

No. 15-1118

IN THE
Supreme Court of the United States

MICHAEL'S FLOOR COVERING, INC.,
Petitioner,

v.

RESILIENT FLOOR COVERING PENSION FUND,
AND BOARD OF TRUSTEES OF THE
RESILIENT FLOOR COVERING PENSION FUND,
Respondents.

**On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**RESPONDENTS APPENDIX
TO BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI**

GEORGE M. KRAW (CA Bar No. 71551)

Counsel of Record

DONNA L. KIRCHNER (CA Bar No. 138320)

KATHERINE McDONOUGH (CA Bar No. 241426)

KRAW AND KRAW LAW GROUP

605 Ellis Street, Suite 200

Mountain View, CA 94043

Telephone: 650-314-7800

Facsimile: 650-314-7899

Counsel for Respondents

APPENDIX
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	Page
Copy of Stipulation Re Designation of Certain Documents and Information Previously Designated Confidential and Filed Under Seal, and exhibits thereto, filed on December 11, 2015 in the Norther District Court of California [N.D. Cal. ECF No. 143] ...	1ra
Copy of Exhibit S to Donna L. Kirchner’s Declaration in Support of the Summary Judgment Motion filed on July 26, 2012 in the Northern District Court of California [N.D. Cal. ECF No. 73-16]	21ra

1 George M. Kraw (California Bar No. 71551)
 Donna L. Kirchner (California Bar No. 138320)
 2 Katherine McDonough (California Bar No. 241426)
 Kraw and Kraw
 3 605 Ellis Street, Suite 200
 Mountain View, CA 94043
 4 Telephone: (650) 314-7800
 Facsimile: (650) 314-7899
 5 gkraw@kraw.com
 dkirchner@kraw.com
 6 kmcdonough@kraw.com

7 Counsel for Plaintiffs
 Resilient Floor Covering Pension Fund, and
 8 Board of Trustees, Resilient Floor Covering Pension Fund

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13
 14 RESILIENT FLOOR COVERING)
 PENSION FUND, et al.,)
 15)
 Plaintiffs,)
 16)
 v.)
 17)
 MICHAEL'S FLOOR COVERING, INC.,)
 18)
 Defendant.)
 19 _____)

Case No.: C 11-5200 JSC

STIPULATION RE DEDESIGNATION OF CERTAIN DOCUMENTS AND INFORMATION PREVIOUSLY DESIGNATED CONFIDENTIAL AND FILED UNDER SEAL

20
 21 The parties, through counsel, hereby stipulate as follows:

- 22 1. Exhibits A and B attached hereto are redacted copies of Exhibits A and B to the
 23 Declaration of Donna L. Kirchner dated August 9, 2012 [Dkt # 86].
 24 2. Defendant designates Exhibit X to the Declaration of Donna Kirchner dated July
 25 26, 2012 [Dkt # 73] which is a document bearing production number MFC004576
 26 MFC004583. A true and accurate copy of Exhibit X is filed with this Stipulation as
 27 Exhibit C hereto.
 28 3. Defendant does not concede any objections to the attached Exhibits under the Federal

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Rules of Evidence.

Dated: December __, 2015

KRAW & KRAW LAW GROUP

Donna L. Kirchner, Esq.
Attorneys for Plaintiffs

Dated: December __, 2015

KILMER, VOORHEES & LAURICK, PC

Robert B. Miller, Esq.
Attorneys for Defendant

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ATTESTATION

I, Donna L. Kirchner, attest that signatories Robert B. Miller read and approved the foregoing
**STIPULATION RE DEDESIGNATION OF CERTAIN DOCUMENTS AND INFORMATION PREVIOUSLY
DESIGNATED CONFIDENTIAL AND FILED UNDER SEAL** and has consented to its filing in this action.

Donna L. Kirchner

4ra

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Exhibit A

A

Billed for \$14,487.98:	
Inv. 9	129.84
Inv. 21	3,732.90
Inv. 74	10,625.24

A

Billed for \$57,053.17:	
Inv. 4	3,859.49
Inv. 20	5,712.96
Inv. 24	4,502.20
Inv. 40	3,427.78
Inv. 63	3,916.84
Inv. 64	3,425.61
Inv. 70	3,228.00
Inv. 72	4,636.37
Inv. 73	4,244.69
Inv. 75	484.74
Inv. 90	3,425.61
Inv. 105	9,116.93
Inv. 112	3,425.61
Inv. 123	3,646.34

B

Billed for \$81.15:	
Inv. 130	81.15

B

Billed for \$28,711.94:	
Inv. 1	11,198.70
Inv. 10	462.01
Inv. 31	5,818.99
Inv. 45	11,232.24

D

Billed for \$323.52:	
Inv. 29	323.52

E

Billed for \$121.08:	
Inv. 62	121.08

F

Billed for \$5,083.00:	
Inv. 94	5,083.00

Gra

G	Billed for \$154.29:		
	Inv. 66	154.29	
H	Billed for \$757.40:		
	Inv. 121	757.40	
H	Billed for \$1,006.26:		
	Inv. 97	1,006.26	
H	Billed for \$595.10:		
	Inv. 37		595.10
J	Billed for \$175.00:		
	Inv. 8	175.00	
J	Billed for \$18,870.72:		
	Inv. 2	8,889.00	
	Inv. 5	120.00	
	Inv. 27	841.00	
	Inv. 28	1,163.72	
	Inv. 43	4,976.00	
	Inv. 65	2,691.00	
	Inv. 69	50.00	
	Inv. 124	140.00	
J	Billed for \$19,979.40:		
	Inv. 49	13,633.20	
	Inv. 51	2,338.20	
	Inv. 110	4,008.00	
L	Billed for \$1,276.76:		
	Inv. 95		1,276.76
M	Billed for \$3,618.00:		
	Inv. 116	3,618.00	

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M	Billed for \$81.12:		
	Inv. 87	81.12	
N	Billed for \$69,564.45:		
	Inv. 11	8,470.38	
	Inv. 12	8,316.45	
	Inv. 33	8,723.08	
	Inv. 58	54.10	
	Inv. 59	54.10	
	Inv. 96	129.84	
	Inv. 107	18,378.48	
	Inv. 113	9,075.46	
	Inv. 114	146.07	
	Inv. 122	16,216.49	
F	Billed for \$681.66:		
	Inv. 108	681.66	
P	Billed for \$116.86:		
	Inv. 85		116.86
P	Billed for \$4,342.39:		
	Inv. 54	4,342.39	
R	Billed for \$14,501.59:		
	Inv. 7	8,608.00	
	Inv. 35	2,146.62	
	Inv. 36	151.48	
	Inv. 128	3,595.49	
R	Billed for \$86.56:		
	Inv. 115		86.56
R	Billed for \$794.88:		
	Inv. 99		794.88

Sra

S

Billed for **\$220.32:**
Inv. 88 220.32

T

Billed for **\$10,426.72:**
Inv. 41 1,843.73
Inv. 48 3,202.72
Inv. 50 3,617.12
Inv. 77 81.15
Inv. 104 1,682.00

U

Billed for **\$14,139.57:**
Inv. 23 6,358.91
Inv. 60 4,971.79
Inv. 76 319.19
Inv. 102 2,489.68

V

Billed for **\$9,859.60:**
Inv. 15 1,755.00
Inv. 16 733.38
Inv. 17 1,273.50
Inv. 18 1,120.00
Inv. 19 996.00
Inv. 30 573.20
Inv. 98 732.52
Inv. 106 1,680.00
Inv. 111 996.00

W

Billed for **\$10,586.29:**
Inv. 61 10,586.29

W

Billed for **\$1,876.19:**
Inv. 103 1,876.19

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Exhibit B

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Totals:

A	14,487.98:	
A	57,053.17	
B		81.15
B	28,711.94	
D	323.52	
E	121.08	
F	5,083.00	
G	154.29	
H	757.40	
H	1,006.26	
H		595.10
J	175.00	
J	18,870.72	
J	19,979.40	
L		1,276.76
M	3,618.00	
M	81.12	
N	69,564.45	
P	681.66	
P		116.86
P	4,342.39	
R	14,501.59	
R		86.56
R		794.88
S	220.32	
T	10,426.72	
U	14,139.57	
V	9,859.60	
W		10,586.29
W	1,876.19	
Former SFC	276,035.37	
Others		13,537.60

Result: 95% of Michael's Floor Covering's First Quarter revenues from business customers came from former Studer's Floor Covering's customers.

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Exhibit C

Business Plan

Michael's Floor
Covering, Inc.

2200-A NE Andresen Rd.
Vancouver, WA 98661
(360) 695-1231
Fax: (360) 695-4651
www.michaelsfc.com

Legal Page

Confidentiality Agreement

The undersigned reader acknowledges that the information provided by *Michael's Floor Covering, Inc.* in this business plan is confidential; therefore, reader agrees not to disclose it without the express written permission of Ronald Michael Haasl.

It is acknowledged by reader that information to be furnished in this business plan is in all respects confidential by nature, other than information which is in the public domain through other means and that any disclosure or use of same by reader, may cause serious harm or damage to *Michael's Floor Covering, Inc.*

Upon request, this document is to be immediately returned to Ronald Michael Haasl.

Signature: _____

Printed Name: _____

Date: _____

This is a business plan. It does not imply an offering of securities.

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Executive Summary

A future void in floor covering sales, service and installation in the greater Vancouver area opens an opportunity to form a floor covering business. *Michael's Floor Covering, Inc.* was formed to be a high quality, service oriented and competitively priced flooring center. Michael Haasl and four additional employees combine with more than 60 years of floor covering experience.

Michael's Floor Covering, Inc. will provide sales, service and complete installation of carpet, hardwoods, stone/ceramics, vinyl, laminates and other flooring needs. We will supply residential and commercial services in both Washington and Oregon.

Services

Michael's Floor Covering, Inc. will provide full service floor covering, including:

- * Showroom complete with product and sales staff
- * Free estimates of complete product and installation
- * Discounted sales of products only
- * Commercial product and knowledge to serve architects and engineers
- * Decorating coordinators on site to assist new and remodel residential
- * Large warehouse and material transportation to location

Start Up Summary

Start up summary of costs and assets are:

EXPENSES

(4) vehicles (vans, truck)	\$11,500.00
Forklift	\$2,700.00
Warehouse racks and supplies	\$4,800.00
Tools, installation equipment	\$4,500.00
Office desks, copiers, computers	\$9,000.00
Showroom remodel	\$6,800.00
Start up inventory	\$8,500.00
Total Start Up Expenses	\$47,800.00

ASSETS

Cash required	\$95,000.00
Start up inventory	\$8,500.00
Current assets	\$40,000.00
Total Assets	\$143,500.00
Total Requirements	\$95,700.00

Sales Forecast 2010

	January	February	March	April	May	June	July	August
Sales	60,000	80,000	100,000	125,000	125,000	150,000	150,000	175,000
COGS	24,000	32,000	40,000	50,000	50,000	60,000	60,000	70,000
Labor	18,000	24,000	30,000	37,500	37,500	45,000	45,000	52,500
Gas, Tools, Misc	2,000	2,000	2,000	2,500	2,500	3,000	3,000	4,000
Direct Costs	44,000	58,000	72,000	90,000	90,000	108,000	108,000	126,500
Overhead								
Rent	6,000	6,000	6,000	6,000	6,000	6,000	7,500	7,500
Salaries	13,000	15,000	15,000	17,500	17,500	19,000	19,000	19,000
Insurance	800	800	800	800	800	800	1,000	1,000
Utilities	500	500	500	500	500	500	500	500
Phone	400	400	400	400	400	400	500	500
Garbage	500	500	500	500	500	500	500	500
Maintenance	500	600	750	750	1,000	1,000	1,000	1,000
Supplies, Misc	500	500	500	750	750	1,000	1,000	1,000
Advertisements	400	400	400	400	500	500	600	600
Indirect Costs	\$22,600	\$24,700	\$24,850	\$27,600	\$27,850	\$29,600	\$31,500	\$31,500
Interest Payments	1,000	1,000	2,000	2,000	3,000	3,000	3,000	3,000
Totals	\$67,600	\$83,700	\$98,850	\$119,600	\$120,850	\$140,600	\$142,500	\$161,000
Profit/Loss	<\$7,600>	<\$3,700>	\$1,150	\$5,400	\$4,150	\$9,400	\$7,500	\$14,000

Market Analysis Summary

The four main target groups of *Michael's Floor Covering, Inc.* are:

- * Charge / cash accounts of products only
- * Retail walk-in – new and remodel
- * Residential new construction - account based
- * Commercial – new and remodel

Michael's Floor Covering, Inc. projects an increased opportunity to expand product sales by offering rebate incentives to independent contractors for sending their clients to our showroom to select new products.

Retail sales can be maintained and expanded by offering better products than our competitors at a competitive price.

While *Michael's Floor Covering, Inc.* expects a slow increase in residential new construction, a decline in commercial needs is expected.

	2010 Jan-June	2010 July-Dec	2011 Jan-June
Product charges	5%	10%	15%
Retail	15%	20%	20%
Residential	40%	40%	35%
Commercial	40%	30%	30%

Strategy

Michael's Floor Covering, Inc. has several directions of strategies to maintain and expand volume of sales in the four target groups.

- * Maintain valued relationships
- * Keeping costs low
- * Increase visibility

Maintain Valued Relationships

Michael's Floor Covering, Inc. has personal and business relationships with many of the trade partners. These relationships are vital to continued success. Top priorities of high service, honesty, product, knowledge, competitive prices and quality installation must be maintained.

Keeping Costs Low

Michael's Floor Covering, Inc. has leased a building with combined showroom, office and warehouse space. This highly visible corner is located on a busy intersection. This space served a reputable former floor covering business for many years. Although an updated remodel is planned for the showroom, the remaining portion of the space is ideal and should help reduce immediate start up costs. A small select group of four motivated and experienced employees will reduce large salary costs.

Increased Visibility

In addition to the business signs at the lease space, *Michael's Floor Covering, Inc.* will have advertisement extended to logos on work vehicles, yellow pages and internet web sites.

Management Summary

The company consists of management, clerical, sales and front counter staff. Between months two and six, an additional two to three part-time employees will be added including warehouse, additional clerical and bookkeeping.

Financial Plan

Michael's Floor Covering, Inc. is projecting to be cash flow stable around the fourth to sixth month. An additional \$100,000 to \$200,000 is expected to be personally injected into the company during this time from personal assets. An equitable interest and payment plan cash disbursement payback period is planned around the same break-even time line.

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EXHIBIT S

**MINUTES OF COMBINED SPECIAL MEETING OF
THE BOARD OF DIRECTORS AND THE SHAREHOLDERS**

OF

STUDER'S FLOOR COVERING, INC.

A combined special meeting of the Board of Directors and the Shareholders of the corporation was held on November 18, 2009 in Vancouver, Washington.

The following directors were present in person:

SCOTT STUDER
KIM SCOTT
LORI ANNE DEMARS

The following shareholders were present in person:

SCOTT STUDER, owner of 277.33 shares
KIM SCOTT, owner of 111.33 shares
LORI ANNE DEMARS, owner of 111.33 shares

Upon motion duly made, seconded and unanimously carried, SCOTT STUDER was designated chairperson and secretary of the meeting.

VOLUNTARY DISSOLUTION OF CORPORATION:

The chairperson suggested that the directors and shareholders consider a voluntary dissolution of the corporation. The reasons for the dissolution recommendation are extensive losses for an extended period of time combined with poor economic conditions and prospects. The chairperson advised that the Corporation would not be selling its business as a "going concern", but instead would liquidate miscellaneous assets on a piecemeal basis as part of its "cessation of business". The chairperson advised that the dissolution should be effective December 31, 2009 and remaining assets would be liquidated and sold during 2010. After due consideration and full discussion, and on motion duly made, seconded and unanimously carried, it was

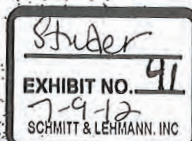
RESOLVED: that the corporation shall be dissolved by filing Articles of Dissolution With the Secretary of State of the State of Washington.

BE IT FURTHER RESOLVED: that the Corporation will not publish public notice of its dissolution or avail itself of procedures to limit known or unknown claims against the Company.

BE IT FURTHER RESOLVED: that in accordance with the dissolution and complete liquidation of the corporation pursuant to Internal Revenue Code Section 331, the attached "plan of liquidation" is adopted, and the officers of the corporation are authorized to do the following:

1. Within thirty (30) days after the effective date of the Articles of Dissolution, cause the corporation's counsel to file Form 966 with the District

MINUTES OF COMBINED SPECIAL MEETING OF THE
BOARD OF DIRECTORS AND THE SHAREHOLDERS - 1
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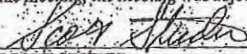


Director of the Internal Revenue Service, together with the plan of liquidation and a certified copy of this resolution.

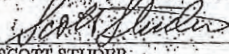
2. Immediately liquidate or distribute all personal property and other property and assets, as the corporation may have, to the shareholders of the corporation, subject to any unpaid liabilities, in accordance with the plan of liquidation;
3. Upon distribution of all assets and liabilities to the shareholders, obtain all outstanding stock of the corporation for immediate cancellation.
4. Immediately execute and cause the Corporation's counsel to file Articles of Dissolution and such other documents which are required for dissolution of the Corporation pursuant to Title 23B.14 of the Revised Code of Washington.
5. Cause the certified public accountant for the Corporation to prepare the final tax return for the Corporation and, after such return is filed, cause the certified public accountant to file a request for prompt assessment of all federal taxes due from the Corporation.
6. Cause the Corporation to file all other forms and documents required by the State of Washington and the Federal Government to dissolve and completely liquidate the Corporation in a manner which satisfies Section 331 et. seq. of the Internal Revenue Code.


BE IT FURTHER RESOLVED: that the officers of the corporation are hereby directed and authorized to take any and all actions consistent with the dissolution of the corporation and the resolutions set forth above.

There being no further business to come before the meeting, the meeting was adjourned.


SCOTT STUDER
Secretary of the Meeting

The undersigned consent to the holding of a combined meeting of the Board of Directors and Shareholders at the time and place specified in the foregoing minutes, and by signing this statement waive all formalities of notice and confirm and approve said minutes and ratify the acts therein taken.


SCOTT STUDER


KIM SCOTT


LORIANNE DEMARS

PLAN OF LIQUIDATION

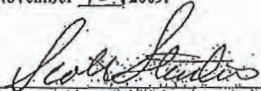
This Plan of Liquidation ("Plan") sets forth the terms and conditions under which STUDER'S FLOOR COVERING, INC., a Washington corporation (the "Company"), will wind up and liquidate its business and affairs.

1. **Dissolution.** The Company will dissolve under RCW 23B.14.020.
2. **Business.** After the effective date of the Company's articles of dissolution, the Company will continue its corporate existence but will not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) collecting its assets;
 - (b) disposing of its properties that will not be distributed in kind to its shareholders;
 - (c) discharging or making provision for discharging its liabilities;
 - (d) distributing its remaining property among its shareholders according to this Plan; and
 - (e) doing every other act necessary to wind up and liquidate its business and affairs.
3. **Timing.** The dissolution and liquidation will occur as promptly as possible and will be completed no later than June 30, 2010.
4. **Disposition of Properties.** The Company will dispose of the following properties before distributing its properties among its shareholders:
 - (a) Auto and truck equipment
 - (b) Accounts receivable
 - (c) Inventories
 - (d) Miscellaneous personal property

THE COMPANY WILL IN NO EVENT SELL ITS BUSINESS AS A "GOING CONCERN" AND WILL NOT ATTEMPT TO SELL ANY GOODWILL, CUSTOMER LISTS OR OTHER INTELLECTUAL PROPERTY.
5. **Reserve Fund.** The Company will establish a reserve fund in the amount of \$25,000.00 for any contingent or unknown liabilities of the Company. The reserve fund may be discontinued at such time as the board of directors deems that it is no longer necessary or desirable.
6. **Distributions.** After discharging or making provision for discharging its liabilities, the Company will distribute its properties among its shareholders according to their interests, provided that life insurance policies owned by the Company shall be assigned to the shareholder based upon their ownership in the Company in a manner that avoids a "transfer for value" of such policy under Internal Revenue Code Section 101(a)(2).

7. **Redemption of Shares.** The distributions set forth in this Plan are in complete redemption of all of the issued and outstanding shares of the Company.
8. **Complete Liquidation.** The distributions set forth in this Plan are intended to be treated as in complete liquidation of the Company. The Company will take such action that the Company's counsel deems necessary or appropriate to ensure that Sections 331 and 336 of the Internal Revenue Code apply to the distributions.

This Plan of Liquidation was adopted by the board of directors and shareholders of STUDER'S FLOOR COVERING, INC. on November 18, 2009.



Scott Studer, President

