

**IN THE CHANCERY COURT OF HARRISON COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

FILED
DEC - 5 2016

CITY OF BILOXI, MISSISSIPPI

PLAINTIFF

V.

JOHN McADAMS, CHANCERY CLERK
_____ D.C.

NO. 16-925/4

**BILOXI BASEBALL, LLC
and OVERTIME SPORTS MANAGEMENT BILOXI, LLC**

DEFENDANTS

COMPLAINT

This is a suit for accounting, for interpretation of contractual provisions, and for other relief. The Plaintiff, City of Biloxi, Mississippi (the "City"), would show as follows:

I. PARTIES

1. Plaintiff, the City of Biloxi, Mississippi, is a political subdivision of the State of Mississippi.

2. Defendant Biloxi Baseball, LLC ("Biloxi Baseball") is a Virginia limited liability company registered to do business in Mississippi with its principal place of business at 18228 U.S. Highway 41 North, Lutz, Florida and may be served with process by serving its registered agent, Robert F. Wood, at its registered office, 410 Legacy Park, Suite B, Ridgeland, Mississippi 39157.

3. Defendant Overtime Sports Management Biloxi, LLC (“Overtime”) is a Mississippi limited liability company with its principal place of business at 105 Caillavet Street, Biloxi, Mississippi and may be served with process by serving its registered agent, Quentin Whitwell, 1200 Jefferson Avenue, Suite 200, Oxford, Mississippi 38655.

II. JURISDICTION

4. Jurisdiction is proper in this Court pursuant to Section 159 of the Constitution of the State of Mississippi.

III. VENUE

5. Venue is proper in this Court pursuant to Miss. Code Ann. § 11-5-1.

IV. SUMMARY OF THE FACTS

6. On or about February 11, 2014, the City, as Sublessor, entered into a Stadium Sublease and Use Agreement with Biloxi Baseball, as Sublessee (the “Sublease”), for the lease of the stadium in the City of Biloxi, Mississippi known as MGM Park (the “Stadium”). A true and correct copy of the Sublease is attached hereto as Exhibit “1.”

7. On or about April 2, 2015, the City entered into a First Amendment to Stadium Sub-Lease and Use Agreement with Biloxi Baseball, Overtime and Beau Rivage Resorts, Inc. (the “First Amendment”) (a) providing for Biloxi Baseball or Overtime to provide certain upgrades and additions to the Stadium, and (b) adjusting the “Additional Rent” to be paid under the Sublease. A true and correct copy of the First Amendment executed by the parties, in the form authorized by the City Council pursuant to Resolution No. 145-15 on March 31, 2015, is attached hereto as Exhibit “2.”

8. On June 2, 2015, the City and Biloxi Baseball entered into a Second Amendment to Stadium Sub-Lease and Use Agreement (the "Second Amendment") limiting the remedies against the City for failure to have the Stadium available for "Beneficial Occupancy" by April 18, 2015. "Beneficial Occupancy" is defined in the Second Amendment as "the date upon which the Stadium is made available . . . *for the team's preparation for the first home game*" (emphasis added). A true and correct copy of the Second Amendment is attached hereto as Exhibit "3."

9. On or about June 4, 2015, the City, Biloxi Baseball and Overtime entered into a Definitive Purchase and Advertisement Revenue Agreement for MGM Park Video Boards/Scoreboards and Certain Other Revenue Producing Signage (the "Video Board Agreement"). Pursuant to the Video Board Agreement, Biloxi Baseball is obligated to use best efforts to sell advertising for Minor League Baseball games, to share the revenue therefrom with the City and to be responsible for all costs associated with the Primary Video Board (as defined therein). A true and correct copy of the Video Board Agreement is attached hereto as Exhibit "4." By its terms, the terms of the Video Board Agreement prevail over conflicting provisions of the Sublease.

10. The Sublease, as amended by the First Amendment, the Second Amendment and the Video Board Agreement (as so amended, "the Amended Sublease") provides that Biloxi Baseball will pay annual Base Rent of \$150,000 per year beginning October 1, 2015 and on every October 1 thereafter until termination of the Amended Sublease. The initial term of the Amended Sublease is February 11, 2014 through February 11, 2035. (Capitalized terms used

in this Complaint but not defined herein have the meanings ascribed to such terms in the Amended Sublease.)

11. The Amended Sublease also provides that Biloxi Baseball will pay Additional Rent monthly in arrears in the form of a surcharge per ticket sold for Club Home Games and Biloxi Baseball Events (defined as events held in the Stadium that are not Club Home Games or City-sponsored events) as set forth on Exhibit R to the First Amendment. Under the First Amendment, the City agreed to forgo Additional Rent with respect to the first 231,250 tickets sold for Minor League Baseball games (but not Biloxi Baseball Events) for each of the years 2015 and 2016, subject to the provision by Biloxi Baseball or Overtime of certain upgrades and additions to the Stadium. Biloxi Baseball agreed in the Amended Sublease to provide to the City a certified accounting of tickets sold for purposes of determining the Additional Rent due.

12. Pursuant to the Amended Sublease, the City agreed to pay liquidated damages to Biloxi Baseball not to exceed \$100,000 if the Stadium was not available for Beneficial Occupancy on or before April 18, 2015, subject to the fulfillment of certain obligations on the part of Biloxi Baseball and Overtime. The Second Amendment provides that such liquidated damages will be Biloxi Baseball's "sole and exclusive remedies" with respect to a failure to have the Stadium available for Beneficial Occupancy by April 18, 2015.

13. For purposes of the liquidated damages set-off, the Stadium was available for Beneficial Occupancy between April 18, 2015 and June 2, 2015. On information and belief, Biloxi Baseball personnel occupied or used, and had Beneficial Occupancy of, the Stadium site prior to June 2, 2015.

14. Through the date hereof, Biloxi Baseball has paid \$146,450 in Base Rent via a check delivered to the City in October 2016. Biloxi Baseball claims, and City denies, that Biloxi Baseball is entitled to an offset against the total Base Rent of \$300,000 due through October 1, 2016 of \$153,550.

15. On information and belief, based on uncertified records provided by Biloxi Baseball and/or Overtime personnel, at least 23,825 tickets have been sold for Biloxi Baseball Events. Biloxi Baseball, however, has paid no Additional Rent with respect to those ticket sales. Overtime, the sponsor of all or certain of those events pursuant to a use agreement with Biloxi Baseball, has paid only \$1,536 to the City with respect to those events.

16. The City has fully satisfied and performed all of the obligations on its part to be performed under the Amended Sublease, or any failure to perform was waived. The City has made demand on Biloxi Baseball to provide an accounting of (a) all ticket sales, certified by an officer of Biloxi Baseball, (b) its completion of the items it agreed to provide under the First Amendment and (c) its efforts made to sell and revenues received from advertising on the video scoreboards. As of this date, the City has not received a satisfactory or timely response.

17. Pursuant to the Video Board Agreement, Overtime guaranteed payment to the City of at least \$50,000 in advertising revenues per year in exchange for which the City assigned its field naming rights under the Sublease to Overtime "as long as the compensation required hereunder is paid to the City." No compensation has thus far been paid to the City under the Video Board Agreement. On information and belief, Overtime has assigned the field

naming rights to Ascendant Spirits, Inc. The City has asked Overtime for a copy of its agreement assigning the field naming rights, but no agreement has been received.

18. Biloxi Baseball has paid the City no money in respect of amounts due under the Video Board Agreement nor has it paid the utility expenses associated with the Primary Video Board.

19. The City has fully satisfied and performed all of the obligations to be performed under the Video Board Agreement, or any failure to perform was waived. The City has made demand on Overtime to account for its revenues with respect to the field naming rights but has not received a satisfactory or timely response (although Overtime has expressed a willingness to convey the field naming rights back to the City prospectively).

20. On June 5, 2015, the City and Biloxi Baseball made a joint application to the Mississippi Development Authority ("MDA") for the Mississippi Tourism Rebate Program to defray the costs of constructing the Stadium. In that application, Biloxi Baseball represented to MDA that its expenses in acquiring and relocating its Minor League Baseball team and in tenant improvements to the Stadium exceeded \$20,000,000. To date, the City's consultant who was hired to manage the application has been able to confirm with Biloxi Baseball's auditor approximately \$16,500,000 of investment eligible under the Program.

V. COUNT I - ACCOUNTING FROM BILOXI BASEBALL

21. The allegations of all preceding paragraphs of this Complaint are readopted and incorporated herein by reference.

22. Biloxi Baseball has not certified and accounted for its ticket sales since the commencement of the Sublease, nor has it accounted for its efforts made to sell advertising on the video scoreboards, its advertising revenues or the making of required specified improvements, thereby preventing the City from determining amounts owed by Biloxi Baseball under the Amended Sublease. As a result of Biloxi Baseball's actions and/or inactions, the City has been unable to verify the amounts that it is owed and therefore seeks the equitable remedy of an accounting of ticket sales, Base Rent and Additional Rent due, improvements made pursuant to the First Amendment, efforts made to sell advertising, advertising revenues owed and any other amounts owed under the Amended Sublease.

23. Biloxi Baseball has not provided information sufficient to support \$20,000,000 in eligible investment under the Mississippi Tourism Rebate Program. As a result of Biloxi Baseball's actions and/or inactions, the City has been unable to reap the full benefits of the Mississippi Tourism Rebate Program and therefore seeks the equitable remedy of an accounting of all costs incurred by Biloxi Baseball in acquiring and relocating its Minor League Baseball team and in tenant improvements to the Stadium.

VI. COUNT II – ACCOUNTING FROM OVERTIME

24. The allegations of all preceding paragraphs of this Complaint are readopted and incorporated herein by reference.

25. Overtime has not certified and accounted for its ticket sales since the commencement of the Sublease, nor has it accounted for its revenue received to date pursuant to its sub-assignment of the field naming rights.

VII. COUNT III - DECLARATORY JUDGMENT

26. The allegations of all preceding paragraphs of this Complaint are readopted and incorporated herein by reference.

27. Defendant Biloxi Baseball has unilaterally, without right or authority, offset its Base Rent due and owing to the City through October 1, 2016 under the Amended Sublease by \$153,550.

28. This Court should issue its declaratory judgment that Defendant Biloxi Baseball is currently obligated to pay the shortfall in Base Rent owing under the Amended Sublease through October 1, 2016 in the amount of \$153,550, net only of such liquidated damages as Biloxi Baseball may prove itself to be entitled at the trial of this cause, but in any event such set-off is not to exceed \$100,000.

VIII. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, the City demands judgment against Biloxi Baseball and Overtime as follows:

29. Judgment ordering Biloxi Baseball to make available and to certify the accuracy of all information necessary to determine, and to provide an accounting of, all amounts owed to the City under the Amended Sublease, including without limitation ticket sales, Base Rent and Additional Rent due, improvements made pursuant to the First Amendment, efforts made to sell advertising, advertising revenues owed and any other amounts owed under the Amended Sublease;

30. Injunctive relief against Biloxi Baseball and Overtime ordering each Defendant to provide timely monthly reports, certified by an officer of such Defendant, of ticket sales and all other information necessary to enable the City to determine amounts due as Additional Rent under the Amended Sublease going forward;

31. Judgment ordering Biloxi Baseball to make available and to certify the accuracy of all information necessary to determine, and to provide an accounting of, all costs incurred by Biloxi Baseball in acquiring and relocating its Minor League Baseball team and in tenant improvements to the Stadium.

32. Judgment ordering Biloxi Baseball to make available and to certify the accuracy of all information necessary to determine, and to provide an accounting of, all dates available for home games in 2015 and all costs incurred in the scheduling of home games for 2015, whether held at MGM Stadium in Biloxi or at another location.

33. Judgment ordering Overtime to make available and to certify the accuracy of all information necessary to determine, and to provide an accounting of, all amounts owed to the City from Overtime under the Amended Sublease, including without limitation ticket sales, Additional Rent due, improvements made pursuant to the First Amendment, any other amounts owed under the Amended Sublease and all revenues received by Overtime pursuant to its sub-assignment of the field naming rights.

34. A declaratory judgment to the effect that Defendant Biloxi Baseball is currently obligated to pay to the City the shortfall in Base Rent owing under the Amended Sublease through October 1, 2016 in the amount of \$153,550, net only of such liquidated damages as

Biloxi Baseball may prove itself to be entitled at the trial of this cause, but in any event such set-off is not to exceed \$100,000.


35. Such further relief, at law or in equity, as this court deems proper.

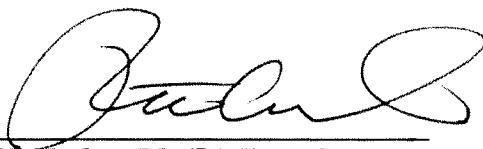
The City reserves the right to amend and assert further or additional causes of action after the completion of the accounting requested and after the completion of further investigation and discovery herein.

DATED this the 5th day of December, 2016.

Respectfully submitted,

CITY OF BILOXI, MISSISSIPPI

By: 
JANE WALLACE MEYNARDIE MB9990
Wise Carter Child & Caraway, P.A.
1105 30th Avenue, Suite 300
Gulfport, Mississippi 39501
TELEPHONE: (228) 867-7141
EMAIL: ejm@wisecarter.com
SPECIAL COUNSEL, CITY OF BILOXI

By: 
PETER C. ABIDE MB1026
Currie Johnson & Myers, P.A.
925 Tommy Munro Drive, Suite H
Biloxi, Mississippi 39532
TELEPHONE: (228) 385-1011
EMAIL: pabide@curriejohnson.com
CITY ATTORNEY, CITY OF BILOXI