. In or around 2015, the Arizona Bowl ("Arizona Bowl") game became one of the
14 three (3) new bowl games sanctioned by the National Collegiate Athletic Association (NCAA)
15 and is played between bowl-eligible teams from the Mountain West Conference and Sun Belt
16 Conference.

17 14. Founded by the ASEC, Alan Young, Kemp Ellis, Nikki Balich, Mark Irvin, Ali
18 Farhang, and Fletcher McCusker, the Mountain West Conference, and Campus insiders, the
19 Arizona Bowl game has become a nationally recognized game, appearing on major broadcasting
20 networks like the CBS Sports Network.

21 15. Each year since its inception, the Arizona Bowl game makes a positive economic
22 impact in southern Arizona, generating substantial revenue through ticket sales, merchandise
23 sales, and agreements between vendors.

24 **The Services Agreement**

25 16. On or about April 1, 2016, ASEC and Nova Home entered into a Services
26 Agreement ("Services Agreement") whereby ASEC agreed to substantially run, operate, consult
upon, and manage the 2016, 2017, and 2018 Arizona Bowl game and their ancillary events.

17. Section 2.1 of the Services Agreement provides that ASEC provide the following services and will “[a]ppoint representatives to the following positions after obtaining [Nova Home’s] consent, which shall not be unreasonably withheld or delayed:

- a. A primary contact to act as its authorized representative with respect to all matters pertaining to the [Services Agreement].
- b. A sufficient number of employees or agents acceptable to [Nova Home], which shall be determined at [Nova Home’s] reasonable discretion, to perform the Services set out in each Statement of Work, each of whose names, positions, and respective levels of experience and relevant licenses shall be set out in the respective Statement of Work.”

18. Section 2.2 of the Services Agreement provides that ASEC shall “make no changes in Provider Representative except either:

- a. With the prior consent of [Nova Home], which consent shall not be unreasonably withheld or delayed.
- b. At the reasonable request of [Nova Home], in which case [ASEC] shall use its best efforts to promptly appoint a replacement.
- c. Upon the resignation, termination, death or disability of the existing Provider Representative.

19. Under Exhibit A, Section C of the Services Agreement, Nova Home agreed to pay ASEC a collective total of \$690,000.00 for ASEC’s services.

20. As a material provision of the Services Agreement, Exhibit A, Section E provides:

- a. **E. RENEWAL OR BUY-OUT.** On or before January 30, 2019 [Nova Home] shall have the option to renew the Agreement for the 2019 Bowl Season and any/all Statements of Work at a yearly cost of \$180,000 (\$45,000 payable on the first day of each quarter). If [Nova Home] fails to exercise this option to renew [Nova Homes] shall pay [ASEC] \$100,000 payable in one lump sum on March 15, 2019.

21. Exhibit A, Section D further provides:

- a. **D. LATE PAYMENT PENALTY.** Any payment received ten (10) days or more after the due date will incur a 10% late fee. Once the outstanding balance has reached 20 days past due a daily 1% will incur as an additional fee to the 10% until the payment is received.

Events Giving Rise to ASEC's Claims

22. At all relevant time, ASEC performed its obligations under the Services Agreement, managing, running, and assisting in the operation of the 2016, 2017, and 2018 Arizona Bowl games.

23. On numerous occasions, and at the request of Nova Home staff and personnel, ASEC provided services that exceeded the scope of the Services Agreement.

24. In early January 2019, ASEC inquired to determine whether Nova Home would elect to renew or buy-out of the Services Agreement pursuant to the terms of the agreement.

25. On or about January 17, 2019, Nova Home, through its counsel, informed ASEC that Nova Home elected not to renew the Services Agreement and it would not pay the \$100,000 lump sum payment.

26. Promptly thereafter, ASEC followed the terms of the Services Agreement, and provided a thirty (30) day written notice to cure to Nova Home that Nova Home had breached the Parties' Services Agreement.

27. On or about April 5, 2019, ASEC made an additional demand for payment under the Services Agreement.

28. Despite these demands, Nova Home has failed to make payment pursuant to the Buy-out provision in the Services Agreement, necessitating this current Action.

COUNT I
(Breach of Contract)

29. Plaintiff hereby incorporates each and every allegation contained in the previous paragraphs of this Complaint as though fully set forth herein.

30. ASEC and Nova Home entered into the Services Agreement, which is a valid and enforceable contract.

31. ASEC performed its obligations pursuant to the Services Agreement by substantially running, operating, consulting upon, and managing the 2016, 2017, and 2018 Arizona Bowl game and their ancillary events.

32. ASEC additionally performed services outside the scope of the Services Agreement for the benefit of the Arizona Bowl as requested by Nova Home staff and personnel.

33. Nova Home breached the Services Agreement by failing to make the lump sum payment of \$100,000 after it elected not to renew the agreement.

34. As a direct and proximate result of Nova Home's breach, ASEC has suffered damages in an amount to be proven at trial but no less than the \$100,000 owed under the Services Agreement, and other consequential, incidental, direct, actual and compensatory damages, some of which are ongoing or accruing.

35. ASEC is entitled to attorneys' fees pursuant to Ariz. Rev. State. § 12-341.01, under the Services Agreement, and/or other applicable law.

COUNT II
(Breach of the Duty of Good Faith and Fair Dealing)

36. Plaintiff hereby incorporates each and every allegation contained in the previous paragraphs of this Complaint as though fully set forth herein.

37. Implied in every contract, including the Services Agreement, is a covenant between the parties thereto that no party will do anything to interfere with the other party's enjoyment of its contractual rights and benefits, and that each contracting party will do everything that the contract presupposes it will do to accomplish the contract's purpose.

38. Nova Home breached its duty of good faith and fair dealing when it prevented ASEC from receiving the benefit of the Parties' agreement by failing to make the lump sum payment pursuant to the Buy-out provision.

39. ASEC was damaged as a result of Nova Home's breach of its duty of good faith and fair dealing.

40. ASEC is entitled to attorneys' fees pursuant to A.R.S. § 12-341.01 and/or other applicable law.

COUNT III
(Unjust Enrichment)

41. Plaintiff hereby incorporates each and every allegation contained in the previous paragraphs of this Complaint as though fully set forth herein.

42. Nova Home has been unjustly enriched at the expense of, the detriment of, and the impoverishment of ASEC by receiving the benefit of ASEC services under the Services Agreement.

43. Specifically, Nova Home received the benefit of having ASEC manage, run, and assist in the operation of the 2016, 2017, and 2018 Arizona Bowl games.

44. There is a direct connection between the enrichment and the impoverishment.

45. Nova Home had no justification in this enrichment to itself and the impoverishment of ASEC.

46. As a direct and proximate result of this enrichment to Nova Home, ASEC has suffered foreseeable damages in an amount to be proven at trial but no less than the \$100,000 lump sum payment pursuant to the Buy-out provision in the Services Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. For actual damages in an amount to be proven at trial;

B. For consequential and incidental damages in an amount to be proven at trial;

C. For interest at the legal rate from the date of the entry of judgment until paid in full;

D. For late payment penalties pursuant to the Services Agreement;

E. For reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and 12-341.01, and under the Services Agreement;

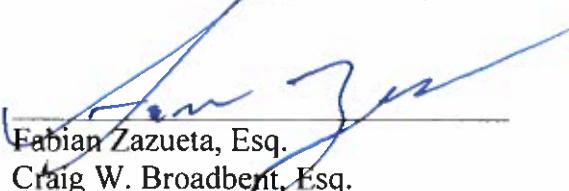
F. For such other and further relief as the Court may deem just and proper under the circumstances.

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1 RESPECTFULLY SUBMITTED this 25th day of April, 2019.

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