

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JACQUELYN HURON
35088 Fairway Drive
Avon, Ohio 44011

And

STEPHEN HEESTAND
4391 Karen Lynne Drive
Broadview Heights, Ohio 44147

Plaintiff,

vs.

E-MERGING TECHNOLOGIES GROUP,
INC.
22021 Brookpark Road
Cleveland, Ohio 44126

And

JEREMY A. SAMIDE
2576 Downing Street
Westlake, Ohio 44145

And

ANN KATIGBAK
28505 Osborne Road
Bay Village, Ohio 44140

Defendants.

Judge: RICHARD J MCMONAGLE
CV 13 812818

**COMPLAINT FOR EQUITABLE AND
LEGAL RELIEF**

(Jury Demand Endorsed Hereon)

ASSIGN TO COMMERCIAL DOCKET

CV13812818

80849825

RELATED CASE:

**Merletti v. E-Merging Technologies Group,
Inc., et al.**

Case No. CV 12 796025

Judge Richard J. McMonagle

NOW COME Plaintiffs Jacquelyn Huron and Stephen Heestand, by and through
undersigned counsel, and for their Complaint against defendants

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff Jacquelyn Huron is a citizen of Lorain County, State of Ohio. At times relevant herein, Ms. Huron was a shareholder of Defendant E-merging Technologies Group, Inc. ("ETG"), a member of ETG's Board of Directors, and an employee of ETG. Ms. Huron owns 3 shares of ETG stock.

2. Plaintiff Stephen Heestand is a citizen of Cuyahoga County, State of Ohio. At all times relevant herein, Mr. Heestand was an employee of ETG and owned one share of ETG stock.

3. Defendant E-merging Technologies Group, Inc. is an Ohio corporation organized under Ohio Revised Code Chapter 1701. Defendant ETG is a close corporation with its principal place of business in the City of Cleveland, County of Cuyahoga, and State of Ohio.

4. Defendant Jeremy A. Samide is the Chief Executive Officer of Defendant ETG. Mr. Samide is a resident of Cuyahoga County, Ohio. Mr. Samide currently owns 20 shares of ETG stock and sits of ETG's Board of Directors.

5. Defendant Ann Katigbak is an Executive Vice President of ETG. Ms. Katigbak currently owns 20 shares of ETG stock and sits on ETG's Board of Directors. Ms. Katigbak is a resident of Cuyahoga County, Ohio.

6. Collectively, Mr. Samide and Ms. Katigbak own a majority of the outstanding shares of ETG stock.

7. This Court has jurisdiction over this matter as the claims herein arise under Ohio statutory and/or common law.

8. Venue is proper in this Court pursuant to Ohio R. Civ. P. 3(B)(1) because one or more of the Defendants resides in Cuyahoga County, Ohio.

STATEMENT OF FACTS

9. Plaintiffs Huron and Heestand and have been employed by ETG since it was originally founded in 1999 or shortly thereafter.

10. Ms. Huron and Mr. Heestand are signatories to a Shareholder Agreement dated January 1, 2001. The Shareholder Agreement provided that ETG was intended to be a close corporation, organized under Chapter 1701 of the Ohio Revised Code.

11. Until mid-2008, ETG was managed and primarily owned by Don Heestand, its founder. Don Heestand initially owned 85 of 100 ETG shares outstanding. Mr. Samide and Ms. Katigabk initially owned only five shares.

12. Most recently, Ms. Huron worked as ETG's Vice President of Marketing and Communications. In that capacity, Ms. Huron reported directly to Defendant Samide. Ms. Huron's responsibilities included management of employee relations, coordinating ETG's requests for proposals, conducting market surveys, managing ETG's compliance with government contracts and numerous other marketing responsibilities.

13. Mr. Heestand worked for ETG as a Senior Recruiter. In that role, he was responsible for identifying potential talent and recruiting new employees to join the company.

14. In or about June 2008, Don Heestand died unexpectedly.

15. In the wake of Don Heestand's passing, Defendants Samide and Katigbak each executed Employment Agreements, guaranteeing themselves continued employment on very favorable terms. Mr. Samide executed Ms. Katigbak's Employment Agreement on behalf of ETG. Likewise, Ms. Katigbak executed Mr. Samide's Employment Agreement on behalf of ETG.

16. Notably, the Employment Agreements executed by Ms. Katigbak and Mr. Samide included terms specifying the manner in which their shares would be repurchased by ETG in the event that their employment with the company was terminated. The share repurchase terms in the Employment Agreements were more favorable than comparable terms in the Shareholder Agreement and the terms applicable to Plaintiffs.

17. Mr. Samide and Ms. Katigbak did not secure the approval of ETG's Board or the other shareholders prior to executing these Employment Agreements.

18. Mr. Samide and Ms. Katigbak also did not disclose the existence of these Employment Agreements to the Board or other ETG shareholders for over three years following their execution.

19. In or about August 2012, Plaintiffs became aware of certain facts relating to the management of ETG by Defendants Samide and Katigbak that caused them concern.

20. For example, Plaintiffs learned that Mr. Samide and Ms. Katigbak had paid themselves in excess of \$1.1 million in 2011.

21. The exorbitant compensation for Mr. Samide and Ms. Katigbak was never disclosed to Plaintiffs and was not approved by ETG's Board.

22. Plaintiffs also learned that Mr. Samide had retained counsel for ETG and initiated legal proceedings against a former ETG shareholder and Board member. Mr. Samide had undertaken these actions without advising the Board or his fellow shareholders of his actions and without obtaining their approval. Mr. Samide would later acknowledge to the Board that he had not been truthful with them in his handling of this issue.

23. A meeting of ETG's Board was held on August 17, 2012. During that meeting, various Board members raised concerns regarding items appearing in the financial statements provided by ETG CFO Michael Knight.

24. When Mr. Knight was unable to provide sufficient explanation in response to the questions, the Board voted to terminate his employment. Mr. Samide and Ms. Katigbak voted against terminating Mr. Knight.

25. Shortly thereafter, Lewis Merletti, another ETG shareholder and Board member, advised Mr. Samide that he was requesting a full financial audit of the company's financial affairs.

26. A special meeting of the Board was held on August 29, 2012 at which time the Board voted in favor of conducting a forensic audit of the company.

27. Despite voting in favor of the audit, Mr. Samide and Ms. Katigbak took steps to frustrate the efforts of the Board to actually conduct the audit. For example, Mr. Samide and Ms. Katigbak refused to provide basic financial data that was needed to conduct the audit.

28. Two days after the Board voted in favor of a forensic audit, Mr. Samide issued a "Notice of Special Shareholder meeting." The stated purpose of this special shareholder meeting was to reduce the number of members of ETG's Board to three and to then elect three new members to the Board.

29. At that Special Shareholder meeting, Defendants Samide and Katigbak voted to reduce the number of Board members to three. Thereafter they elected themselves as two of the three Board members. As a result of Defendants' actions, Ms. Huron's position on the Board was eliminated.

30. In October, Defendant Katigbak stated that the book value of ETG was negative \$96,391.

31. In the wake of the reduction of the number of members of the Board and the concomitant consolidation of control by Defendants Samide and Katigbak, Plaintiffs were ostracized by Defendants. For example, their roles and responsibility were gradually diminished.

32. As well, Defendants Samide and Katigbak concealed information regarding the management and financial affairs of ETG.

33. In March 2013, Plaintiffs were terminated by Defendants. Defendant Katigbak and ETG's CFO Michael Knight explained that Plaintiffs were being terminated in a cost cutting move that was necessitated by the federal government's sequestration related funding reductions.

34. Defendants' cost-cutting move came after Defendants Samide and Katigbak paid themselves nearly \$1 million in combined compensation during 2012 and enjoyed numerous benefits provided by the company.

35. Following their termination, Defendants have attempted to repurchase the shares held by Ms. Huron and Mr. Heestand.

36. Plaintiffs are entitled to be paid fair market value for their respective shares.

37. Upon information and belief Defendants have manipulated the financial records of the company to produce a book value of zero.

38. Defendants have signaled that, based upon a book value of zero, they intend to take the position that Plaintiffs are not entitled to be compensated for their shares.

39. Defendants have taken this position, pursuant to Section 4.4(A)(iv)(ii), which allows the Company the option of multiplying the Fair Market Value "by a fraction, the numerator of which is the Book Value of such Shares at the end of the period which is six (6)

months after the end of the period in which such Shareholder's employment terminated, and the denominator of which is the Book Value of such Shares as the end of the period in which his or her employment terminated."

40. Defendants have expressed their intent to invoke this provision of the Shareholder Agreement and return a valuation of zero.

41. Defendants' actions in this regard evidence their further manipulation of the Company's finances and their unreasonable refusal to pay Plaintiffs the Fair Market Value for their shares to which they are entitled.

42. Applying basic math principles, Defendants' attempt to invoke the Section 4.4(A)(iv)(ii) is untenable because the "fraction" upon which they rely is undefined because the denominator is zero.

43. Plaintiffs have attempted to resolve this matter informally with Defendants but have not been successful in doing so.

COUNT I **(Breach of Fiduciary Duty)**

44. Plaintiff incorporates the preceding paragraphs by reference as if fully set forth herein.

45. Defendants Samide and Katigbak, as majority shareholders of ETG, owe a heightened fiduciary duty to minority shareholders of ETG such as Ms. Huron and Mr. Heestand.

46. Upon information and belief, Defendants Samide and Katigbak have engaged in self-dealing to the detriment of the minority shareholders, including Ms. Huron and Mr. Heestand. Defendants' actions that were contrary to the interests of the minority shareholders include, but are not limited to, executing self serving employment agreements for each other without Board approval; awarding themselves exorbitant salary benefits and other compensation,

without the approval of the Board and to the financial detriment of the company; and, manipulating the financial records of the company to achieve a book value favorable to their interests.

47. Plaintiffs have suffered significant damage as a result of the breach of fiduciary duty in an amount to be determined at trial.

COUNT II (Wrongful Discharge)

48. Plaintiff incorporates the preceding paragraphs by reference as if fully set forth herein.

49. As minority shareholders, Plaintiffs employment may only be terminated on the basis of legitimate business reasons.

50. Defendants unlawfully terminated Plaintiffs' employment by terminating their employment without a legitimate business reason.

51. Defendants' purported reason for terminating Plaintiffs was pretextual and only served to obscure the unlawful motivations truly lying behind Defendants' termination decision.

52. The actions of Defendants were intentional, willful, reckless and malicious.

53. As a direct and proximate result of Defendants' illegal activity, Plaintiffs have suffered damages, including, but not limited to pain and suffering, emotional distress, and the loss of past and future salary, wages, benefits, and other privileges and conditions of employment.

COUNT III (Fraud)

54. Plaintiff incorporates the preceding paragraphs by reference as if fully set forth herein.

55. Defendants misrepresented certain facts relating to the management and finances of ETG, including, but not limited to, matters relating to their compensation, matters relating to the terms of their employment, and matters relating to the financial statements of the company.

56. Defendants also concealed information from Plaintiff relating to the management and finances of ETG, including, but not limited to, matters relating to their compensation, matters relating to the terms of conditions of their employment, matters relating to the repurchase of shares from Mr. Samide and Ms. Katigbak in the event their employment was terminated, and matters relating to the financial affairs and conditions of the company. By virtue of their status as majority shareholders, Defendants were under a duty to disclose fully information relating to these topics to Plaintiffs.

57. Defendants' misrepresentations and concealments were material to Plaintiff's status as minority shareholders.

58. Defendants' misrepresentations and concealments were made by Defendants with knowledge of their falsity, or with such utter disregard and recklessness as to whether they were true or false that knowledge may be inferred.

59. Defendants made the aforementioned misrepresentations and concealments with the intent of misleading Plaintiffs into reliance upon them.

60. Plaintiffs justifiably relied upon Defendants' misrepresentations and concealments.

61. As a direct and proximate result, Plaintiffs have suffered and will continue to suffer damages in an amount to be determined at trial.

COUNT IV
(Declaratory Judgment)

62. Plaintiff incorporates the preceding paragraphs by reference as if fully set forth herein.

63. Plaintiffs are parties to the Shareholder Agreement as well as the First Amendment to the Shareholder Agreement. (Attached hereto and incorporated herein by reference.)

64. Under the terms of the Shareholder Agreement, ETG may, at its option, elect to purchase the shares of a departing shareholder.

65. Due to the manner in which Plaintiffs were terminated, ETG's repurchase of shares is governed by Section 4.4(A)(iv). One of the mechanisms to valuing Plaintiffs' shares under the Shareholder Agreement allows ETG to opt to multiple the Fair Market Value of these shares, as determined by three appraisers, "by a fraction, the numerator of which is the Book Value of such Shares at the end of the period which is six (6) months after the end of the period in which such Shareholder's employment terminated, and the denominator of which is the Book Value of such Shares at the end of the period in which his or her employment terminated." (Shareholder Agreement at Section 4.4(A)(iv)).

66. Defendants have already taken the position that the Book Value of Plaintiffs' shares as of the date of their termination – that is, the denominator of the fraction provided for at Section 4.4(A)(iv)(ii) – is zero.

67. A fraction with a denominator of zero is a mathematical impossibility, thereby rendering the fraction provided for in Section 4.4(A)(iv)(ii) a mathematical impossibility.

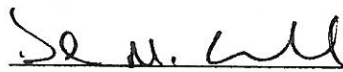
68. Defendants' intent to apply the fraction provided under Section 4.4(A)(iv)(ii) is a violation of the Shareholder Agreement.

69. Pursuant to Ohio Revised Code §2721.01, Plaintiffs are entitled to have this Court determine, as a matter of law through a declaratory judgment, that their shares cannot be valued using the fraction that is described in Section 4.4(A)(iv)(ii) of the Shareholder Agreement and that the appropriate purchase price for their shares is the Fair Market Value is determined under Section 4.4(D) of the Shareholder Agreement.

WHEREFORE, having full stated their claims against Defendants, Plaintiffs pray for relief as follows:

- A. All remedies available for the claims set forth above, including, but not limited to, compensatory and punitive damages, past and future economic and non-economic damages in excess of \$25,000, back pay, front pay, and lost benefits;
- B. A declaratory judgment finding that the fraction described in Section 4.4(A)(iv)(ii) is inapplicable to the valuation and repurchase of Plaintiffs' shares and that Plaintiffs' shares must be repurchased at Fair Market Value;
- C. An award of all reasonable attorneys' fees, costs, and litigation expenses; and
- D. Any other relief that this Court deems appropriate.

Respectfully submitted,

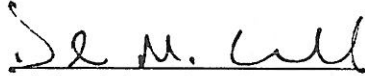


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JURY DEMAND

A trial by jury is hereby demanded.



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