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Court of Appeals No. 71042-7-1
King County Superior Court No. 12-2-07861-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RADIANCE CAPITAL, LLC,
RESPONDENT,

v.

NICHOLAS W. BARTZ,
APPELLANT.

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COURT OF APPEALS DIV 1
STATE OF WASHINGTON

BRIEF OF APPELLANT

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ORIGINAL

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I. INTRODUCTION

Nicholas W. Bartz (Bartz) is a resident of the State of Michigan. For a period of time he was the Managing Member of Health Pro Solutions, LLC (HPS LLC), a now defunct Nevada limited liability company. While doing business in the State of Arizona, HPS LLC sought financing for an equipment purchase through an independent broker also located in the State of Arizona. That independent broker found financing available through Radiance Capital, LLC (Radiance Capital), a limited liability company located in the City of Tacoma, County of Pierce, State of Washington. The independent broker presented an Equipment Financing Agreement (Agreement, *see* APPENDIX, at APP-2) to HPS LLC which was signed in the State of Arizona by Bartz in his official corporate capacity as Managing Member. Bartz never had any personal contact with or dealings with anyone from Radiance Capital. Bartz signed a Personal Guarantee included with the Agreement. The sole Debtor was expressly named and identified in the Agreement as HPS LLC. One of the terms of the Agreement required HPS LLC to waive objections to personal jurisdiction and submit to venue in the courts of King County, Washington. The Personal Guarantee signed by Bartz had no such express waiver or voluntary submission to jurisdiction and venue. The question presented here is whether Bartz, an out-of-state resident, is subject to the jurisdiction of the King County Superior Court under either Washington's long-arm statute, RCW 4.28.185, or the terms of the Personal Guarantee he signed?

II. ASSIGNMENTS OF ERROR

Appellant Nicholas W. Bartz filed his appeal raising issue with errors made by the trial court in its denial of his CR 12(b) Motion to Dismiss and the grant of Summary Judgment to Respondent Radiance Capital, LLC.

A. TRIAL COURT ERRORS

1. The trial court erred by issuing its Judgment Summary And Order Granting Summary Judgment And Denying Defendants' CR 12(b) Motion To Dismiss dated September 20, 2013. Clerk's Papers (CP) at 161.

2. The trial court erred by issuing its Amended Final Judgment Summary And Order Granting Summary Judgment And Denying Defendants' CR 12(b) Motion To Dismiss dated October 4, 2013. CP at 164.

B. ISSUES RELATING TO ASSIGNMENTS OF ERROR

The sole issue on appeal is whether the King County Superior Court was not the proper venue and moreover lacked personal jurisdiction over Nicholas W. Bartz, an out-of-state resident, under both Washington's long-arm statute, RCW 4.28.185, and the personal guarantee signed by him on the Equipment Financing Agreement between Health Pro Solutions, LLC, as Debtor, and Radiance Capital, LLC? (Assignments of Error #1 and #2.)

III. STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

Out-of-State Residency

Bartz is an unmarried individual¹ who resided in the State of Arizona generally from 1999 through February 2012 but with a brief residency in the

¹ Bartz was divorced prior to May 2008 and was then remarried in October 2011 but had that marriage annulled in January 2012. CP at 121, ¶ 2.

State of California in 2011. He has resided in the State of Michigan since March 2012, and his present mailing address is 1405 N West Avenue, Suite 152, Jackson, Michigan 49202. CP at 121-22, ¶ 3.² Bartz was the former Managing Member of Health Pro Solutions, LLC (HPS LLC), a Nevada Limited Liability Company that was formed July 3, 2001 (Nevada Secretary of State Public Records, Domestic Limited Liability Company No. LLC7075-2001; Nevada Business ID# NV20011072244). CP at 122, ¶ 4. After Bartz suffered a permanent disability with his eyesight, HPS LLC went out of business; its Nevada Business License expired July 31, 2011, and was administratively terminated by the Nevada Secretary of State's Office effective November 15, 2011 (Nevada Secretary of State Public Records, Administrative Status Change, Document No. 2011-079721848), and its present status is "Revoked" according to the Nevada Secretary of State Public Records. CP at 122, ¶ 5. The Registered Agent for HPS LLC is listed as John D. Lee, 2830 S. Jones Blvd, Suite 1, Las Vegas, Nevada 89146. (Nevada Secretary of State Public Records). CP at 122, ¶ 6. Bartz' business address at the time HPS LLC was formed as a Nevada Limited Liability Company was 8912 E Pinnacle Peak Rd, #430, Scottsdale, Arizona 85255. (Nevada Secretary of State Public Records). CP at 122, ¶ 7.

² Prior to 2009 Bartz owned a house at 4535 Eagle Drive, Jackson, Michigan. In 2009 that house was foreclosed on and resold to persons Bartz does not know and with whom he has no relationship. CP at 121-22, ¶ 3.

Absence of Recent Personal Contacts

For only that period of time from April 15, 1983 through June 25, 1992 Bartz was licensed by the State of Washington through reciprocity as an Osteopathic Physician and Surgeon, License # OP00000978 (Washington State Department of Health Provider Credential Public Records); however, Bartz never practiced as an Osteopathic Physician in the State of Washington. CP at 122-23, ¶ 8. Bartz was originally licensed as an Osteopathic Physician by the State of Michigan in 1982, and was further licensed as an Osteopathic Physician by the State of Arizona in 1986. CP at 122-23, ¶ 8. Bartz is not presently licensed in any State and is retired due to medical disability. CP at 122-23, ¶ 8.

Absence of Business Contacts

Bartz has never resided in nor conducted any business in, and since June 25, 1992 he has not been licensed as an Osteopathic Physician to practice in, the State of Washington. CP at 123, ¶ 9. At no time since its formation in 2001 through its termination in 2011 did HPS LLC conduct or operate any business in the State of Washington. CP at 123, ¶ 10. HPS LLC was never registered as a foreign or any form of limited liability company or other business entity with any office or agency of the State of Washington. CP at 123, ¶ 10.

Equipment Financing Agreement

In May 2008, HPS LLC was conducting its business in the State of Arizona and was referred to an independent lease broker, also operating in

the State of Arizona, to recommend a possible lease or financing source for acquisition of equipment. CP at 123, ¶11. By and through the broker and not subject to negotiation, an Equipment Financing Agreement was arranged through Radiance Capital, LLC (as Creditor) with HPS LLC as the sole Debtor. CP at 123, ¶ 12. All papers associated with the financing agreement from Radiance Capital were delivered and signed through the broker in the State of Arizona, with no direct contact made between HPS LLC and Bartz with Radiance Capital, LLC. CP at 123, ¶ 12. The equipment that was financed by the Agreement with Radiance Capital, LLC was in fact initially delivered to an address in the State of Michigan. CP at 123, ¶ 13.

In 2011 the equipment was moved to the State of Arizona and was stored and temporarily used by Fred Goldblatt, a family physician in Arizona. At that time, Dr Goldblatt agreed to assume the Agreement payments to Radiance Capital, LLC in exchange for his use of the equipment. Dr Goldblatt shortly thereafter filed for bankruptcy and the equipment went missing. CP at 124, ¶ 14. Subsequently, HPS LLC made several attempts to locate the whereabouts of the equipment and reacquire it, but its attorney was unsuccessful and failed to locate the equipment. CP at 124, ¶ 15. Presently, the whereabouts of the equipment that HPS LLC financed through Radiance Capital, LLC is unknown. CP at 124, ¶ 16.

Jurisdictional and Venue/Forum Issues

In his signing the Personal Guarantee solely in his individual capacity, Bartz nowhere agreed or otherwise consented to personal jurisdiction over

him by the State of Washington nor to any Washington-based forum, venue and choice of law selections that might otherwise, if legal and proper under all the circumstances, be applicable to HPS LLC under the Agreement as a totally separate and distinct legal entity established under Nevada law. CP at 124, ¶ 17.

Health Pro Solutions, LLC was always treated as a separate, legal entity with its own books and no commingling of finances. CP at 124, ¶ 17. Bartz has not and does not consent to personal jurisdiction of any Washington State Court over him and retains all his rights and privileges as a citizen of the State of Michigan. CP at 124, ¶ 18.³

B. PROCEDURAL BACKGROUND

Bartz' counsel filed a Notice of Appearance that expressly preserved all defenses under and pursuant to CR 12(b) (*see* APPENDIX, at APP-11). Radiance Capital filed a Motion for Summary Judgment and Bartz filed a CR 12(b) Motion to Dismiss grounded on CR 12(b)(2) and (3). The trial court heard arguments on these cross-motions and denied Bartz' CR 12(b) Motion to Dismiss and granted Radiance Capital's Motion for Summary Judgment.

An Amended final judgment was entered on Radiance Capital's stipulation that the Judgment entered was solely against Nicholas W. Bartz, all other Defendants were dismissed. Subsequently, this appeal was filed.

³ The referenced Declaration and Supplemental Declaration were made by Bartz solely for the purpose to support a Rule 12(b) Motion to Dismiss the above-captioned action as to Bartz personally, and as may also have been applicable under the law to Health Pro Solutions, LLC. CP at 125, ¶ 22; CP at 157, ¶ 8.

IV. STANDARD OF REVIEW

The Court of Appeals finds itself in the exact position as was the trial court in considering the parties' cross-motions for Summary Judgment and CR 12(b) dismissal.

A named defendant may move, prior to trial, to dismiss the complaint for lack of personal jurisdiction. CR 12(b)(2).⁴ Because it is hornbook law that personal jurisdiction is essential to a court's power to enter a valid judgment, it follows that jurisdictional issues, including proper venue, are threshold matters that must be decided prior to addressing the merits of a case by summary judgment or otherwise.⁵ And because personal jurisdiction is bounded by due process under U.S. Const. Amend. XIV, the requisite quantum of proof for an out-of-state defendant is elevated to that necessary to demonstrate sufficient minimum contact with the forum State so that personal jurisdiction will not offend "traditional notions of fair play and

⁴ Jurisdictional issues are decided by the Court as a matter of law, but the plaintiff must nevertheless make a *prima facie* showing of facts supporting personal jurisdiction to rebuff a Rule 12(b) motion to dismiss. *Lewis v. Bours*, 119 Wn.2d 667, 669, 835 P.2d 221 (1992); *MBM Fisheries, Inc. v. Bollinger Machine Shop & Shipyard, Inc.*, 60 Wn. App. 414, 418, 804 P.2d 627 (1991).

⁵ As Judge Friendly put it so well, "We all agree it was error for the district court to proceed as it did. Not only does logic compel initial consideration of the issue of jurisdiction over the defendant -- a court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim -- but the functional difference that flows from the ground selected for dismissal likewise compels considering jurisdiction and venue questions first. A dismissal for lack of jurisdiction or improper venue does not preclude a subsequent action in an appropriate forum, whereas a dismissal for failure to state a claim upon which relief can be granted is with prejudice. We shall therefore vacate the judgment dismissing the complaint for failure to state a claim on which relief can be granted and remand the case for consideration of the issue of jurisdiction over the person of the defendant and, in the event that this be found, the issue of venue, prior to consideration of the merits." *Arrowsmith v. United Press International*, 320 F.2d 219, 221 (2d Cir. 1963).

substantial justice.” *International Shoe Company v. State of Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945).⁶ General personal jurisdiction can exist only when the out-of-state defendant transacts “substantial and continuous business of such character as to give rise to a legal obligation.” *MBM Fisheries*, 60 Wn. App. at 418.⁷ Issues relating to jurisdiction are reviewed as a question of law under a *de novo* standard.⁸

Summary judgment as sought “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁹ A material fact is one upon which the outcome of the litigation depends, in whole or in part.¹⁰ The burden is on the moving party to

⁶ “The consistent constitutional rule has been that a court has no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant. *E.g.*, *Pennoyer v. Neff*, 95 U.S. 714, 24 L. Ed. 565 (1878).” *Zenith Radio Corporation v. Hazeltine Research, Inc.*, 395 U.S. 100, 110, 89 S. Ct. 1562, 23 L. Ed. 2d 129 (1969).

⁷ Specific personal jurisdiction over out-of-state defendants is subject to the provisions of RCW 4.28.185; three factors must coexist to satisfy this statute: “(1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from, or be connected with, such act or transaction; and (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.” *Tyee Construction Company v. Dulien Steel Products, Inc.*, 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963).

⁸ *Sheldon v. Fetting*, 77 Wn. App. 775, 779, 893 P.2d 1136 (1995), *aff’d*, 129 Wn.2d 601, 919 P.2d 1209 (1996).

⁹ CR 56(c).

¹⁰ *Morris v. McNicol*, 83 Wn.2d 491, 494, 519 P.2d 7 (1974).

demonstrate that there is no genuine issue as to a material fact and that, as a matter of law, summary judgment is proper.¹¹ All facts and reasonable inferences therefrom must be considered in the light most favorable to the non-moving party.¹²

V. ARGUMENT

SUMMARY

The King County Superior Court was the improper venue and moreover lacked personal jurisdiction over out-of-state resident Nicholas W. Bartz under both Washington's long-arm statute, RCW 4.28.185, and the Personal Guarantee under the Agreement between HPS LLC and Radiance Capital.

LEGAL DISCUSSION AND ARGUMENT

A. Nicholas W. Bartz Is An Out-Of-State Resident Who Does Not Have Sufficient Minimum Contact With The State Of Washington To Constitutionally Justify And Support Personal Jurisdiction Over Him By The King County Court Under Washington's Long-Arm Statute

To pass constitutional muster, long-arm jurisdiction must be grounded on more than mere boilerplate language that was not negotiated and that misrepresents the true facts of performance and execution "deemed" to be in the State of Washington. Bartz has never lived in, conducted business in, had any business locations in, or has had any substantial and significant minimum contacts in and with the State of Washington at all -- much less having

¹¹ *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985).

¹² *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 38, 785 P.2d 447 (1990).

anything whatsoever to do with the Equipment Financing Agreement between HPS LLC and Radiance Capital that was brokered by an independent entity in the State of Arizona.¹³

Except for that period from 1983 through 1992 when Bartz was licensed by reciprocity as an Osteopathic Physician by the State of Washington, but never practiced in this State, Bartz has had no contact with the State of Washington as he has neither lived in nor conducted any business in or with this State. CP at 122-23, ¶¶ 8 and 9. Since March 2012 Bartz has resided in the State of Michigan, no longer is licensed as an Osteopathic Physician, and is now retired due to a medical disability with his eyesight. CP at 121-23, ¶¶ 3, 5, and 8. In May 2008 at the time the Equipment Financing Agreement was arranged with Radiance Capital by an independent broker in Arizona, Bartz was unmarried and a resident of the State of Arizona. CP at 121-23, ¶¶ 2, 3 and 11.¹⁴

Other than the period of licensure by reciprocity, without any actual practice, in the State of Washington that in any event ended in 1992 (16 years prior to the Agreement between HPS LLC and Radiance), Bartz has no

¹³ CP at 123, ¶¶ 9 - 13; CP at 157, ¶¶ 3 - 4. In fact, even the equipment financed under the Agreement was delivered to the State of Michigan. In addition, Bartz has never made any personal payments related to the Agreement on behalf of HPS LLC -- all business related matters were conducted at arms length under totally separate corporate accounts. CP at 124, ¶ 17.

¹⁴ That broker in Arizona found Radiance Capital in Tacoma, Washington, as a source for financing so that HPS LLC could purchase equipment for its business. CP at 123, ¶¶ 11 and 12. There was no direct contact made between HPS LLC and Bartz in Arizona with Radiance Capital in Washington, and execution of the Agreement was through the independent Broker in Arizona. CP at 123, ¶ 12.

sufficient minimum business contact with the State of Washington to pass constitutional due process muster and support personal jurisdiction of Washington courts over him as a Michigan resident. And under the express provisions of Washington's long-arm statute, RCW 4.28.185(1), any transactions related to the Equipment Financing Agreement were conducted solely by an independent broker in the State of Arizona at the request of HPS LLC, also a resident of the State of Arizona. CP at 123, ¶ 11.¹⁵ Under these circumstances, Bartz did not have sufficient minimum contact with the State of Washington regarding either the Agreement or otherwise to warrant the exercise of personal jurisdiction over him by the King County Court and in so doing not offend traditional notions of fair play and substantial justice that are the hallmarks of due process under the Fourteenth Amendment.

These are facts and they are all true, supported by competent and substantial evidence, and undisputed. Accordingly, long-arm jurisdiction is not properly supported and does not exist upon which the King County Court may constitutionally exert its jurisdiction and venue over Bartz individually as an out-of-state citizen. Based on the foregoing, under Washington's long-arm statute, RCW 4.28.185, the King County Court did not have sufficient legal grounds to exercise personal jurisdiction over Nicholas W. Bartz,

¹⁵ As a matter of law, there was no agency relationship between the independent broker and Bartz personally. And under *Tyee*, 62 Wn.2d at 115-16, Bartz as a resident of the State of Arizona did not “purposefully do some act or consummate some transaction in the” State of Washington, as he did not communicate with Radiance Capital and all papers related to the Agreement were delivered to and signed at the independent broker in Arizona. CP at 123, ¶ 12.

individually. Pursuant to CR 12(b)(2), the trial court erred as a matter of law that it had personal jurisdiction over Bartz and in its denial of Bartz' CR 12(b) Motion to Dismiss.

B. Nicholas W. Bartz Did Not Voluntarily Submit To Personal Jurisdiction Over Himself By The State of Washington And The King County Court As The Standard Clause Selecting Forum/Venue/Jurisdiction For Litigation Was Included Only In The Equipment Financing Agreement Which Bartz Signed Solely In His Corporate Capacity And There Was No Forum/Venue/Jurisdiction Selection Clause In The Personal Guarantee Provision Which Bartz Signed Solely In His Personal Capacity

The sole DEBTOR under the Equipment Financing Agreement was named and identified as Health Pro Solutions, LLC;¹⁶ and on behalf thereof the Agreement was signed by Bartz solely in his official corporate capacity as Managing Member. CP at 131.¹⁷ As the solely named and identified DEBTOR, *and if otherwise legal*, the standard/boilerplate language of the Equipment Financing Agreement set forth the following stipulation as to jurisdiction and forum/venue selection applicable solely to HPS LLC as the *Debtor*:

CHOICE OF LAW; WAIVER OF JURY TRIAL. This Agreement shall be deemed fully executed and performed in the

¹⁶ CP at 129. The sole Debtor is identified as Health Pro Solutions, LLC.

¹⁷ Such an act made in his official capacity for HPS LLC does not by itself render Bartz personally liable for debts under any contract or obligation entered into as a managing member under Nevada law. Nevada Revised Statutes (NRS) § 86.371. *See also* RCW 25.15.125(1) (no liability under Washington law).

State of Washington¹⁸ and shall be governed by and construed in accordance with the laws thereof without regard to the conflicts of laws rules of such State. **DEBTOR** agrees to submit to the jurisdiction of the State of Washington in King County. Each Creditor and **DEBTOR** hereby waives any right to trial by jury of any action involving this Agreement.

CP at 130, ¶ 26 (emphasis on **DEBTOR** added).

Bartz in his individual capacity signed as a Personal Guarantor according to and under the express provisions set forth in the following standard/boilerplate language:

PERSONAL GUARANTEE(S)

The undersigned guarantee and promise to make all of the payments and perform all Debtors' obligations as specified in this Equipment Financing Agreement. Each of our liabilities is primary and joint and several and shall not be affected by any settlement, extension, renewal or modification of the Agreement, by the discharge of [sic] release of the Debtor obligations or by the taking or release of additional guarantors or security for the performance of the Agreement. The undersigned waive any rights we may have to (a) presentment, demand, protest, notice of protest, notice of dishonor, notice of default under the Agreement [or] any other notices related to this guaranty or the Agreement and (b) the right to require Creditor to proceed against Debtor or to pursue any other remedy in Creditor's power. The undersigned also waive any other rights and defenses available to a guarantor by reason of application [of] case or statutory law. The undersigned agree that we are liable for Creditor's attorney's fees and costs in enforcing this guaranty, whether or not suit is filed. The undersigned acknowledge that this guaranty inures to the benefit of Creditor's assigns.

CP at 132. This Personal Guarantee was signed by Nicholas W. Bartz solely

¹⁸ This standard/boilerplate assertion is patently false, as HPS LLC was at all times in and a resident of the State of Arizona, CP at 122-23, ¶¶ 7 and 11; the Agreement was procured by an independent broker in the State of Arizona and executed by HPS LLC in the State of Arizona, CP at 123, ¶ 12; and the equipment purchased with the financing was in fact delivered to an address in the State of Michigan, CP at 123, ¶ 13.

in his personal/individual capacity on May 20, 2008 in the State of Arizona. CP at 123, ¶ 12.

Critical to the issue of personal jurisdiction of the King County Court over Bartz is the fact that nowhere in the Personal Guarantee language signed by Bartz, as crafted, drafted and provided as standard/boilerplate language by Radiance Capital, is there any stipulation by him to voluntarily submit or waive any objection to jurisdiction of the State of Washington in King County, or to choice of law and waiver of jury trial. CP at 124, ¶¶ 17 and 18. The specific language set forth in Paragraph 26 of the Equipment Financing Agreement expressly applies only to the named **DEBTOR** -- identified and named solely as Health Pro Solutions, LLC.¹⁹ In short, the King County Court did not have personal jurisdiction over Bartz grounded on Paragraph 26 of the Equipment Financing Agreement that applies solely to HPS LLC as the sole named DEBTOR in the Agreement.

A personal guarantee is merely a contract subject to well-established principles of construction. In *Seattle-First National Bank v. Hawk*, 17 Wn. App. 251, 562 P.2d 260 (1977), an issue arose as to an ambiguity in the scope of a guaranty (i.e., what the guaranty covers), with the Court of Appeals holding that a personal guarantee must be explicit with its language strictly

¹⁹ There is absolutely nothing in either Paragraph 26 or in the express language of the Personal Guarantee that would legally bind Bartz, in his capacity as Personal Guarantor, to the same stipulations regarding jurisdiction, forum, waiver of jury trial, and choice of law. Accordingly and notably, Bartz did not and has not stipulated to personal jurisdiction over him by the State of Washington in King County, to a waiver of jury trial, and to the choice of law selection. CP at 124, ¶ 17.

construed in the *guarantor's* favor.²⁰

The role of the court is to ascertain the mutual intention of the contracting parties, and the burden of proving such mutual intention rests upon the plaintiff. . . . Here, plaintiff is urging that we infer defendant's intent and thus, the mutual intent of both parties, from the evidence that only establishes plaintiff's intent -- an intent that was never communicated to defendant. This we cannot do. The unexpressed understanding of one of the contracting parties as to the meaning of language is generally of no legal significance. . . . Therefore, the subjective intent of Mr Helm as to the scope of the guaranty, unexpressed and uncommunicated to defendant, does not satisfy plaintiff's burden of proof of the parties' mutual intent.

Therefore, the court properly looked to contract law in reaching its final determination. ***It is a fundamental rule that guarantors can be held only upon the strict terms of their contract, as a contract to answer for the debt of another must be explicit and is strictly construed. . . . If a contract is equally susceptible of two or more constructions, it should be construed against the party using the language. . . . In other words, where language is ambiguous, the party selecting, drafting, and presenting the contract of guaranty containing such misleading language should suffer any consequences.***

Hawk, 17 Wn. App. at 255-56 (citations omitted; emphasis added).²¹

In our case, Radiance Capital attempts to bind Bartz in his person to the jurisdiction and venue of the King County Court by and through the boilerplate language it provided in the Personal Guarantee. The language provided, however, does not explicitly and unequivocally state that by

²⁰ Here, Bartz signed the Personal Guarantee as "Guarantor" in his individual capacity. CP at 132.

²¹ The "general rule [is] that guaranty agreements are to be strictly construed in favor of the guarantor . . . and the liability of a guarantor cannot be extended by construction." Alces, *The Efficacy Of Guaranty Contracts In Sophisticated Commercial Transactions*, 61 North Carolina Law Review 655, 673 (1983).

signing the personal guarantee in his individual capacity that Bartz, an out-of-state citizen, voluntarily submits to the jurisdiction of the State of Washington, venue in the King County Court,²² and further that he chooses Washington law and waives all right to a jury trial. There is nothing in the language of the Personal Guarantee that explicitly states such a dramatic and binding result on his personal rights and interests.²³ And Bartz had no intention and was most certainly not voluntarily consenting to such adverse impacts on his rights and interests as an out-of-state citizen.²⁴ As legally required that the Personal Guarantee must be strictly construed against Radiance Capital and in favor of Bartz, this Court should find and conclude that by signing the Personal Guarantee solely in his individual capacity that Bartz did not voluntarily consent and waive all objections to personal jurisdiction over him by and venue in the King County Court.

Moreover, under settled and published Washington law, individuals who may serve solely as personal guarantors to another's obligation under an Agreement but who in so doing were signatory only to a separate Personal Guarantee provision that did not contain a jurisdictional and forum selection

²² Just as a curiosity, note that the relevant Radiance Capital office is located in Tacoma -- in Pierce County, not in King County. Query why venue was selected by Radiance Capital to be in King County courts?

²³ It would have been very simple for Radiance Capital to insert express and explicit language in the Personal Guarantee that by his signature the Guarantor agrees to voluntarily submit to the jurisdiction and venue of the selected State and court. It did not do so; accordingly, Radiance Capital must bear the consequences for its omission.

²⁴ CP at 124, ¶ 17.

clause, are held not to be parties to the Agreement's stipulation to personal jurisdiction and choice of forum clause and are therefore not legally bound by the requirements of such provision.²⁵ For example,

A forum selection clause is not binding on a third party who did not agree to the contract in which the clause is found.

Oltman v. Holland American Lines USA, Inc., 163 Wn.2d 236, 250, 178 P.3d 981 (2008).²⁶ See also *American Mobile Homes of Washington, Inc. v. Seattle-First National Bank*, 115 Wn.2d 307, 796 P.2d 1276 (1990).²⁷ Based on the foregoing principles of law, the sole Debtor under the Agreement was HPS LLC and Bartz signed the Agreement on behalf of HPS LLC solely in his official corporate capacity as Managing Member of HPS LLC. Bartz signed the Personal Guarantee solely in his individual capacity. The Personal Guarantee did not expressly contain and set forth the same provisions as did the Agreement regarding personal jurisdiction, forum selection, choice of

²⁵ Moreover, a guarantee only promises a creditor that the guarantor will perform in the event of nonperformance by the debtor. *B & D Leasing Company v. Ager*, 50 Wn. App. 299, 306, 748 P.2d 652 (1988). But “a guarantor is not to be held liable beyond the express terms of his or her engagement. If there is a question of meaning, the guaranty is construed against the party who drew it up or against the party benefited.” *Matsushita Electric Corporation of America v. Salopek*, 57 Wn. App. 242, 246-47, 787 P.2d 963 (1990).

²⁶ This context is applicable and persuasive authority because consent to a forum selection clause in an agreement generally connotes a consent to or waiver of personal jurisdiction. *Kysar v. George A. Lambert DBA Lambert Rainbow Fruit Co.*, 76 Wn. App. 470, 485, 887 P.2d 431 (1995).

²⁷ A person who signs an agreement only in an official corporate capacity does not personally benefit by or is bound by a forum selection clause contained therein; and a personal guarantee must contain therein express jurisdiction or forum selection provisions to bind an individual signatory. Cf. *State ex rel. Electrical Products Consolidated v. Superior Court*, 11 Wn.2d 678, 679, 120 P.2d 484 (1941); *State ex rel. Lund v. Superior Court*, 173 Wash. 556, 558, 24 P.2d 79 (1933) (both holding that a wife was not bound by a forum selection agreement signed only by the husband).

law, and waiver of jury trial. Whereas HPS LLC agreed to such clause and provisions and thus may be bound thereby (if otherwise legal and enforceable), Bartz individually did not and is not bound by any of those provisions.

Based on the foregoing and under settled Washington law regarding and relating to the nonjoinder of all named Defendants in jurisdictional and forum selection clauses in agreements, because Bartz did not voluntarily agree to personal jurisdiction over him or to venue in the King County Court, the trial court did not have sufficient contractual grounds to lawfully exercise personal jurisdiction over Nicholas W. Bartz, individually. Pursuant to CR 12(b)(2), the trial court erred as a matter of law that it had personal jurisdiction over Bartz and in its denial of Bartz' CR 12(b) Motion to Dismiss.

C. The Standard Boilerplate Language In The Personal Guarantee That Bartz Would "Perform All Debtors' Obligations" Does Not Include His Voluntarily Submission To The Venue And Jurisdiction Of The King County Court

Although HPS LLC was required to agree as part of the boilerplate language in the Equipment Financing Agreement provided by Radiance Capital, if otherwise legal, to jurisdiction over it and venue in the King County Court, Bartz as an individual and out-of-state resident did not. Bartz had no intention to and did not voluntarily consent to personal jurisdiction over him in this State and venue in the King County Court by signing as a

personal guarantor.²⁸

Nevertheless, Radiance Capital has argued that all else is irrelevant considering the language of the Personal Guarantee signed by Bartz in his individual capacity. Radiance Capital appears to place great weight on, and to read unwritten requirements into, the following language as constituting voluntary consent by Bartz to personal jurisdiction over him and venue by and in the King County Court:

The undersigned guarantee and promise to make all of the payments and *perform all Debtors' obligations* as specified in this Equipment Financing Agreement.

CP at 132. The Debtor is clearly and solely HPS LLC, a separate corporate entity established under Nevada law. To *perform all Debtors' obligations* under the Equipment Financing Agreement, in addition to making all the payments thereunder, can fairly and obviously be read and construed to mean and be limited to the various provisions therein regarding HPS LLC's obligations relating to keeping the location of the collateral, making alterations or improvements to the collateral, maintaining and repairing the collateral, paying taxes related to the collateral, insuring the collateral, and similar provisions the performance of which may be measured as compliant or noncompliant with the Agreement thus used as metrics giving rise to an

²⁸ CP at 124, ¶¶ 17 and 18.

action for breach.²⁹ A boilerplate language standard provision by Radiance Capital under which HPS LLC “*agrees to submit* to the jurisdiction of the State of Washington in King County” is not such a measure of performance to which Bartz is bound simply by signing the Personal Guarantee in his individual capacity.³⁰

Radiance Capital has also argued that because the Personal Guarantee is located in Schedule A, that such *ipso facto* binds Bartz to all the provisions of the Equipment Financing Agreement, including the Debtor HPS LLC's agreement to jurisdiction and venue in the King County Court.³¹ Schedule A primarily deals with the collateral and its itemization. That the Personal Guarantee is set forth on the bottom of such page is of no legal import -- perhaps more a matter of convenience to locate on a single page in lieu of a different sheet of paper? In any event, based on the foregoing discussion of personal guarantees being strictly construed against the drafter and in favor of the guarantor under well-established rules of contract law, the location of the language is not controlling nor persuasive and dispositive as to effect on

²⁹ An “obligation” is defined to mean “that which constitutes a legal or moral duty and which renders a person liable to coercion and punishment for neglecting it.” Black's Law Dictionary, at p. 968 (5th ed. 1979).

³⁰ If anything of import stems from this standard/boilerplate language, it is that such terminology gives rise to an ambiguity that must be construed most favorably to Bartz as the guarantor, and perhaps also gives rise to a genuine issue of material fact which, at a minimum, makes summary judgment inappropriate under the circumstances.

³¹ It may also be argued that the provisions of the Personal Guarantee regarding waiver of notices and affirmative defenses amounts to unfair and unjust overreaching and are thus unconscionable and unenforceable under basic contract law, thus rendering the entire Personal Guarantee procedurally and substantively null and void as a matter of law. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004).

personal jurisdiction and venue with respect to Bartz in his individual capacity.

D. Because The Stipulation To Jurisdiction, Forum Selection, Waiver Of Jury Trial, And Choice Of Law Provision Of The Agreement Is Grounded Solely On Standard/Boilerplate Language Crafted By Radiance Capital That Misrepresents The Facts And Is Patently Untrue, Paragraph 26 Of The Agreement Is Unenforceable And The King County Court Is Not The Proper Venue Such That The Complaint Must Be Dismissed *In Toto*

The standard/boilerplate language crafted and drafted by Radiance Capital in its Equipment Financing Agreement recites as fact that “This Agreement shall be deemed fully executed and performed in the State of Washington” CP at 130, ¶ 26. On such assertion of facts as true, the Agreement purportedly volunteers the DEBTOR (HPS LLC) to submit to the jurisdiction of the State of Washington, to the personal jurisdiction and forum of the King County Court, to the waiver of jury trial, and to selection of Washington law as the choice of law. CP at 130, ¶ 26. However, this standard/boilerplate language misrepresents the actual facts and is patently untrue, as HPS LLC, a Nevada limited liability company and resident of the State of Arizona, performed all acts with the broker, received all papers related to the Agreement and signed them through the independent broker all within the State of Arizona. CP at 123, ¶¶ 11 and 12. Although forum selection and jurisdictional clauses are generally enforced by the courts, where there is either (1) clear evidence of fraud, undue influence, or unfair bargaining power, or (2) are not part of freely negotiated agreements and are

unreasonable and unjust, the courts will invalidate such clauses and decline to enforce them. *See generally, Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 834-35, 161 P.3d 1016 (2007); *Kysar v. George A. Lambert dba Lambert Rainbow Fruit Co.*, 76 Wn. App. 470, 484, 887 P.2d 431 (1995). The proper procedural mechanism by which to determine the enforceability of a venue/forum selection clause is by a motion to dismiss brought under CR 12(b)(3). *Voicelink Data Services, Inc. v. Datapulse, Inc.*, 86 Wn. App. 613, 624, 937 P.2d 1158 (1997).³²

Here, the non-negotiated standard/boilerplate language relating to forum/venue selection crafted and drafted by Radiance Capital was a misrepresentation of the actual facts solely of one-sided benefit and patently untrue, and moreover was not “freely negotiated” (CP at 123, ¶ 12) so as to offend traditional notions of fair play and substantial justice if such venue selection clause should be enforced by the Court. The unfairness to Bartz is clearly obvious, as he is retired on disability and lives in the State of Michigan. Under these circumstances, there is no rational basis for the Court to enforce a standard/boilerplate contract forum selection provision based wholly on a patent misrepresentation of facts where Radiance Capital has presented no reason why it can't bring its claim for monetary damages in the State of Michigan, the location of Bartz' residence and the place where the equipment financed under the Agreement was originally delivered.

³² Assertion of improper venue was expressly noted as an affirmative defense in the Notice of Appearance filed in this case. APPENDIX, at APP-11.

Based on the foregoing and pursuant to CR 12(b)(3), the trial court erred as a matter of law that it was the proper venue/forum in the underlying action and in its denial of Bartz' CR 12(b) Motion to Dismiss.

VI. REQUEST FOR AWARD OF ATTORNEY FEES AND COSTS

Foreign resident Bartz respectfully requests that this Court award him his reasonable attorney fees and costs incurred in his defense of the underlying action and in this appeal.

In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

RCW 4.28.185(5). RAP 18.1.

VII. EFFECT OF DISCHARGE GRANTED IN BANKRUPTCY

Bartz filed for Chapter 7 bankruptcy while residing in the State of Michigan in October 2008. After successfully completing all requirements imposed by law, subsequent to the trial court's entry of Summary Judgment in favor of Radiance Capital and solely against Nicholas W. Bartz, individually, Bartz was granted a discharge in his bankruptcy action by the United States Bankruptcy Court, Eastern District of Michigan, Case No. 08-63007-mbm (October 7, 2013). *See* APPENDIX, at APP-1. The discharge granted Bartz under 11 U.S.C. § 727 legally entitled him to be discharged "from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not

a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.” 11 U.S.C. § 727(b). The “date of the order for relief” is defined as the date on which a voluntary case for bankruptcy under Chapter 7 was commenced by the filing of a petition. 11 U.S.C. § 301.

The only representation that can be made at this time by counsel is that the effect of Bartz’ bankruptcy discharge is presently being discussed by his bankruptcy attorney (located in Michigan) and counsel for Radiance Capital. What counsel can and does affirm to this Court is that Bartz has absolutely no intention of waiving or relinquishing his legal rights and protections afforded him by the bankruptcy discharge granted him subsequent to entry of the trial court orders on Summary Judgment.³³

This Court should at least take into due consideration the likely effect of the bankruptcy discharge granted under Chapter 7 to Bartz and the appropriate venue/forum for any issues related to that discharge and all other matters, including the action against him individually under the Personal Guarantee by Radiance Capital, to be the State of Michigan.

³³ The purpose of this appeal is to protect and preserve his rights to contest jurisdiction and venue of the King County Court under and pursuant to CR 12(b)(2), and -(b)(3). In the event an Answer would have been required had the trial court denied Radiance Capital’s Motion for Summary Judgment, Bartz would have timely included and/or amended any Answer to include the affirmative defense of discharge in bankruptcy. The Notice of Appearance filed by Bartz in fact preserved all affirmative defenses to be later raised if required and as appropriate. APPENDIX, at APP-11. *See also* Notice of Appeal. CP at 159-60.

VIII. CONCLUSIONS

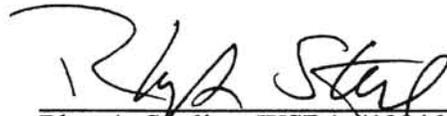
Based on the foregoing facts and law, this Court should find and conclude that the King County Court had neither personal jurisdiction over out-of-state resident Nicholas W. Bartz nor was it the proper forum/venue for hearing an action related to the Agreement. For the grounds set forth in CR 12(b)(2) and -(b)(3), this Court should reverse the trial court orders on Summary Judgment and remand this matter to the trial court with instructions to grant Bartz' Motion to Dismiss and dismiss Radiance Capital's Complaint *in toto* for lack of personal jurisdiction and improper forum/venue.

In addition, Bartz respectfully requests this Court grant him his reasonable attorney fees and costs incurred for defense of this action based on jurisdictional grounds under and pursuant to RCW 4.28.185(5). RAP 18.1.

Dated this 30th day of December, 2013.

Respectfully submitted,

RHYS A. STERLING, P.E., J.D.



Rhys A. Sterling, WSBA #13846
Attorney for Appellant Nicholas W. Bartz

* * * * *

APPENDIX

* * * * *

United States Bankruptcy Court

Eastern District of Michigan

Case No. 08-63007-mbm

Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Nicholas William Bartz
4535 Eagle Drive
Jackson, MI 49201

Social Security / Individual Taxpayer ID No.:

xxx-xx-1411

Employer Tax ID / Other nos.:

DISCHARGE OF DEBTOR

It appearing that the debtor is entitled to a discharge,

IT IS ORDERED:

The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).

BY THE COURT

Dated: 10/7/13

Marci B McIvor
United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.

EQUIPMENT FINANCING AGREEMENT - CONTRACT No. 621-0000164-000

CREDITOR: Radiance Capital LLC	DEBTOR: HEALTH PRO SOLUTIONS, LLC
Address: 820 A Street, Suite 560	Address: 4535 EAGLE DR.
City/State/Zip: Tacoma, WA 98402	City/State/Zip: JACKSON, MI 49201

1. SECURITY AGREEMENT: Debtor hereby grants Creditor a security interest under the Uniform Commercial Code in the property (collectively the "Collateral") and individually in "Tangible" or "Intangible Collateral") described in Schedule A attached hereto and incorporated herein. Such security interest is granted to secure performance by Debtor of its obligations hereunder and under any other present or future agreement with Creditor. Debtor shall insure that such security interest is and shall remain a valid first lien security interest.

2. PAYMENTS: Debtor shall repay Creditor the "Total Amount" shown in Schedule A together with interest in the number of periodic installments shown in Schedule A. The initial installment payment shall be deemed due as of the date indicated on Schedule A and subsequent installment payments shall be due on the same day of each month thereafter until paid, whether or not on a business day. Advance Payments, if any are shown in Schedule A, will be used for the first payment and any balance will be used for the last payment(s), provided that if there is a default, any payments under this Agreement may be applied to Debtor's obligation to Creditor in such order as Creditor deems.

3. NO AGENCY: DEBTOR ACKNOWLEDGES THAT NO SUPPLIER OF ANY ITEM OR INTERMEDIARY FOR ANY AGENT OF EITHER THEREOF IS AN AGENT OF CREDITOR AND FURTHER THAT NONE OF SUCH PARTIES IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS AGREEMENT. NO REPRESENTATION AS TO ANY MATTER BY ANY SUCH PARTY SHALL BIND CREDITOR OR AFFECT DEBTOR'S DUTY TO PAY THE INSTALMENT PAYMENTS AND PERFORM THE OTHER OBLIGATIONS HEREUNDER.

4. NON-CANCELABLE AGREEMENT; REPAIRMENT; NO OBTAIN: THIS AGREEMENT IS NON-CANCELABLE BY DEBTOR FOR ANY REASON WHATSOEVER. DEBTOR MAY REPAIR THE INSTALMENT PAYMENTS ONLY IN ACCORDANCE HERewith. ALL PAYMENTS HEREUNDER ARE TO BE MADE WITHOUT CURE.

5. FINANCING: THIS AGREEMENT IS SOLELY A FINANCING AGREEMENT. CREDITOR HAS HAD NO INVOLVEMENT IN THE SELECTION OR PURCHASE OF AND HAS MADE AND NEGOTIATES NO AGREEMENT, REPRESENTATION OR WARRANTY AS TO ANY ITEM OF COLLATERAL.

6. LOCATION AND INSPECTION: Debtor shall keep, store in an item which is suitable, prominently posted and accessible from the United States, an appropriate, each item of Collateral in Debtor's possession and control at the Collateral Location specified in Schedule A or at such other location to which such item may have been moved with prior written consent of Creditor. Upon request, Creditor may inspect the Collateral during normal business hours and enter the premises where the Collateral may be located for such purposes. Such item shall be used solely for commercial or business purposes and operated in a careful and proper manner in compliance with all applicable governmental regulations and all requirements of insurance policies carried hereunder and all manufacturers' instructions and warranty requirements.

7. ALTERATIONS; EXCLUSIVE REPAIR COVERAGE: Without Creditor's prior written consent, Debtor shall not make any alterations, addition or improvements to an item of Collateral that detract from its economic value or functional utility. All additions and improvements made to an item shall be deemed maintenance items, and shall not be removed if removal would impair the item's economic value or functional utility. Creditor's security interest shall cover all maintenance, alterations, additions to and replacements and substitutions for the Collateral. Debtor will not make any replacements or substitutions without Creditor's prior written consent.

8. MAINTENANCE: Debtor shall maintain the Collateral in good repair, condition and working order. Debtor shall cause all repairs required to maintain the Collateral in such condition to be made promptly by qualified parties. Debtor will cause such loss of Collateral for which a service contract is generally available to be covered by such a contract that provides coverage typical as to property of the type involved and is issued by a state-licensed servicing entity.

9. LOSS AND DAMAGE; CURRENT VALUE: Debtor will bear all risk of loss, theft, destruction or disposition or of damage to any item. Debtor shall give Creditor prompt notification of a casualty occurrence and shall defend, settle and pay the loss in good repair, condition and working order; provided however, that if such item is determined by Creditor to be lost, stolen, destroyed or damaged beyond repair or its replacement or suffers a constructive total loss under an insurance policy carried hereunder, Debtor shall pay Creditor all remaining payments of such item to satisfy the debt.

10. TITLING: If requested by Creditor, Debtor shall cause an item of Collateral subject to this agreement item to be titled as directed by Creditor. Debtor shall advise Creditor promptly as to any necessary titling. Debtor shall cause all documents of title to be furnished to Creditor within sixty (60) days of the date on any filing date by Debtor.

11. TAXES: Unless otherwise directed in writing by Creditor, Debtor shall pay when due and make filings with respect to all taxes, fees, including registration, sales, franchise, and other governmental assessments with respect to the Collateral and shall pay all other governmental assessments (including gross receipt taxes but exclusive of Federal and State Joint based on Creditor's past income) related to assets due hereunder, the Collateral and otherwise related hereto.

12. LIMITED POWER OF ATTORNEY: Debtor hereby irrevocably appoints Creditor as Debtor's attorney-in-fact for the following limited purposes: (1) to sign and file or record on Debtor's behalf and in Debtor's name any document Creditor deems necessary to perfect or protect Creditor's interest in the Collateral or pursuant to the UCC; and (2) to sign, defend and/or negotiate, on Debtor's behalf and in Debtor's name, for Creditor's benefit, any instrument representing proceeds from any policy of insurance covering the Collateral.

13. INSURANCE: Debtor shall maintain and provide Creditor with authority to Creditor for the maintenance of all risk insurance against loss of or damage to the Collateral for not less than the full replacement value shown on the Loan Paper. Such insurance shall be in an amount and form and with coverage approved by Creditor, shall provide at least sixty (60) days advance written notice to Creditor of material changes or cancellation, shall provide full benefit of warranty protection, if appropriate, and shall provide that coverage is "primary." In the event of any assignment of this Agreement of which Debtor receives notice, Debtor shall cause such insurance to provide the same protection to the assignee as its lowest may appear. The proceeds of such insurance, at the option of the Creditor, shall be applied toward (a) the repair or replacements of the appropriate item or items of Collateral, (b) payment of the outstanding balance, or (c) payment of any other accrued obligations of Debtor hereunder. Any excess of such proceeds remaining shall belong to Debtor. Debtor shall maintain public liability and property damage coverage in such amounts and in such form as Creditor shall reasonably require. If Debtor does not provide the insurance described in this section, Creditor may, but will not be required to, buy such insurance and add the cost, including any necessary changes or fees associated with the placement, maintenance or service for such insurance, to the installment payments due from Debtor.

14. CREDITOR'S PAYMENTS: If Debtor fails to perform any of its obligations hereunder, Creditor may perform such obligations, and Debtor shall (a) reimburse Creditor the cost of such performance and related expenses and (b) pay Creditor the late charge contemplated in Paragraph 21 on the cost and expense of such performance.

15. INDEMNITY: Debtor shall indemnify, defend and hold harmless Creditor against any claim, action, liability or expense, including attorney's fees and court costs, incurred by Creditor related to this Agreement.

16. WAIVER: Any of the following constitutes an event of default hereunder: (a) Debtor's failure to pay any amount hereunder, within ten (10) business days of when due; (b) Debtor's default in performing any other obligations hereunder or under any other agreement between Debtor and Creditor; (c) Debtor changes its name, state of incorporation, chief executive officer, major place of business without providing Creditor with sixty (60) days written notice of such change; (d) death or judicial declaration of incompetency of Debtor, if an individual or partner; (e) the filing by or against Debtor of a petition under the Bankruptcy Code or under any insolvency law or law providing for the relief of debtors, including without limitation, a petition for reorganization, appointment or extension; (f) the making of an assignment of a substantial portion of its assets by Debtor for the benefit of creditors, appointment of a receiver or trustee for Debtor or for any Debtor's estate, institution by or against Debtor of any other type of insolvency proceeding or other proceeding contemplating settlement of claims against or winding up of the affairs of Debtor; Debtor's cessation of such business affairs or the making by Debtor of a transfer of a material portion of Debtor's assets or inventory not in the ordinary course of business; (g) the occurrence of an event described in (a), (c) or (f) as to a guarantor or other surety of Debtor's obligations hereunder; (h) any misappropriation of a material part in connection herewith by or on behalf of Debtor; (i) Debtor's default under a lease or agreement providing financial accommodations with a third party or (j) Creditor shall in good faith deem itself necessary as a result of a material adverse change in Debtor's financial condition or otherwise.

Initial MJB

17. REMEDIES: Upon the occurrence of an event of default Creditor shall have the right, options, duties and remedies of a secured party, and Debtor shall have the rights and duties of a Debtor, under the Uniform Commercial Code of Washington (regardless of whether such Code or law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted). Without limiting the generality of the foregoing, Creditor shall have the right to (a) at Creditor's option, declare immediately due and payable the entire amount of all of Debtor's obligations hereunder, without notice or demand to Debtor and without proof; (b) take possession of any, if deemed appropriate, real or personal property of Debtor, without demand or notice whatsoever, without any process of law and without liability for any damages occasioned by such taking of possession, including damages to tenants; (c) require Debtor to assemble any or all items of Collateral at a location in reasonable proximity to their designated location hereunder; (d) upon notice to Debtor required by law, sell or otherwise dispose of any items of Collateral, whether or not in Creditor's possession, in a commercially reasonable manner at public or private sale at any place designated in such notice and apply the net proceeds of such sale after deducting all costs of such sale, including, but not limited to, costs of transportation, representation, storage, refurbishing, advertising and brokers fees, to the obligations of Debtor hereunder with Debtor remaining liable for any deficiency and with any excess being returned to Debtor or (e) unless any other remedy available under the Uniform Commercial Code or otherwise to Creditor. All remedies are cumulative. Any sale may be performed by assignment at the time and place appointed for such sale without further published notice, and Creditor may if permitted by law bid and become the purchaser of any such sale.

18. LITIGATION EXPENSES: Debtor shall pay Creditor its costs and expenses, including representation and attorney's fee and court costs, incurred by Creditor in enforcing this Agreement. This obligation includes the payment of such amounts whether an action is filed and whether an action that is filed is dismissed.

19. ASSIGNMENTS: Without the prior written consent of Creditor, Debtor shall not sell, lease or create or allow any lien other than Creditor's security interest against an item of Collateral or assign any of Debtor's obligations hereunder. Debtor's obligations are not assignable by operation of law. Consent to any of the foregoing applies only in the given instance. Creditor may assign, pledge or otherwise transfer any of its rights hereunder without notice to Debtor. If Debtor is given notice of any such assignment, Debtor shall acknowledge receipt thereof in writing and shall thereafter pay any amounts due hereunder as directed in the notice. The rights of an assignee to amounts due hereunder shall be free of any claims or defenses Debtor may have against Creditor, and Debtor agrees not to assert against an assignee any claim or defense which Debtor may have against Creditor. Subject to the foregoing, this Agreement inures to the benefit of, and it binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties.

20. MARKING; PERSONAL PROPERTY: Debtor shall mark the Collateral at its location as suggested by Creditor to indicate Creditor's security interest. Debtor will provide Creditor any and properly written requested by Creditor as to the real property values on item of Collateral or to be located.

21. LATE PAYMENT AND PENALTIES: In the event a payment is not made within ten (10) days upon due hereunder, the Debtor promises to (a) pay a late charge to Creditor or its assignee not later than ten (10) days thereafter, of up to 10% of the payment, or twenty-five dollars (\$25.00), whichever is greater and (b) pay Creditor amounts paid to obtain in connection with collection of the amount. The late charge and for the interest payments set forth in this Agreement shall apply only when permitted by law, and if not permitted by law, the late charge and/or interest payments shall be calculated at the maximum rate permissible by law. If a check or other instrument tendered for payment is dishonored, Debtor shall be liable for a fifty dollar (\$50.00) fee.

22. COMPLIANCE WITH LAW: Debtor and Creditor intend to comply with all applicable laws. If it is determined that payments under this Agreement result in an interest payment higher than that allowed by applicable law, then any excess interest collected will be applied to the repayment of principal and interest will be charged at the rate allowed by law.

23. ADDITIONAL DOCUMENTS: Debtor shall provide to Creditor such financing statements and similar documents as Creditor shall request. Debtor authorizes Creditor when permitted by law to make filings of such documents without Debtor's signature. Debtor further shall furnish Creditor (a) a fiscal year-end financial statement, including balance sheet and profit and loss statement within one hundred twenty (120) days of the close of each fiscal year and (b) such other information and documents not specifically mentioned herein relative to this Agreement as Creditor may request. Debtor shall reimburse Creditor for all search and filing fees incurred by Creditor related hereto.

24. CROSS COLLATERAL/CROSS DEFAULT: All Collateral shall secure the payment and performance for all of Debtor's liabilities and obligations to Creditor hereunder, under any other agreement between Debtor and Creditor, and under any of the loan documents relating hereto, including but not limited to all Equipment Finance Agreements, Lease Agreements, Installment Financing Agreements and all other documents (referred to herein collectively as the "Documents"). Creditor's security interest in the Collateral shall not be terminated until and unless all of Debtor's obligations to Creditor under any of the Documents are fully paid and performed. The occurrence of an event of default under any other of the Documents shall be deemed to be an Event of Default hereunder and an Event of Default hereunder shall be deemed to be an Event of Default under the Documents.

25. NOTICES: Notices shall be in writing and sufficient if mailed to the party involved. United States mail first class postage prepaid, at its respective address set forth above or at such other address as such party may provide on notice in accordance herewith. Notice so given shall be effective when mailed. Debtor shall promptly notify Creditor of any change in Debtor's address.

26. CHOICE OF LAW; WAIVER OF JURY TRIAL: THIS AGREEMENT SHALL BE DEEMED FULLY EXECUTED AND PERFORMED IN THE STATE OF WASHINGTON AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS THEREOF WITHOUT REGARD TO THE CONFLICTS OF LAWS RULES OF SUCH STATE. DEBTOR AGREES TO SUBMIT TO THE JURISDICTION OF THE STATE OF WASHINGTON IN KING COUNTY. EACH CREDITOR AND DEBTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACCION INVOLVING THIS AGREEMENT.

27. GENERAL: This agreement constitutes the entire agreement of the parties as to the subject matter and shall not be amended, altered or changed except by a written agreement signed by the parties. Any notice by Creditor sent by its writing, and performance shall not constitute a notice. Whenever the intent of this Agreement requires, the notice includes the mailing or delivery and the six days before the filing. If there is any time that Debtor issued for this Agreement, the liability of each shall be joint and several. This filing to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be in violation of the interpretation. Any provision declared invalid shall be deemed severable from the remaining provisions that shall remain in full force and effect. Time is of the essence of this Agreement. The obligations of Debtor shall survive the release of security interest in the Collateral.

28. DEBTOR'S WARRANTIES: DEBTOR CERTIFIES AND WARRANTS: (a) THE FINANCIAL AND OTHER INFORMATION WHICH DEBTOR HAS SUBMITTED, OR WILL SUBMIT, TO CREDITOR IN CONNECTION WITH THIS AGREEMENT IS, OR SHALL BE AT TIME OF SUBMISSION, TRUE AND COMPLETE; (b) THE DEBTOR'S EXACT LEGAL NAME, STATE OF INCORPORATION, LOCATION OF ITS CHIEF EXECUTIVE OFFICE AND/OR ITS PLACE OF RESIDENCE AS APPLICABLE, HAVE BEEN CORRECTLY IDENTIFIED TO CREDITOR; (c) THIS AGREEMENT HAS BEEN DULY AUTHORIZED BY DEBTOR AND UPON EXECUTION BY DEBTOR SHALL CONSTITUTE THIS LEGAL, VALID AND BINDING OBLIGATION, CONTRACT AND AGREEMENT OF DEBTOR ENFORCEABLE AGAINST DEBTOR IN ACCORDANCE WITH ITS TERMS; AND (d) EACH SIGNING PROVIDED BY DEBTOR IN CONNECTION HEREWITH MAY BE FULLY RELIED UPON BY CREDITOR NOTWITHSTANDING ANY TECHNICAL DEFICIENCY IN ATTESTATION OR OTHERWISE. THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF THE DEBTOR WARRANTS THAT PERSON'S DUE AUTHORITY TO DO SO. DEBTOR FURTHER WARRANTS THAT EACH ITEM OF COLLATERAL SHALL AT THE TIME CREDITOR FUNDS THE TOTAL ADVANCE BE OWNED BY DEBTOR FREE AND CLEAR OF LIENS AND ENCUMBRANCES AND BE IN GOOD CONDITION AND WORKING ORDER.

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29. NO WARRANTY BY CREDITOR CREDITOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO: THE CONDITION, DESIGN, OR QUALITY OF THE EQUIPMENT; THE FITNESS OF THE EQUIPMENT FOR USE OR FOR A PARTICULAR PURPOSE; THE MERCHANTABILITY OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS OR CONTRACTS PERTAINING THERETO; PATENT INFRINGEMENT; OR LATENT DEFECTS; THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR THE CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO; THE OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. NO DEFECT OR UNFITNESS OF THE EQUIPMENT SHALL RELIEVE DEBTOR OF THE OBLIGATION TO PAY RENT OR OF ANY OTHER OBLIGATION UNDER THIS AGREEMENT. THE DEBTOR ALSO ACKNOWLEDGES THAT THE CREDITOR HAS MADE NO REPRESENTATION OR WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT. CREDITOR SHALL HAVE NO LIABILITY TO DEBTOR OR ANY PERSON WHOASOEVER FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE (INCLUDING ATTORNEY FEES) OF ANY KIND OR NATURE, WHETHER SPECIAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALY, OR CONSEQUENTIALY BY THE EQUIPMENT OR ANY PART THEREOF OR PRODUCTS THEREFROM, BY ANY INADEQUACY OF THE EQUIPMENT OR DEFECT OR DEFICIENCY THEREIN, BY ANY INCIDENT WHATSOEVER ARISING IN STRICT LIABILITY OR OTHERWISE, FROM CREDITOR'S OR DEBTOR'S NEGLIGENCE OR OTHERWISE, BY THE USE OR MAINTENANCE THEREOF, OR FOR REPAIR, SERVICING OR ADJUSTMENT THERETO, OR FOR ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF THE EQUIPMENT, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED, OR ARISING OUT OF THIS AGREEMENT. DEBTOR SHALL INDEMNIFY AND HOLD CREDITOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS COSTS EXPENSES, DAMAGES, LOSSES, LIABILITIES INCURRED OR SUFFERED BY THE CREDITOR, DEBTOR, OR ANY OTHER PARTY IN CONNECTION WITH THE DELIVERY, OPERATION, USE OR PERFORMANCE OF THE EQUIPMENT, OR AS A RESULT OF ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) FURTHER, DEBTOR UNDERSTANDS AND AGREES THAT THERE SHALL BE NO ABATEMENT OF RENT DURING ANY PERIOD OF BREAKDOWN OR NONUSE OF THE EQUIPMENT.

This Agreement is effective only upon execution by an authorized officer of Creditor following Debtor's execution hereof. Debtor hereby authorizes Creditor to disclose the Total Advances as reflected on the Pay Proceeds Disclosure attached to each Schedule A.

CREDITOR: Health Pro Solutions, LLC
 By: [Signature]
 Title: Controller
 Date: 5/28/08

DEBTOR: HEALTH PRO SOLUTIONS,
 By: Nicholas W. Brant
 Title: Mng. Member
 Date: 5-28-08

SCHEDULE "A" to Equipment Financing Agreement

EQUIPMENT FINANCING AGREEMENT - CONTRACT No. 621-0000164-000
 DATED: _____

CREDITOR: Redstone Capital LLC DEBTOR: HEALTH PRO SOLUTIONS, LLC

CREDITOR AND DEBTOR HAVE ENTERED INTO THE EQUIPMENT FINANCING AGREEMENT DESCRIBED ABOVE (THE "AGREEMENT"), THE TERMS OF WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE. THIS IS A SCHEDULE A TO THE AGREEMENT. ALL WORDS AND TERMS USED HEREIN AND NOT DEFINED HEREIN SHALL HAVE MEANINGS SPECIFIED IN THE AGREEMENT.

TERMS

TOTAL ADVANCE \$ 43,466.18	TERM OF LOAN 60 mo.	MONTHLY PAYMENT \$ 1,137.02	ADVANCE PAYMENTS 2	INITIAL AMOUNT DUE \$ 2,624.04
BALLOON PAYMENT \$ 0.00	DUE DATE	TOTAL NUMBER OF PAYMENTS 60	DOC FEE/OTHER FEE \$ 350.00	SECURITY DEPOSIT \$ 0.00

COLLATERAL DESCRIPTION

QUANTITY	SERIAL NO.	DESCRIPTION	ITEMIZED ADVANCE
SEE	ATTACHED	COLLATERAL DESCRIPTION	EXHIBIT
<small>If collateral description is of length where it would not fit in this section, then use "COLLATERAL DESCRIPTION EXHIBIT" attached hereto as though set forth at length herein.</small>			TOTAL ADVANCE \$ 43,466.18

SUPPLIER SEE ATTACHED COLLATERAL DESCRIPTION EXHIBIT	COLLATERAL LOCATION (IF DIFFERENT THAN BUSINESS ADDRESS)
<small>This agreement is effective only upon execution by an authorized officer of Creditor following Debtor's execution hereof, and upon execution Creditor shall fund the Total Advance. Debtor hereby authorizes Creditor to disburse the Total Advance as identified in the PAY PROCEEDS DESCRIPTION. Creditor reserves the right to pay the applicable portion of the Total Advance jointly to any party not specified in the preceding sentence with a security interest in an item of collateral.</small>	

PERSONAL GUARANTEE(S)

The undersigned guarantor and guarantors warrant to make all of the payments and perform all Debtor's obligations as specified in this Equipment Financing Agreement. Each of our obligations is jointly and severally and shall not be affected by any settlement, extension, rescission or modification of the Agreement, by the discharge or release of the Debtor's obligations or by the taking or release of additional guarantors or security for the performance of the Agreement. The undersigned warrant any rights we may have to (a) possession, demand, protest, notice of payment, notice of discharge, notice of default under the Agreement and any other remedies related to this guaranty or this Agreement and (b) the right to require Creditor to proceed against Debtor or to pursue any other remedy in Creditor's power. The undersigned also warrant any other rights and remedies available to a guarantor by reason of application laws or statutory law. The undersigned agree that we are liable for Creditor's attorney's fees and costs in enforcing this guaranty, whether or not suit is filed. The undersigned acknowledge that this guaranty issues to the benefit of Creditor's assignee.

Nicholas W. Bartz
 Guarantor name (printed) _____ Guarantor Signature Nicholas W Bartz Date 5-20-08

 Guarantor name (printed) _____ Guarantor Signature _____ Date _____

 Guarantor name (printed) _____ Guarantor Signature _____ Date _____

 Guarantor name (printed) _____ Guarantor Signature _____ Date _____

COLLATERAL DESCRIPTION EXHIBIT

EQUIPMENT FINANCING AGREEMENT - CONTRACT No. 621-0000164-00

CREDITOR: Radtance Capital LLC		DEBTOR: HEALTH PRO SOLUTIONS, LLC	
QUANTITY	SERIAL NO.	DESCRIPTION	ITEMIZED ADVANCE
	Vendor: Ashley Furniture HomeStore 7450 Timberstone Dr. Findlay, OH 45840		
1	ASHLEY 3560038, IS, 2257-1, (2) 6	Bedroom: Casper	1,572.20
1	ASHLEY 3560035	LOVESEAT/RECLINER/CATNAP	
N/O	ASHLEY 3560038	SOFA/RECLINER/CATNAP	
1	ASHLEY 2257-1	RECT CHIL. MARGHERY STAIN FREE	
N/O	ASHLEY 2257-5	RECT CHIL. MARGHERY STAIN FREE	
2	ASHLEY 2257-5	RECT CHIL. MARGHERY STAIN FREE	
N/O	ASHLEY 2257-5	RECT CHIL. MARGHERY STAIN FREE	
1	ASHLEY 2418-278, -27X	Windsor 2. Glass Desk	413.48
1	ASHLEY 2418-278	DOORWAY BENCH CHERRY STAIN FREE	
N/O	ASHLEY 2418-278	DOORWAY BENCH CHERRY STAIN FREE	
1	ASHLEY 3560060	SOFA/RECLINER/CATNAP	295.92
N/O	ASHLEY 3560060	SOFA/RECLINER/CATNAP	
1	ASHLEY 2257-48	RECT CHIL. MARGHERY STAIN FREE	300.13
N/O	ASHLEY 2257-48	RECT CHIL. MARGHERY STAIN FREE	
1	ASHLEY 4616338	LOVESEAT/RECLINER/CATNAP	615.48
N/O	ASHLEY 4616338	LOVESEAT/RECLINER/CATNAP	
1	ASHLEY 2788-1	RECT CHIL. MARGHERY STAIN FREE	645.28
N/O	ASHLEY 2788-1	RECT CHIL. MARGHERY STAIN FREE	
1	ASHLEY 2418-278	Windsor 2. Glass Desk	256.55
N/O	ASHLEY 2418-278	Windsor 2. Glass Desk	
2	ASHLEY 2418-278	Windsor 2. Glass Desk	112.77
N/O	ASHLEY 2418-278	Windsor 2. Glass Desk	
1	ASHLEY 2788-3	RECT CHIL. MARGHERY STAIN FREE	325.74
N/O	ASHLEY 2788-3	RECT CHIL. MARGHERY STAIN FREE	
1	ASHLEY 2257-35	RECT CHIL. MARGHERY STAIN FREE	201.02
N/O	ASHLEY 2257-35	RECT CHIL. MARGHERY STAIN FREE	
1	ASHLEY 2257-13	RECT CHIL. MARGHERY STAIN FREE	150.98
N/O	ASHLEY 2257-13	RECT CHIL. MARGHERY STAIN FREE	
4	ASHLEY 2219-048	RECT CHIL. MARGHERY STAIN FREE	332.40
N/O	ASHLEY 2219-048	RECT CHIL. MARGHERY STAIN FREE	
1	ASHLEY 3560060	SOFA/RECLINER/CATNAP	318.31
N/O	ASHLEY 3560060	SOFA/RECLINER/CATNAP	
6	ASHLEY 2257-21	RECT CHIL. MARGHERY STAIN FREE	204.18
N/O	ASHLEY 2257-21	RECT CHIL. MARGHERY STAIN FREE	
		TOTAL ADVANCE	\$ CONTINUED

CREDITOR: Radtance Capital LLC

By: [Signature]
Title: Controller
Date: 5/28/09

DEBTOR: HEALTH PRO SOLUTIONS, LLC

By: [Signature]
Title: Mrs. Member
Date: 5-20-09

COLLATERAL DESCRIPTION EXHIBIT

EQUIPMENT FINANCING AGREEMENT - CONTRACT No. 621-0000164-000

CREDITOR: Redstone Capital LLC		DEBTOR: HEALTH PRO SOLUTIONS, LLC	
QUANTITY	SERIAL NO.	DESCRIPTION	ITEMIZED ADVANCE
Vendor: PROTECH COMPUTERS LLC 1524 HORTON ROAD JACKSON, MI 49203			
1		Intel E850 Core 2 Duo System, 2Gb DDR2-667 Memory, 250Gb SATA Hard Drive, 20x DVD-RW, Windows XP Pro, Office 2007 SP2, Keyboard, Mouse, 15" LCD, 1yr. P&L War	1144.65
1		AMD Athlon Dual Core 4200+ System, 2Gb DDR2-667 Memory, 250Gb SATA Hard Drive, 20x DVD-RW, 15" LCD, Keyboard, Mouse, 1yr. P&L War	1119.76
2		HP Desktop J4760 All-in-One Printer/Scanner/Copier/Fax, 1yr manufacturer warranty	249.90
2		HP 700L Black / 750L Color Combo Ink Cartridges	141.00
3		6' HDMI Extension Cable	6.95
2		6' USB Extension Type A Cable	12.90
1		6' 1/8" Mini-Stereo M-F Audio Cable Extension	3.95
1		Quickbooks 2008 Pro Software, No Refunds on Software	199.95
1		Modular Power Cord UL 6	1.99
		TOTAL ADVANCE	CONTINUED

CREDITOR: Redstone Capital LLC

By: [Signature]
Title: Controller
Date: 5/28/08

DEBTOR: HEALTH PRO SOLUTIONS, LLC

By: [Signature]
Title: Mgr. Member
Date: 5-20-08

COLLATERAL DESCRIPTION EXHIBIT

EQUIPMENT FINANCING AGREEMENT - CONTRACT No. 621-0000164-000

CREDITOR: Radiance Capital LLC		DEBTOR: HEALTH PRO SOLUTIONS, LLC	
QUANTITY	SERIAL NO.	DESCRIPTION	ITEMIZED ADVANCE
	Vendor Integrated Smart Technologies 6918 Stony Lake Lane Jackson, MI 49201		
	Audio/Video & Integration Control Equipment		
1		Sleep AQUOS LC-37D80U 37" LCD HDTV, 1080p, Titanium Finish	2,300.00
1		Samsung LN-S4096D 40" LCD HDTV, 1080p, Black Finish	3,000.00
2		Monitor Audio InCeiling LCR Speaker, 6.5" Driver, Round, White	4,000.00
1-4		ELAN M1885Dohr Pitch-mount Speaker, 6.5" Driver, InCeiling or InWall	700.00
1		Control4 Wireless Dimmer for Presentation Room & Office, White	1,750.00
1		Control4 Wireless Switch, White	125.00
2		Control4 Wireless 3-Button Keypad, White w/Custom Labeled Keycaps	185.00
1		Control4 Wireless 8-Button Keypad, White w/Custom Labeled Keycaps	600.00
1		Control4 Wireless 8-Button Keypad, White w/Custom Labeled Keycaps	600.00
2		Control4 HC300 Controller w/System Remote v2	1,000.00
1		LinkSys Dual-Band Wireless N Router with 10/100/1000 4-Port Switch	400.00
1		D-Link DGS-2208 10/100/1000 8-Port Fast Ethernet Switch, Unmanaged	400.00
1		Danzen AVR-3808CI AV Surround Receiver w/HDMI v1.3	2,000.00
1		Paralinx MAX1500UPS Power Conditioner/Back-up UPS System, Blk	1,750.00
1		Control4 Ethernet InWall Mini-Touchscreen, White	900.00
1		Control4 MTS InWall Retrofit Bracket	60.00
2		Control4 PoE Power Over Ethernet Injector	100.00
1		Control4 HC300 Home Controller w/System Remote v2	1,000.00
1		Control4 HC500 Home Controller w/160GB HDD & System Remote v2	2,000.00
1		Control4 Multi-Channel Amplifier/Switch, 18-Ch	3,600.00
1		Paralinx MAX6 Surge Protection Strip	200.00
1		Sony DVP-CX777ES 400-Disc DVD/DVD Changer	1,000.00
1		Interconnect Cabling	1,000.00
1		Supplies	600.00
1			1,500.00
TOTAL ADVANCE			\$ 43,466.18

CREDITOR: Radiance Capital LLC

By: S. Christian

Title: Controller

Date: 5/28/09

DEBTOR: HEALTH PRO SOLUTIONS, LLC

By: Michael W. Bantz

Title: Exec. Member

Date: 5-20-09

**MICHIGAN DEPARTMENT OF STATE**

Uniform Commercial Code Section
P.O. Box 30197
Lansing, Michigan 48909-7697
www.michigan.gov/sosucc

Filing Acknowledgement

June 08, 2008

Job Number U20080606-0348	Initial Filing Number 2008089764-1	
Filing Description Initial Financing Statement	Document Filing Number 2008089764-1	Date/Time of Filing 06/05/2008 05:00 PM
Debtors HEALTH PRO SOLUTIONS, LLC 4535 EAGLE DR JACKSON MI 49201	Secured Parties RADIANCE CAPITAL LLC 820 A ST STE 560 TACOMA WA 98402	

The attached document(s) were filed with the Michigan Secretary of State, Uniform Commercial Code Section. The filing date and time have been affixed to each document, indicating the date and time of filing. A filing number is also affixed and can be used to reference this document in the future.

Michigan Department of State
Jeffrey C. Nickerson
Filing Officer

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY**

RADIANCE CAPITAL, LLC, a Washington) NO. 12-2-07861-1 KNT
limited liability company,)
PLAINTIFF,)
v.) NOTICE OF APPEARANCE BY
NICHOLAS W. BARTZ and "JANE DOE") COUNSEL FOR DEFENDANTS
BARTZ, husband and wife; and) NICHOLAS and "JANE DOE"
HEALTH PRO SOLUTIONS, LLC, a for-) BARTZ and HEALTH PRO SOLU-
eign limited liability company,) TIONS, LLC
DEFENDANTS.)

TO: CLERK, KING COUNTY SUPERIOR COURT, Maleng Regional
Justice Center, Kent, WA;

AND TO: SHANNON R. JONES, WSBA #28300, Attorney for Plain-
tiff Radiance Capital, LLC; Campbell, Dille, Bar-
nett & Smith, 317 South Meridian, Puyallup, WA
98371.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE of the appearance
by counsel for Defendants NICHOLAS W. BARTZ and "JANE DOE" BARTZ,
husband and wife ("Bartz"); and HEALTH PRO SOLUTIONS, LLC, a
foreign limited liability company ("Health Pro"), in the above-

NOTICE OF APPEARANCE BY
COUNSEL FOR DEFENDANTS
-- Page 1 of 3

RHYS A. STERLING, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, Washington 98025-0218
Telephone (425)432-9348
Facsimile (425)413-2455
E-mail: RhysHobart@hotmail.com

1 entitled action by the undersigned attorney. You are hereby
2 directed to serve all future pleadings or papers, except original
3 process, upon said attorney at the address below stated.

4 **BY NOTING THEIR APPEARANCE** through the undersigned attorney,
5 Defendants Bartz and Health Pro do not waive any rights to amend
6 prior pleadings, if any, and to make counterclaims, cross-claims,
7 or third party claims and to contest personal or subject matter
8 jurisdiction or improper service (out-of-State), venue or any other
9 defenses, whether affirmative or permissive or under CR 12 or
10 otherwise and including but not limited to failure to state a claim
11 upon which relief may be granted, available to them pursuant to the
12 civil rules of procedure, law, and equity.

13 **ALSO TAKE NOTICE THAT** undersigned attorney requests Plain-
14 tiff's counsel send him at the earliest convenience copies of any
15 case schedules, court orders, pleadings, and motion papers not
16 previously served on Defendants Bartz and Health Pro.

17 **FURTHERMORE TAKE NOTICE THAT** if not already done, Plaintiff's
18 counsel is respectfully requested to Opt-In to service via the King
19 County E-Filing automated system.

20
21 DATED this 31st day of May, 2013.

22
23 RHYS A. STERLING, P.E., J.D.

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27 Rhys A. Sterling, WSBA #13846
28 Attorney for Defendants Bartz and
29 Health Pro

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Rhys A. Sterling, P.E., J.D.
Attorney at Law
P.O. Box 218
Hobart, WA 98025-0218
e-mail: RhysHobart@hotmail.com
Tel. (425) 432-9348
Fax (425) 413-2455

NOTICE OF APPEARANCE BY
COUNSEL FOR DEFENDANTS
-- Page 3 of 3

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