

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

GIBBS INTERNATIONAL, INC., and
WELLSTONE HOLDINGS, LLC,

Plaintiffs,

vs.

THE WELFONT GROUP, LLC,
TAX APPRAISAL GROUP, LLC, and
BRYANT ASSET ADVISORS, LLC,

Defendants.

COMPLAINT

(Jury Trial Requested)

Plaintiffs, Gibbs International, Inc., and Wellstone Holdings, LLC, for their complaint against Defendants, The Welfont Group, LLC, Tax Appraisal Group, LLC, and Bryant Asset Advisors, LLC, would respectfully show unto the Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Gibbs International, Inc. (“Gibbs”) is a corporation organized under the laws of the State of South Carolina with a principal place of business in Spartanburg County, South Carolina.

2. Plaintiff Wellstone Holdings, LLC (“Wellstone”), is a limited liability company organized under the laws of the State of South Carolina with a principal place of business in Spartanburg County, South Carolina, of which Gibbs is the sole member. Gibbs and Wellstone are hereinafter referred to collectively as “GIBBS”.

3. Defendant The Welfont Group, LLC (“WELFONT”) is, upon information and belief, a limited liability company organized under the laws of the State of Delaware with a principal place of business in Florida with members who reside in a State other than the State of South Carolina.

4. Defendant Tax Appraisal Group, LLC (“TAG”) is, upon information and belief, a limited liability company organized under the laws of and with a principal place of business in the State of Florida with members who reside in a State other than the State of South Carolina.

5. Defendant Bryant Asset Advisors, LLC (“BAA”) is, upon information and belief, a limited liability company organized under the laws of the State of Indiana and with a principal place of business in the State of California with members who reside in a State other than the State of South Carolina.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 because the controversy is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. This Court has personal jurisdiction over Defendants because, among other things, Defendants regularly conduct business in South Carolina and this dispute involves contractual agreements between GIBBS, a company maintaining its principal place of business in Spartanburg, South Carolina, and Defendants in Spartanburg County, South Carolina.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the litigation occurred in this judicial district and the contract at issue was formed in, and the real estate is in, this judicial district.

GENERAL ALLEGATIONS

9. Prior to November 9, 2017, GIBBS owned that certain real property at 6 and 12 Nesbitt Drive and 7 Palmetto Drive, Inman, Spartanburg County, South Carolina (collectively, the “Property”).

10. WELFONT is a real estate broker organization that holds itself out by solicitation, advertisement, or otherwise in South Carolina and elsewhere as facilitating, providing, or arranging for “bargain sales” of real property to charitable organizations for less than fair market value in

exchange for the seller's receiving a tax deduction for the difference between the fair market of the property and the cash received from the charitable organization.

11. In order to meet the expectations of both the buyer and the seller in a bargain sale, there must be an appraisal of the subject property that is credible to the Internal Revenue Service ("IRS") and that meets all U.S. Treasury regulations (a "Qualified Appraisal").

12. In approximately June 2017, WELFONT provided to GIBBS a "Brokers Opinion of Value" in which WELFONT represented to GIBBS that it could obtain a Qualified Appraisal of the Property in the amount of approximately \$5,996,000 and facilitate a bargain sale of the Property to a charitable organization that would result in a tax deduction to GIBBS of the difference between \$5,996,000 and the cash paid by the buyer.

13. On or about September 8, 2017, WELFONT prepared and presented to GIBBS a Real Estate Purchase Agreement with Master's Commission International Network, Inc. (the "Buyer") pursuant to which WELFONT agreed to obtain a Qualified Appraisal of the Property of approximately \$5,996,000 and at least \$5,396,400 and in exchange GIBBS would sell the Property to Buyer for \$2,500,000 and pay WELFONT a sales commission of \$37,500 (the "Welfont Contract").

14. On or about September 19, 2017, WELFONT introduced GIBBS to TAG, who WELFONT said would obtain the Qualified Appraisal of the Property.

15. TAG is a tax appraisal organization that holds itself out by solicitation, advertisement, or otherwise in South Carolina and elsewhere as facilitating, obtaining, or arranging for Qualified Appraisals for "bargain sales" of real property to charitable organizations for less than fair market value in exchange for the seller's receiving a tax deduction for the difference between the fair market of the property and the cash received from the charitable organization.

16. TAG agreed to obtain a Qualified Appraisal of the Property and in exchange GIBBS agreed to, and did, pay TAG consideration of \$1,000 (the “TAG Contract”).

17. On or about September 20, 2017, TAG introduced GIBBS to BAA, who said it would provide the Qualified Appraisal of the Property.

18. BAA is a real estate appraisal organization that holds itself out by solicitation, advertisement, or otherwise in South Carolina and elsewhere as providing Qualified Appraisals for “bargain sales” of real property to charitable organizations for less than fair market value in exchange for the seller’s receiving a tax deduction for the difference between the fair market of the property and the cash received from the charitable organization.

19. BAA agreed to provide a Qualified Appraisal of the Property and in exchange GIBBS agreed to, and did, pay BAA consideration of \$7,500 (the “BAA Contract”).

20. On or about October 23, 2017, BAA provided to GIBBS an appraisal of the Property in the amount of \$5,675,000 (the “BAA Appraisal”).

21. In reliance upon the BAA Appraisal and other representations of Defendants set forth herein, on or about November 9, 2017, GIBBS sold the Property to Buyer for \$2,500,000, and thereafter claimed a deduction of \$3,175,000 from the sale on its 2017 tax returns.

22. On or about December 20, 2017, WELFONT or an entity affiliated with it purchased the Property from Buyer for \$3,932,000, and then on or about August 27, 2018, sold the Property to a third party for \$3,400,000, in both instances undermining the fair market value of \$5,675,000 set forth in the BAA Appraisal.

23. Thereafter, the IRS audited GIBBS’s 2017 tax returns and determined, in part based upon WELFONT’s subsequent purchase and sale of the Property, that the BAA Appraisal was not a Qualified Appraisal (the “IRS Ruling”) on July 31, 2020, which was the date GIBBS first discovered that that the BAA Appraisal was not a Qualified Appraisal.

24. As part of the IRS Ruling, the IRS ruled the Property had a fair market value of \$4,080,000. As a result, GIBBS's allowable, deductible contribution from the sale of the Property was reduced from \$3,175,000 to \$1,580,000, or a loss of \$1,595,000 in deductions.

25. After making other adjustments on its 2017 tax returns, GIBBS suffered damages in the amount of \$552,830 that GIBBS had to pay in taxes caused by the BAA Appraisal not being a Qualified Appraisal.

FOR A FIRST CLAIM
(Breach of Contract)

26. GIBBS incorporates herein by reference the foregoing paragraphs of this Complaint to the extent consistent with this cause of action.

27. GIBBS and WELFONT were parties to the Welfont Contract, which was a legally enforceable and binding contract pursuant to which WELFONT agreed to obtain a Qualified Appraisal of the Property of approximately \$5,996,000 and at least \$5,396,400.

28. Although GIBBS fully performed its obligations thereunder, WELFONT breached its obligations under the Welfont Contract by failing to obtain a Qualified Appraisal of the Property.

29. GIBBS and TAG were parties to the TAG Contract, which was a legally enforceable and binding contract, pursuant to which TAG agreed to obtain a Qualified Appraisal of the Property of approximately \$5,996,000 and at least \$5,396,400.

30. Although GIBBS fully performed its obligations thereunder, TAG breached its obligations under the TAG Contract by failing to obtain a Qualified Appraisal of the Property.

31. GIBBS and BAA were parties to the BAA Contract, which was a legally enforceable and binding contract, pursuant to which BAA agreed to provide a Qualified Appraisal of the Property.

32. Although GIBBS fully performed its obligations thereunder, BAA breached its obligations under the BAA Contract by failing to obtain a Qualified Appraisal of the Property.

33. WELFONT's breaches of the Welfont Contract, TAG's breaches of the TAG Contract, and BAA's breaches of the BAA Contract, have caused GIBBS actual damages, including but not limited to \$552,830, prejudgment interest at 8.75% on the foregoing amount, plus costs, which GIBBS is entitled to recover from Defendants.

FOR A SECOND CLAIM
(Negligent Misrepresentation)

34. GIBBS incorporates herein by reference the foregoing paragraphs of this Complaint to the extent consistent with this cause of action.

35. During the course of its service as broker for GIBBS, WELFONT represented to GIBBS that (a) the Property had a fair market value of approximately \$5,996,000, (b) it would obtain a Qualified Appraisal of the Property showing a fair market value of approximately \$5,996,000 that would allow GIBBS to sell to the Buyer and obtain a tax deduction of the difference between \$5,675,000 and the cash paid by the Buyer, and (c) TAG would obtain a Qualified Appraisal of the Property showing a fair market value of approximately \$5,996,000 that would allow GIBBS to sell to the Buyer and obtain a tax deduction of the difference between \$5,675,000 and the cash paid by the Buyer.

36. During the course of its service as a tax appraiser locator for GIBBS, TAG represented to GIBBS that it would obtain a Qualified Appraisal of the Property showing a fair market value of approximately \$5,996,000 that would allow GIBBS to obtain a tax deduction of the difference between \$5,675,000 and the cash paid by the Buyer.

37. During the course of its service as an appraiser for GIBBS, BAA represented to GIBBS that it had provided a Qualified Appraisal of the Property showing a fair market value of

approximately \$5,675,000 that would allow GIBBS to obtain a tax deduction of the difference between \$5,675,000 and the cash paid by the Buyer.

38. All of WELFONT, TAG, and BAA had a strong pecuniary interest in making the foregoing representations (collectively, the “Representations”) to GIBBS so that GIBBS would pay them, purchase the BAA Appraisal, and sell the Property to Buyer.

39. All of the Representations were false.

40. All of WELFONT, TAG, and BAA were negligent, grossly negligent, reckless, willful, and/or wanton in making the Representations.

41. GIBBS reasonably relied on WELFONT’s, TAG’s, and BAA’s Representations to GIBBS’s detriment.

42. As a direct and proximate result of its reasonable reliance on the foregoing Representations by Defendants, GIBBS has suffered considerable pecuniary loss, including but not limited to \$552,830, prejudgment interest at 8.75% on the foregoing amount, plus costs, which GIBBS is entitled to recover from Defendants.

43. Defendants are liable to GIBBS for all of GIBBS’s damages flowing from the injury caused by their negligent misrepresentations.

44. Moreover, Defendants acted with reckless disregard to the truth of their Representations, so that GIBBS is entitled to punitive damages against Defendants in an amount to be determined by the jury.

FOR A THIRD CLAIM
(Fraud/Constructive Fraud)

45. GIBBS incorporates herein by reference the foregoing paragraphs of this Complaint to the extent consistent with this cause of action.

46. WELFONT made the aforesaid Representations, which were false.

47. Upon information and belief, at the time it made the Representations and at the time GIBBS sold the Property to Buyer and paid WELFONT its commission, WELFONT intended to purchase the Property from Buyer and sell the Property to a third party for less than the BAA Appraisal (the “Welfont Plan”), even though WELFONT knew that the Welfont Plan would render the BAA Appraisal a non-Qualified Appraisal.

48. WELFONT had a duty to disclose the Welfont Plan to GIBBS.

49. WELFONT failed to disclose the Welfont Plan to GIBBS.

50. WELFONT acted to conceal its misrepresentations and the Welfont Plan from GIBBS.

51. The Representations made by WELFONT and the Welfont Plan were all material to GIBBS; WELFONT knew or should have known of the falsity of these Representations; GIBBS relied upon these Representations and WELFONT’s failure to disclose the Welfont Plan; GIBBS’s reliance was reasonable and it had the right to rely; and GIBBS's reliance caused it serious damage.

52. As a direct and proximate result of GIBBS's reliance upon WELFONT’s misrepresentations and non-disclosure of the Welfont Plan, GIBB's has suffered actual damages including, but not limited to \$552,830, prejudgment interest at 8.75% on the foregoing amount, plus costs.

53. Upon information and belief, WELFONT’s conduct was sufficiently willful, wanton, reckless, grossly negligent, and outrageous to entitle GIBBS to punitive damages in an amount to be determined by a jury, for which WELFONT is liable.

FOR A FOURTH CLAIM
(Negligence)

54. GIBBS incorporates herein by reference the foregoing paragraphs of this Complaint to the extent consistent with this cause of action.

55. WELFONT had a duty to GIBBS to use reasonable care to ensure that the BAA Appraisal was a Qualified Appraisal and to not undermine same, but breached its duties to GIBBS and was negligent, grossly negligent, reckless, willful, and/or wanton, including but not limited to by:

- a. Failing to ensure that the BAA Appraisal was a Qualified Appraisal; and
- b. Buying and then selling the Property at prices far below the BAA Appraisal within a short period of time following GIBBS's sale of the Property.

56. TAG had a duty to GIBBS to use reasonable care to ensure that the BAA Appraisal was a Qualified Appraisal, but breached its duties to GIBBS and was negligent, grossly negligent, reckless, willful, and/or wanton, including but not limited to by failing to ensure that the BAA Appraisal was a Qualified Appraisal.

57. BAA had a duty to GIBBS to use reasonable care to ensure that the BAA Appraisal was a Qualified Appraisal, but breached its duties to GIBBS and was negligent, grossly negligent, reckless, willful, and/or wanton in failing to ensure that the BAA Appraisal was a Qualified Appraisal, including but not limited to by:

- a. Failing to address BAA's market area knowledge of the Property;
- b. Using an exposure time of 36 to 48 months instead of "as is" conditions;
- c. Failing to define "fair market value" to encompass the notion of a willing buyer and willing seller;
- d. Stating that the BAA Appraisal was higher than a "561 appraisal," even though the IRS has no "561 appraisal";
- e. Misapplying IRS Publication 561; and
- f. Failing to have both appraisers who contributed to the BAA Appraisal sign it as required by U.S. Treasury regulations.

58. WELFONT's, TAC's, and BAA's negligence, gross negligence, willfulness, and/or wantonness as aforesaid was the proximate cause of the damages suffered by GIBBS.

59. WELFONT's, TAC's, and BAA's negligence, gross negligence, willfulness, and/or wantonness as aforesaid has caused GIBBS actual damages, including but not limited to \$552,830, prejudgment interest at 8.75% on the foregoing amount, plus costs, which GIBBS is entitled to recover along with punitive damages from Defendants.

WHEREFORE, GIBBS prays that it be granted judgment against Defendants jointly and severally (a) for actual damages, including but not limited to \$552,830.00, (b) prejudgment interest at 8.75% on the foregoing amount, (c) punitive damages, (d) costs, and (e) for such other and further relief as may be just and proper.

Respectfully submitted,

WYCHE, P.A.

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The Plaintiffs respectfully request a jury trial.