

QUESTION NO. ONE

Do you find that Allen Academy has proved that Jerry Bullin promised Allen Academy that the following "Loan Agreements" would never be enforced?

In deciding this question, you may consider what the parties said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed intentions.

A party's conduct includes the conduct of another who acts with the party's authority. Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

Answer "Yes" or "No" for the following:

- a. No. 1: (June 15, 2010 "Loan Agreement" in the amount of \$1,765,000.00): No
- b. No. 2: (August 24, 2011 "Loan Agreement" in the amount of \$860,000.00): No
- c. No. 3: (December 31, 2011 "Loan Agreement" in the amount of \$770,000.00) No
- d. No. 4: (May 31, 2012 "Loan Agreement" in the amount of \$300,000.00): No

QUESTION NO. TWO

Did Allen Academy and Bullin agree that Bullin would loan Allen Academy funds as outlined in the Loan Agreements with the expectation that it would constitute a legally enforceable agreement?

In deciding this question, you may consider what the parties said and did in light of the surrounding circumstances, including any earlier course of dealing. You may not consider the parties' unexpressed intentions.

Answer "Yes" or "No" as to each of the following:

1. Loan Agreement One

ANSWER: Yes

2. Loan Agreement Two

ANSWER: Yes

3. Loan Agreement Three

ANSWER: Yes

4. Loan Agreement Four

ANSWER: Yes

### QUESTION NO. THREE

The Texas Business Organization Code states certain conditions be satisfied for a contract or transaction between a nonprofit corporation and an entity or other organization in which one or more trustees of the nonprofit corporation has a financial interest to be valid and enforceable. Do you find from a preponderance of the evidence that either of the conditions listed below was satisfied with respect to each of the "Loan Agreements" at issue?

#### **Condition No. 1:**

- (a) Was the relationship between CJB Partners, Ltd. and Dr. Jerry Bullin and the material facts concerning the "Loan Agreements" disclosed to or known by Allen Academy's Board of Trustees or a committee of the Board of Trustees, and;
- (b) Did the Board of Trustees or any committee of the Board of Trustees in good faith and with ordinary care authorize the "Loan Agreements" by an affirmative vote of the majority of disinterested trustees or a committee of the trustees regardless of whether the disinterested trustees or committee members constituted a quorum.

You are instructed that "ordinary care" means the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.

**OR**

#### **Condition No. 2:**

Was the "Loan Agreement" fair to Allen Academy when the "Loan Agreement" was authorized, approved, or ratified by the Board of Trustees or a committee of the Board.

For purposes of determining whether Bullin has proved one or both of the conditions above, you should consider the following:

You are instructed that "ratification" is an approval by act, word, or conduct, with full knowledge of the facts of the earlier act; and with the intention of giving validity to the earlier act. Ratification may be express or implied. Express ratification occurs when a party specifically indicates, by words or conduct, that it approves of a transaction that was not authorized before it occurred. Implied ratification of a transaction occurs when a party, though unaware of the transaction at the time it occurred, retains the benefits of the transaction after acquiring full knowledge of the unauthorized conduct. Implied ratification results in the ratification of the entire transaction.

If either one of the conditions stated above are proved, Allen Academy cannot avoid enforcement of the Loan Agreements on the alleged ground that Bullin breached any fiduciary duty as it relates to the making, authorization, or performance of the Loan Agreements. However, regardless of whether Bullin proves one of the conditions stated above, Allen Academy may nonetheless avoid enforcement of the Loan Agreements if Allen Academy proves an affirmative defense as set forth later in these instructions.

Answer "Yes" or "No" for the following:

No. 1: (June 15, 2010 "Loan Agreement" in the amount of \$1,765,000.00): Yes

No. 2: (August 24, 2011 "Loan Agreement" in the amount of \$860,000.00): Yes

No. 3: (December 31, 2011 "Loan Agreement: in the amount of \$770,000.00): Yes

No. 4: (May 31, 2012 "Loan Agreement" in the amount of \$300,000.00) Yes

QUESTION NO. FOUR

Did Allen Academy fail to comply with any of the following "Loan Agreements?"

Answer "Yes" or "No as to each of the following:

1. Loan Agreement One  
ANSWER: Yes
2. Loan Agreement Two  
ANSWER: Yes
3. Loan Agreement Three  
ANSWER: Yes
4. Loan Agreement Four  
ANSWER: Yes

QUESTION NO. FIVE

Do not answer any subpart of this question if you have answered "yes" to any corresponding subparts in Questions No. One or "no" to any corresponding subparts in Question No. Two.

What amount of money is owed, in any, on the "Loan Agreements" as of January 22, 2020.

Answer in dollars and cents, if any.

1. Loan Agreement One

Answer: \$958,480 + interest to current date

2. Loan Agreement Two

Answer: \$860,000 + interest " "

3. Loan Agreement Three

Answer: \$770,520 + interest " "

4. Loan Agreement Four

Answer: \$300,000 + interest " "

QUESTION NO. SIX

Do you find that Bullin has proved that BRE Group, LTD., qualifies as a holder in due course of the "Loan Agreements?"

Defenses to enforcement of a loan agreement do not apply against a party which qualifies as a "holder in due course" of such loan agreement. BRE Group, Ltd., the current holder of the "Loan Agreements," qualifies as a "holder in due course" of the "Loan Agreements" if Bullin proves that BRE Group, Ltd. acquired the "Loan Agreements" for value, in good faith, and without notice that payment of the "Loan Agreements" was overdue or that Allen Academy disputed its obligation to pay.

Answer "Yes" or "No."

ANSWER: Yes

QUESTION NO. SEVEN

Please state in dollars and cents the total amount of, payments, offsets, or credits, if any, other than those previously deducted by Bullin, that should be applied to the following:

1. Loan Agreement One

ANSWER: 0

2. Loan Agreement Two

ANSWER: 0

3. Loan Agreement Three

ANSWER: 0

4. Loan Agreement Four

ANSWER: 0



QUESTION NO. EIGHT

Did the Loan Agreements lack consideration?

Consideration is an exchange of value in return for a promise and consists of benefits and detriments to the contracting parties. The detriments must induce the parties to make the promises, and the promises must induce the parties to incur the detriments. Lack of consideration occurs when the contract does not impose obligations on both parties.

Answer "Yes" or "No" for each of the following:

1. Loan Agreement One

ANSWER: No

2. Loan Agreement Two

ANSWER: No

3. Loan Agreement Three

ANSWER: No

4. Loan Agreement Four

ANSWER: No

QUESTION NO. NINE

Do you find that Bullin has proved that Allen Academy would be unjustly enriched if it were not required to repay the amounts set forth in the "Loan Agreements?"

Unjust enrichment occurs when a party has wrongfully secured a benefit, or has passively received a benefit that would be grossly unfair for the party to retain without compensating another.

Answer "Yes" or "No."

ANSWER: Yes

QUESTION NO. TEN

If you answered Question No. Nine "Yes," then answer this question. Otherwise, do not answer this question.

State in dollars and cents, if any, the amount of unjust enrichment to Allen Academy found by you in Question No. Nine.

Answer in dollars and cents, if any.

ANSWER: ~~\$ 4,184,058.00~~ TJK

\$ 4,184,058.00 with interest up to current date

QUESTION NO. ELEVEN

Has Allen Academy proved that it substantially relied to its detriment on Bullin's promise, if any, to complete the construction of the gymnasium and was this reliance foreseeable by Bullin?

Answer "Yes" or "No."

Answer: Yes

QUESTION NO. TWELVE

Answer this question only if you have answered "Yes" to Question No. Eleven. Otherwise, do not answer this question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Allen Academy for its damages, if any, that resulted from its reliance on Jerry Bullin's promise?

Consider the following elements of damages, if any, and none other.

Answer in dollars and cents for damages, if any.

1. The amount that Allen Academy borrowed for the completion of the gymnasium.

Answer: \$ 300,000  
+ interest to date

QUESTION NO. THIRTEEN

Did Jerry Bullin breach his fiduciary duty to Allen Academy in connection with any item listed below?

As a Member and the Chairman of the Allen Academy's Board of Trustees, Bullin owed Allen Academy a fiduciary duty.

1. That his actions in question were fair and equitable to Allen Academy; and
2. Bullin made reasonable use of the confidences that Allen Academy had placed in him; and
3. Bullin acted in the utmost good faith and exercised the most scrupulous honesty toward Allen Academy; and
4. Bullin placed the interest of Allen Academy before his own and did not use the advantage of his position to gain any benefit for himself at the expense of Allen Academy; and
5. Bullin fully and fairly disclosed all important information to Allen Academy concerning the transactions.

Answer "Yes" or "No" as it relates to each of the following:

- A. The making, authorization or enforcement of the "Loan Agreements"

Answer: No

- B. The undertaking of the gymnasium construction project and his representation, if any, that he would pay for the cost

Answer: Yes

QUESTION NO.FOURTEEN

Answer this question only if you have answered "Yes" to Question No. Thirteen A or Thirteen B. Otherwise, do not answer this question.

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Allen Academy for its damages, if any, that resulted from its reliance on Jerry Bullin's breach of fiduciary duty?

Consider the following elements of damages, if any, and none other.

Answer in dollars and cents for damages, if any.

A. The making, authorization or enforcement of the "Loan Agreements"

Answer: \$ 0

B. The amount that Allen Academy borrowed for the completion of the gymnasium.

Answer: \$ 100,000.00

QUESTION NO. FIFTEEN

Answer this question only if you have answered “yes” to either subpart of Question No. Thirteen. Otherwise, do not answer this question.

You are instructed that this question must be based upon the clear and convincing evidence standard of proof. **Clear and convincing evidence** means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

You are instructed that you must **unanimously** agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against Jerry Bullin and awarded to Allen Academy in response to Question No. **Thirteen**.

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not for compensatory damages. Exemplary damages includes punitive damages.

Factors to consider in awarding exemplary damages, if any, are:

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and the sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of Jerry Bullin.

Answer in dollars and cents, if any.

Answer:     \$ 0