

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Park Ridge Sports, Inc.,)
an Illinois Not For Profit Corporation,)
)
Plaintiff,)

v.)

Park Ridge Travel Falcons,)
an Illinois Not For Profit Corporation;)
Timothy Walbert, James Purcell, Jeffrey)
Kilburg, and Lou Karnezis, individuals)
)
Defendants.)

Civil Action No. 20-cv-02244

Jury Trial Demanded

_____)
James Purcell,)
Counter-Plaintiff,)

Hon. Ronald A. Guzman

and)

Horizon Therapeutics USA, Inc., a)
Delaware Corporation,)
)
Third-Party Plaintiff,)

v.)

Park Ridge Sports, Inc.,)
)
Counter-Defendant and)
Third-Party Defendant.)

**PARK RIDGE SPORTS INC.’S ORIGINAL ANSWER TO
JAMES PURCELL’S AMENDED COUNTERCLAIM AND HORIZON
THERAPEUTICS USA, INC.’S THIRD-PARTY COMPLAINT**

Park Ridge Sports, Inc. (“Park Ridge Sports”) answers the allegations made against it by James Purcell (“Purcell”) and Horizon Therapeutics USA, Inc. (“Horizon”) in their Amended Counterclaim and Third-Party Complaint [Dkt. 39] as follows:

INTRODUCTION

Park Ridge Sports vehemently denies the misappropriation allegations that have been raised against it. Park Ridge Sports has never misappropriated any earmarked donations, and Horizon's and Purcell's contrary allegations are baseless at best.

I. Park Ridge Sports did not use Horizon's or Purcell's donation to pay for tax penalties. Indeed, it was impossible for it to do that.

Horizon and Purcell accuse Park Ridge Sports of using their donations to pay for late fees and penalties that supposedly resulted from Park Ridge Sports' failure to file its tax returns. This is ridiculous, on many levels. First, Park Ridge Sports did not incur fees and penalties for failure to file its tax returns. It incurred penalties because it belatedly filed its Form 990 for the years 2010 and 2013. Second, it was impossible for Park Ridge Sports to even use Horizon's or Purcell's donation to pay for the penalties. Both Horizon and Purcell gave their donations to Park Ridge Sports after it had already paid the penalties. Purcell knows this, as he was a member of the Park Ridge Sports Board of Directors ("Board") when payment of the penalties was approved by the Board. Finally, the allegation that the misappropriation resulted from the actions of Robert Leach ("Leach") has it all backwards. Leach could not have been responsible for the 2010 and 2013 filing delinquencies, as he first became a member of the Board in 2015 and first became Treasurer in 2018. Moreover, it was in April of 2018, as Treasurer, when Leach first became aware of the filing delinquencies. He then immediately spearheaded the efforts to pay the fees, appealing them to the IRS and later getting Board approval to pay for them in July of 2018.

II. Horizon did not give its \$50,000 donation to Park Ridge Sports with an oral restriction that the funds only be used to purchase football helmets and equipment.

Horizon alleges that Park Ridge Sports spent Horizon's \$50,000 donation in contravention of an oral restriction that the donation only be used to purchase football helmets and equipment.

This is false. The truth is, Defendant Timothy Walbert (“Walbert”) gave the \$50,000 check to Park Ridge Sports on behalf of Horizon and did not express the spending restriction that Horizon now claims that he did. Walbert’s own words and repeated conduct reveal this. First, when Walbert presented Horizon’s check to Park Ridge Sports, he explicitly stated to Jim Toulon (“Toulon”), who was receiving the check on behalf of Park Ridge Sports, that the donation was to be used to generally support Park Ridge Sports. Second, it was just a few months ago that Walbert, like Park Ridge Sports, believed that Horizon’s donation was not restricted to football helmets and equipment. In a draft complaint his counsel sent to Park Ridge Sports on April 3, 2020, Walbert claimed that the \$50,000 donation “was intended to support the youth football league.” Third, Walbert was a Board member throughout 2019. In that capacity, he reviewed and even approved how Horizon’s donation was budgeted. Tellingly, he never voiced then that Park Ridge Sports was misspending the donation—even though he had unfettered access to Park Ridge Sports’ financials. Finally, while Walbert may now think that he gave Park Ridge Sports the \$50,000 Horizon donation in exchange for Park Ridge Sports’ guarantee that the donation would be used for purchasing football helmets and equipment, Walbert certainly did not think so in February of 2019, when he post-hoc sought a sponsorship from Park Ridge Sports in return for the \$50,000 donation.

III. Purcell’s donation was not misspent. Park Ridge Sports bought football jerseys with his single, \$2,000 donation, and he knows this.

Purcell asserts that Park Ridge Sports misused \$2,600 worth of donations that were supposed to be spent on football jerseys. This is baseless, and Purcell knows it. First, Purcell did not make numerous donations to Park Ridge Sports that were restricted to the purchase of football jerseys. Purcell only made one, \$2,000 donation to Park Ridge Sports on October 26, 2018 that had such a restriction. In fact, Park Ridge Sports openly admits that it was only because Purcell

volunteered to donate \$2,000 for the purchase of football jerseys that the Board, which he was a member of, authorized the purchase of them. Second, it is beyond reasoning how Purcell can accuse Park Ridge Sports of not buying football jerseys with his October 2018 donation. Purcell was a Board member and reviewed and approved how that donation was budgeted. Purcell coached Park Ridge Sports teams that wore the very jerseys that were bought with his donation. Purcell's sons even played in them for years. And, Purcell was present at the November 2018 Board meeting where he was thanked for his contribution to the purchase of the new jerseys.

In light of the above, Park Ridge Sports submits these answers and affirmative defenses to the unsubstantiated allegations raised by Purcell and Horizon in their Amended Counterclaim and Third-Party Complaint.

PARTIES

1. Purcell is an individual residing in Park Ridge, Cook County, Illinois.

ANSWER: Admit.

2. Horizon is a Delaware corporation with its principal place of business in Cook County, Illinois. Timothy Walbert . . . is Horizon's Chairman, President, and Chief Executive Officer.

ANSWER: Admit.

3. Park Ridge Sports is an Illinois not-for-profit corporation doing business in Park Ridge, Cook County, Illinois.

ANSWER: Admit.

JURISDICTION AND VENUE

4. This Court has supplemental jurisdiction over Donors' Illinois state law claims pursuant to 28 U.S.C. § 1367(a) as these claims form part of the same case or controversy as Counter-Defendant's and Third-Party Defendant's Lanham Act claims.

ANSWER: Whether this Court has supplemental jurisdiction over Purcell's and Horizon's state law claims is a legal conclusion to which Park Ridge Sports need not admit or deny. To the

extent a response is deemed required, however, Park Ridge Sports denies that this Court has supplemental jurisdiction over those claims, as they are not “so related” to the claims over which this Court has original jurisdiction such “that they form part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C. § 1367(a).

5. This Court has personal jurisdiction over Park Ridge Sports because it is duly organized under the laws of the State of Illinois, transacts business within the Northern District of Illinois, and thus has sufficient minimum contacts with this District. Park Ridge Sports purposefully availed itself of the benefits of doing business within the United States and Illinois by conducting business within the State of Illinois and causing injury to Counter-Plaintiff and Third-Party Plaintiff in this District. Thus, Park Ridge Falcons can reasonably anticipate being hauled into court in the Northern District of Illinois.

ANSWER: Whether this Court has personal jurisdiction over Park Ridge Sports is a legal conclusion to which Park Ridge Sports need not admit or deny. If a response is deemed required, however, Park Ridge Sports denies that this Court has personal jurisdiction over it on the basis that Park Ridge Sports caused injury to Horizon and Purcell in this District. Park Ridge Sports admits that it is duly organized under the laws of the State of Illinois and that it transacts business within this District.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Park Ridge Sports’ actions giving rise to the claims alleged herein have occurred and are occurring within this District.

ANSWER: Whether venue is proper in this court is a legal conclusion to which Park Ridge Sports need not admit or deny. To the extent a response is deemed required, however, Park Ridge Sports denies that venue is proper pursuant to the allegations raised against it by Purcell and Horizon. Park Ridge Sports did not commit any of the actions that Purcell and Horizon allege give rise to their claims.

BACKGROUND

7. Park Ridge Sports operates a youth football program in Park Ridge, Illinois.

ANSWER: Park Ridge Sports admits it operates and has operated a highly successful youth football program in Park Ridge, Illinois. It has done so for over half a century under the “Park Ridge Falcons” trademark.

8 Walbert’s and Purcell’s children played on the youth travel football program operated by Park Ridge Sports.

ANSWER: Park Ridge Sports admits Walbert’s and Purcell’s children played on Park Ridge Sports’ youth travel football program.

9 In 2019, Horizon made an oral restricted donation of \$50,000 to Park Ridge Sports, so long as the donation was to be used for football helmets and equipment.

ANSWER: Park Ridge Sports denies Horizon made a \$50,000 donation to it in 2019. Horizon made a \$50,000 donation via check to Park Ridge Sports that was dated December 14, 2018. Park Ridge Sports also denies that Horizon orally restricted this donation to the purchase of football helmets and equipment. Walbert, on behalf of Horizon, gave the \$50,000 donation to Park Ridge Sports with no such restriction. When Walbert presented the check to Horizon, he explicitly stated to Toulon that the donation was to be used to generally support Park Ridge Sports. Indeed, it was just a few months ago that Walbert, like Park Ridge Sports, believed that Horizon’s donation was not restricted to football helmets and equipment. In a draft complaint his counsel sent to Park Ridge Sports on April 3, 2020, Walbert claimed that the \$50,000 donation “was intended to support the youth football league.” Moreover, Walbert was a Board member throughout 2019. In that capacity, he reviewed and even approved how Horizon’s donation was budgeted. Tellingly, he never voiced then that Park Ridge Sports was misspending the donation—even though he had unfettered access to Park Ridge Sports’ financials. Finally, while Walbert may now think that he gave the \$50,000 Horizon donation in exchange for the condition that it be used for the purchase of football helmets and equipment, he certainly did not think so in February of 2019, when he post-

hoc sought a sponsorship from Park Ridge Sports in return for the \$50,000 donation.

10. Through its authorized agents or representatives, Park Ridge Sports orally accepted Horizon's \$50,000 restricted donation subject to the terms referenced above.

ANSWER: Park Ridge Sports denies it accepted a \$50,000 donation from Horizon in 2019. Park Ridge Sports received a \$50,000 donation check from Horizon that was dated December 14, 2018. Park Ridge Sports further denies it received the donation with an oral restriction that the funds be used for the purchase of football helmets and equipment. The \$50,000 donation was provided to Park Ridge Sports by Horizon with no such restriction.

11. Horizon would not have made the donation to Park Ridge Sports had the monies not been used for their intended purpose, namely football helmets and equipment.

ANSWER: Having too little information to decide the truth of whether Horizon would have donated the \$50,000 if the funds were not used for the purchase of football helmets and equipment, Park Ridge Sports denies the allegation that Horizon would not have donated the \$50,000 if the funds were not used for the purchase of football helmets and equipment.

12. From 2017 to 2019, Purcell also made oral restrictive donations to Park Ridge Sports totaling \$2,600, so long as the donations were to be used for football jerseys.

ANSWER: Park Ridge Sports denies that from 2017 to 2019 Purcell made \$2,600 worth of donations that had the oral restriction restricting the use of the funds to the purchase of football jerseys. Purcell made a single, \$2,000 donation via check to Park Ridge Sports that was dated October 26, 2018, and that had the alleged restriction. Park Ridge Sports openly admits that it was only because Purcell volunteered to donate \$2,000 for the purchase of football jerseys that the Board, which he was a member of, authorized the purchase of them.

13. Through its authorized agents or representatives, Park Ridge Sports orally accepted Purcell's \$2,600 restricted donations subject to the terms referenced above.

ANSWER: Park Ridge Sports denies it orally accepted \$2,600 in donations from Purcell that had

the alleged restriction. Park Ridge Sports received from Purcell a single, \$2,000 donation that had an oral restriction that the funds be used for the purchase of football jerseys.

14. Purcell would not have made the donations to Park Ridge Sports had the monies not been used for their intended purpose, namely football jerseys.

ANSWER: Having too little information to decide the truth of whether Purcell would have donated the \$2,000 if the funds were not used for the purchase of football jerseys, Park Ridge Sports denies the allegation that Purcell would not have donated the \$2,000 if the funds were not used for the purchase of football jerseys.

15. Despite the terms of the restricted donations mentioned above, Park Ridge Sports did not use either the Horizon \$50,000 restricted donation or the Purcell \$2,600 restricted donation only for football helmets and equipment or football jerseys, respectively.

ANSWER: As Park Ridge Sports denies it received the \$50,000 donation from Horizon with the alleged oral restriction, Park Ridge Sports denies that it did not use the \$50,000 donation in accordance with it. Again, Horizon gave the \$50,000 to Park Ridge Sports without such a restriction. Concerning Purcell's donation, Park Ridge Sports denies that Purcell made donations totaling \$2,600 that had the restriction that the funds only be used to purchase football jerseys. Purcell made one, \$2,000 donation for football jerseys to Park Ridge Sports, which Park Ridge Sports used to purchase football jerseys. Purcell was and is aware that his donation was spent in accordance with its purpose. Purcell was a Board member and reviewed and approved how his donation was budgeted. Purcell coached Park Ridge Sports teams that wore the very jerseys that were bought with his donation. His sons even played in them for years. And, he was even present at the November 2018 Board meeting where he was thanked for his contribution to the purchase of the new Park Ridge Sports jerseys.

16. Park Ridge Sports' failure to use Donors' restricted donations for their intended purposes resulted from the actions of Park Ridge Sports' authorized agent Robert Leach and with

the knowledge or approval of Park Ridge Sports' authorized agent James Toulon, and other members of the executive board including Garry Abezetian and Kris Zabratanski. Park Ridge Sports' failure to use the restricted funds for their intended purposes was also due to the fact that it did not file tax returns for years, which resulted in thousands of dollars of late fees and penalties.

ANSWER: Park Ridge Sports used Purcell's \$2,000 donation to purchase football jerseys.

Accordingly, it denies that any of its authorized agents caused it to not purchase football jerseys with Purcell's donation. As to Horizon's donation, Park Ridge Sports again denies that it received the \$50,000 donation from Horizon with the alleged oral restriction. Park Ridge Sports accordingly denies that any of its authorized agents caused it to use the \$50,000 donation in contravention of the alleged oral restriction. Concerning the tax-returns allegation and insinuation, Park Ridge Sports fully denies that it misappropriated the alleged donations because it did not file tax returns. First, Park Ridge Sports incurred penalties from the IRS because it belatedly filed its Form 990 for 2010 and 2013, not because it did not file tax returns. Second, Park Ridge Sports paid the filing penalties by July of 2018, which was months before Purcell and Horizon made their donations to Park Ridge Sports. Purcell knows this, as he was a Board member when payment of the penalties was approved by the Board. Finally, Leach did not cause any misappropriation to occur. Leach could not have been responsible for the 2010 and 2013 filing delinquencies, as he first became a member of the Board in 2015 and first became Treasurer in 2018. Moreover, it was in April of 2018, as Treasurer, when Leach first became aware of the filing delinquencies. He then led the efforts to pay the fees, appealing them to the IRS and later getting Board approval to pay for them in July of 2018.

17. Prior to filing this lawsuit, the Donors requested that Park Ridge Sports provide certain information, including its general ledger and other relevant accounting or financial information, in order to verify how the donations were spent. Park Ridge Sports refused to provide the requested documentation.

ANSWER: Park Ridge Sports admits that counsel for Horizon and Purcell requested financial

information from Park Ridge Sports. Park Ridge Sports denies that it refused to provide financial information. In April of 2020, Park Ridge Sports willingly provided to counsel for Horizon and Purcell its profit and loss report for 2019.

18. Horizon and Purcell performed all of their obligations under their respective oral restricted donations to Park Ridge Sports.

ANSWER: Whether Horizon and Purcell performed their obligations pursuant to their donations is a legal conclusion to which Park Ridge Sports need not admit or deny. To the extent a response is deemed required, however, Park Ridge Sports admits that Horizon and Purcell donated \$50,000 and \$2,000 to Park Ridge Sports, respectively.

COUNT I
Breach of Contract
(Horizon's Third-Party Complaint)

19. Donors reincorporate by reference their allegations in paragraphs 1 - 18.

ANSWER: Park Ridge Sports fully incorporates here its answers to paragraphs 1 – 18.

20. Horizon has been damaged, proximately caused by Park Ridge Sports, because the \$50,000 restricted donation he made to Park Ridge Sports was not used for its intended purpose.

ANSWER: Whether Park Ridge Sports has proximately caused damage to Horizon is a legal conclusion to which Park Ridge Sports need not admit or deny. To the extent a response is deemed required, however, Park Ridge Sports denies it has proximately caused damage to Horizon.

COUNT II
Breach of Contract
(Purcell's Counterclaim)

21. Donors reincorporate by reference their allegations in paragraphs 1 - 18

ANSWER: Park Ridge Sports fully incorporates here its answers to paragraphs 1 – 18.

22. Purcell has been damaged, proximately caused by Park Ridge Sports, because the \$2,600 restricted donations he made to Park Ridge Sports was not used for their intended purpose.

ANSWER: Whether Park Ridge Sports has proximately caused damage to Purcell is a legal conclusion to which Park Ridge Sports need not admit or deny. To the extent a response is deemed required, however, Park Ridge Sports denies it has proximately caused damage to Purcell.

PARK RIDGE SPORTS' DEMAND FOR JURY TRIAL

Park Ridge Sports demands a trial by jury.

PRAYER

All allegations that Park Ridge Sports has not expressly admitted are expressly denied. Park Ridge Sports reserves the right to amend this Original Answer in accordance with any order entered by the Court and/or the applicable Federal Rules of Civil Procedure. Park Ridge Sports requests that judgment be granted in its favor dismissing all claims asserted by Horizon and Purcell, that it recover its costs in connection to this matter, and that the Court grant it all other relief to which it is entitled.

AFFIRMATIVE DEFENSES

By pleading the following defenses, Park Ridge Sports does not concede that it possesses or assumes the burden to prove each or any of them. Park Ridge Sports maintains that Horizon and Purcell retain the burden of proof on all matters necessary to state and sustain the claims asserted in their Amended Counterclaim and Third-Party Complaint. Park Ridge Sports reserves the right to amend this Original Answer to plead any additional affirmative defenses or matters of avoidance required by Rules 8(c) and 12(h) of the Federal Rules of Civil Procedure.

1. Horizon's claim fails for want of consideration. Horizon gave the \$50,000 to Park Ridge Sports without the alleged condition that the funds be used for the purchase of football helmets and equipment. Horizon thus received no consideration for the \$50,000. Consequently, the \$50,000 was a gift to Park Ridge Sports, and no contract was formed between Park Ridge

Sports and Horizon.

2. Horizon's and Purcell's claims fail because they are both equitably estopped from asserting that Park Ridge Sports misspent their donations by not spending them in accordance with the alleged oral restrictions. Horizon's agent, Walbert, and Purcell were both members of the Board, which, *inter alia*, reviews and approves how Park Ridge Sports budgets the donations it receives. As Board members, both Walbert and Purcell knew and approved how the donations were spent. Neither ever expressed that the donations were being spent in contravention of the alleged oral restrictions. Park Ridge Sports relied on Horizon's and Purcell's conduct and spent the donations in accordance with it.

Dated: July 7, 2020

Respectfully submitted,

AHMAD, ZAVITSANOS, ANAIPAKOS,
ALAVI & MENSING P.C.

/s/ John Zavitsanos

John Zavitsanos*

Alexander R. Hernandez*

1221 McKinney, Suite 2500

Houston, Texas 77010

Telephone: (713) 655-1101

Telecopier: (713) 655-0062

Email: jzavitsanos@azalaw.com

Email: ahernandez@azalaw.com

Counsel for Park Ridge Sports, Inc.

**Admitted Pro Hac Vice*

Richard B. Biagi, Esq.

Illinois Bar No. 6274572

Jeffrey T. Norberg, Esq.

Illinois Bar No. 6315012

NEAL & MCDEVITT, LLC

1776 Ash Street

Northfield, Illinois 60093

Telephone: (847) 441-9100

Facsimile: (847) 441-0911

Local and co-counsel for Park Ridge Sports, Inc.

CERTIFICATE OF SERVICE

I certify that on July 7, 2020, a true and correct copy of Park Ridge Sports, Inc.'s Original Answer has been served via CM/ECF on all counsel of record.

/s/ Alexander R. Hernandez
Alexander R. Hernandez

James L. Wideikis (ARDC #6278707)
Shawn M. Staples (ARDC #6293863)
MUCH SHELIST, P.C.
191 N. Wacker Drive
Suite 1800
Chicago, IL 60606
(312) 521-2000
jwideikis@muchlaw.com
sstaples@muchlaw.com

*Attorneys for Defendants, Counter-Plaintiff,
and Third-Party Plaintiff*