

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type:

State of Minnesota by Ken Peterson,  
Commissioner of the Minnesota Department of  
Labor and Industry,

Court File No.

Plaintiff,

**COMPLAINT**

vs.

Lakeville Motor Express, Inc., LME, Inc., and  
Finish Line Express, LLC,

Defendants.

**INTRODUCTION**

This State of Minnesota, by Ken Peterson, Commissioner, Department of Labor and Industry, alleges that:

**JURISDICTION AND VENUE**

1. This Complaint is issued pursuant to Minn. Stat. § 513.47 (2016), which allows creditors, including state agencies, to bring an action for relief against a transfer or obligation under the Uniform Fraudulent Transfer Act, Minn. Stat. §§ 513.41-.51. The Commissioner, as the supervisor of the Minnesota Department of Labor and Industry, is a person with a claim under the Act.

2. Jurisdiction is proper pursuant to Minn. Stat. § 513.47, because Plaintiff supervises a government entity located in Minnesota and because two Defendants are Minnesota corporations and a third Defendant is a Minnesota Limited Liability Company.

3. Venue is proper in this case because a substantial portion of the events giving rise to this claim occurred in Ramsey County, Minnesota, and because both Defendants Lakeville Motor Express, Inc. and LME, Inc. have registered office addresses in Ramsey County. Jurisdiction is also proper because the Minnesota state agency bringing this action, the Minnesota Department of Labor and Industry ("DLI"), has its main office in Ramsey County.

### **PARTIES**

4. Complainant is the State of Minnesota by Ken Peterson, Commissioner of the Minnesota Department of Labor and Industry. The Commissioner is authorized pursuant to Minn. Stat. § 177.27 to enforce Minnesota's wage and hour laws. The Commissioner has commenced an enforcement action against defendants for the payment of back wages and liquidated damages under Minn. Stat. § 181.13. That enforcement action forms the basis of the Commissioner's claim under Minn. Stat. § 513.41.

5. Defendant Lakeville Motor Express, Inc. ("Lakeville") is a Minnesota corporation with a registered office address of 500 W. County Road D, New Brighton, Minnesota 55112 and a Principal Executive Office Address at 1975 Partridge Road, Roseville, Minnesota 55113. Lakeville has been allegedly owned by Kevin Deming ("Deming") since approximately 2014, but the Minnesota Secretary of State lists no transfer of shares to Deming.

6. Defendant LME, Inc. ("LME") is a Minnesota corporation with a registered office address of 500 W. County Road D, New Brighton, Minnesota 55112. LME is owned by Roger Wilsey ("Wilsey") and Shari Taylor Wilsey ("Taylor Wilsey"). Wilsey and Taylor Wilsey previously owned Lakeville, beginning in 2009.

7. Defendant Finish Line Express, LLC ("Finish Line") is a Minnesota corporation with a registered office address of 23540 Osmium St. NW, St. Francis, Minnesota 55070. Finish

Line is owned by Mike and Nancy Sanford and Travis and Jennifer Hoeschen and was registered with the Minnesota Secretary of State on May 5, 2016.

### **FACTUAL BACKGROUND**

#### **A. Defendant Companies Are Interrelated.**

8. Upon information and belief, LME, Inc. was purchased by Wilsey and Taylor Wilsey in 2009. At that time, LME operated synonymously with the name "Lakeville Motor Express." When Wilsey and Taylor Wilsey purchased LME, Inc., they also purchased Lakeville Motor Express, Inc.

9. Upon information and belief, Deming claims to own Lakeville Motor Express, Inc. However, the Commissioner can find no evidence that the shares of Lakeville were ever transferred from Wilsey and Taylor Wilsey to Deming. Deming is related to Wilsey and Taylor Wilsey by marriage.

10. Upon information and belief, Mike Sanford and Travis Hoeschen were both high-ranking former employees of Lakeville Motor Express or LME. Mike Sanford is the former Vice President of Operations at LME or Lakeville. Travis Hoeschen is a former terminal manager at LME or Lakeville.

11. Travis Hoeschen received wages from both LME, Inc. and Lakeville in the third quarter of 2016, after the founding of Finish Line. As a person in control at both LME, Inc. and Lakeview prior to, and potentially after forming Finish Line, Travis Hoeschen is an insider pursuant to Minn. Stat. § 513.41(7)(ii)(C).

12. Mike Sanford received wages from Lakeville through 2012, and then began being paid by LME through the third quarter of 2016, after the founding of Finish Line. As an officer at either LME or Lakeville, Mike Sanford is an insider pursuant to Minn. Stat. § 513.41(7)(ii)(B).

13. Deming received wages from both LME and Lakeville in 2014-15 and received wages from Lakeville in 2012-13 and 2016. As the CEO of Lakeville and a relative of LME's owners, Deming is an insider pursuant to Minn. Stat. § 513.41(7)(A-B, F).

14. Wilsey received wages from Lakeville from 2004 through 2014. Beginning in 2015, Wilsey received wages from LME. As an owner of LME, former owner of Lakeville, and relative of Deming, Wilsey is an insider pursuant to Minn. Stat. § 513.41(7)(A-B, F).

15. Taylor Wilsey, as an owner of LME, the wife of Wilsey, and as a relative of Deming, is an insider pursuant to Minn. Stat. § 513.41(7)(A, F).

16. Upon information and belief, LME appears to be operating in concert with Lakeville, is indistinguishable from it as a corporate entity, and has failed to observe corporate formalities.

17. Upon information and belief, Finish Line appears to be operating in concert with Lakeville and LME, is indistinguishable from Lakeville and LME as a corporate entity, and has failed to observe corporate formalities.

18. Upon information and belief, Lakeville is or was made to be insufficiently capitalized to meet its payroll obligations, as discussed below.

19. Upon information and belief, Lakeville is or was insolvent on or around the time when it began dissipating assets, including but not limited to its trucks and trailers.

20. Upon information and belief, Lakeville has siphoned funds and dissipated assets to LME and Finish Line, as discussed below.

**B. The Commissioner Has A Claim Against Lakeville, LME, And Finish Line.**

21. On November 19, 2016, employees arrived at Lakeville's premises in Roseville, Minnesota to discover that its doors were padlocked.

22. On November 23, 2016, almost 100 Lakeview employees did not receive their regular paychecks.

23. Employees were informed by Deming that “effective [November 19] Lakeville Motor Express Inc. shall cease all operations, close its business office and terminate all employees. Lakeville is out of cash and has no reserves to pay any amounts owed to employees or vendors at this time.”

24. At the time Lakeville closed, it owed employees approximately \$185,130.08 in back wages.

25. Employees subsequently filed wage claims with DLI, which initiated an investigation.

26. DLI issued a Compliance Order on December 12, 2016 and an Amended Compliance Order (“Amended Order”) on December 21, 2016. In the Amended Order, DLI directed Lakeville, LME, and Finish Line to jointly pay \$185,130.08 in back wages for violations of Minn. Stat. § 181.13, \$185,130.08 in liquidated damages pursuant to Minn. Stat. § 177.27, subd. 7, and \$154,405.09 in statutory penalties pursuant to Minn. Stat. § 181.13.

27. DLI may be entitled to statutory penalties under Minn. Stat. § 177.27 if it successful in its administrative enforcement action against Lakeville, LME, and Finish Line.

**C. Upon Information And Belief, Lakeville Has Attempted To Dissipate Its Assets Fraudulently To Avoid Paying Employee Wages.**

28. Upon information and belief, after Lakeville closed, its terminal managers and supervisors began working for Finish Line.

29. Upon information and belief, Lakeville began dispersing its assets before November 19, 2016, when it locked out employees and continued dispersing its assets after

November 19. Particularly, Lakeville began selling its trucks and trailers at severely discounted prices. The trailers sold bore markings of both Lakeville and LME.

30. Upon information and belief, Lakeville purchased several new trucks from Rihm Kenworth in 2016 prior to dispersing its assets. Those trucks have been observed at Finish Line since Lakeville locked its employees out.

31. Upon information and belief, Lakeville cell phones have been transferred to employees of Finish Line since Lakeville locked its employees out.

32. Upon information and belief, the Commissioner alleges that Lakeville is likely dispersing other assets, potentially to LME and Finish Line.

33. Upon information and belief, a trailer bearing Lakeville's markings will be auctioned at Dailey Realty & Auction Services, LLC. The trailer has already been sold by Lakeville and currently belongs to a company, Aircraft Demolition, LLC, that has declared bankruptcy, demonstrating that Lakeville may be dispersing its assets outside of LME and Finish Line.

## **COUNT I**

### **AVOIDANCE OF FRAUDULENT TRANSFERS MADE WITH ACTUAL INTENT TO DEFRAUD CREDITORS (MINN. STAT. § 513.44)**

34. The Commissioner re-alleges the foregoing paragraphs and incorporates those allegations by reference. Section 513.44 of Minnesota Statutes provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any creditor.

35. Upon information and belief, Lakeville, LME, and Finish Line are acting in concert to dissipate Lakeville's assets and avoid satisfying DLI's claim.

36. Upon information and belief, the sale of assets by Lakeville to LME, Finish Line and others were made with actual fraudulent intent because:

- a. The transfer of assets from Lakeville to LME and Finish Line were to insiders;
- b. Lakeville and insiders remain in possession or control of the property transferred;
- c. The transfer of the assets has occurred in secret;
- d. On, before, or around the time when the transfers were made, employees made demands for the unpaid wages to Lakeville. Those unpaid wages are now the subject of an administrative action taken by the Commissioner;
- e. Lakeville claims to have no assets to pay back wages;
- f. Lakeville has concealed assets by transferring them to LME and Finish Line;
- g. The value of the consideration received by Lakeville for transferred assets was not commensurate with the transferred assets; and
- h. Lakeville was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

#### **RELIEF**

The District Court has the authority to issue any relief authorized by Minn. Stat. § 513.47. The Commissioner, therefore, prays that the Court issues its findings of fact and conclusions of law and grant the following relief: