

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE  
HAYWOOD COUNTY 08 AUG 12 AM 10:13 DISTRICT COURT DIVISION 08-CVD-00768

HAYWOOD COUNTY C.S.C.	
ETON PROPERTIES CORP., A Nevada Corporation, Plaintiff, vs. CMKM DIAMONDS, INC., A Nevada Corporation, Defendant.	DEFENDANT'S ANSWER AND COUNTERCLAIM

COMES NOW, Defendant CMKM Diamonds, Inc. ("CMKM") and responds to the allegations of Plaintiff's Complaint as follows:

**FIRST DEFENSE**

As a First Defense, the Defendants respond to the numbered allegations of the Complaint as follows:

**Parties, Jurisdiction, and Factual Background**

1. Admitted.
  2. Admitted.
  3. Denied. The other lawsuit speaks for itself.
  4. Admitted.
  5. Admitted.
  6. Admitted but said pleading seeks other properties in addition to the properties described which would include the subject property.
  7. Admitted
  8. Admitted as to 6.307 acres but Denied as to 22.006 acres
  9. This paragraph sets forth conclusions of law to which a response is not necessary. To the extent a response is deemed necessary, denied.
  10. This paragraph sets forth conclusions of law to which a response is not necessary. To the extent a response is deemed necessary, denied.
  11. Denied.
- First Claim for Relief**
12. The responses to the allegations set forth in paragraphs 1 through 11 above are incorporated herein by reference.
  13. It is admitted that there is an actual controversy between the Plaintiff related to the Defendant's filing of a Lis Pendens Notice but it is expressly denied that Plaintiff did not have legal authority to do so in the office of the Clerk of Superior Court of Haywood County, North Carolina.

### **Second Claim for Relief**

14. The responses to the allegations set forth in paragraphs 1 through 13 above are incorporated herein by reference.
15. Admitted.
16. Admitted.
17. This paragraph sets forth conclusions of law to which a response is not necessary. To the extent a response is deemed necessary, it is admitted that Defendant's claim is a cloud on Plaintiff's title. It is Denied that Defendant's claim is not valid in law or in fact.
18. Admitted.

### **Third Claim for Relief**

19. The responses to the allegations set forth in paragraphs 1 through 18 above are incorporated herein by reference.
20. Denied
21. Admitted
22. Admitted
23. Admitted
24. Denied
25. Denied
26. This paragraph sets forth conclusions of law to which a response is not necessary. To the extent a response is deemed necessary, denied.
27. Denied
28. Denied
29. Denied
30. Denied
31. Denied

### **SECOND DEFENSE**

As a Second Defense, the Defendant asserts the defense of equitable esoppel in that Plaintiff knew that the property made the subject of this suit was purchased with "ill gotten gains" received from the illegal sale of Defendant's common stock. Thus, Plaintiff is barred from any recovery based on its pleadings.

### **SETOFF AND COUNTERCLAIM**

As a further defense and as a setoff and counterclaim, Jones alleges that:

#### **Counterclaim**

1. Defendant-Counter Plaintiff CMKM Diamonds, Inc. (CMKM) is a Texas corporation having its principal office and place of business in Tyler, Texas.

2. On information and belief, the Plaintiff-Counter Defendant Eton Properties Corp. (**Eton**) is a Nevada Corporation having its principal office and place of business in Las Vegas, Nevada.
3. On information and belief John Edwards formed **Eton** as a shell corporation to facilitate money laundering and to have a vehicle to distribute proceeds received from the illegal sale of **CMKM** stock. In 2002, John Edwards facilitated a merger between Cybermark International, Inc. and several companies resulting in the formation of **CMKM**. From 2002 through 2006, Edwards and other insiders of **CMKM** concocted various schemes to receive shares of common stock from **CMKM** without paying for such stock or providing services.
4. On numerous occasions in 2003 and 2004, John Edwards obtained stock certificates from **CMKM** insiders or the **CMKM** transfer agent which had names of third parties that were the apparent owners of **CMKM** stock. Mr. Edwards would go to his local Wells Fargo Bank and obtain a gold medallion signature stamp of his signature on multiple stock powers. Mr. Edwards purposely adopted a signature that was a wavy line in lieu of a legible signature. John Edwards would then write over his signature and contort the scribbling so that the name resembled the name of the person found on the stock certificate. This method was used to have the stocks then transferred into companies under his name.
5. One of the companies used to perpetrate this fraud was **Eton**. A trading account was opened at NevWest Securities in Las Vegas, Nevada by John Edwards for the sole purpose of liquidating these stocks and distributing these proceeds to other entities.
6. **Eton** took the proceeds or “ill gotten gains” and acquired properties throughout the United States. One of the properties purchased was the property made the subject of the Lis Penders made the basis of this suit.
7. Eton originally purchased the 28.313 acre tract off of SR 1206, Julie Noland Drive in Waynesville, N.C. with funds derived from Eton’s illegal activities. On January 12, 2006, Eton sold off 6.307 acres of this tract to The Senior Residences at Lake Junaluska, LP for \$518,175 with knowledge that ownership of the original tract of 28.313 was acquired with “ill gotten gains”.

**FIRST CAUSE OF ACTION**  
**(Conversion against Counter-Defendant)**

8. **CMKM** realleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates the same herein as though set forth in full.
9. **CMKM** owned or was entitled to possession of millions of dollars of stock which was wrongly converted from **CMKM**.
10. **Eton**, through the acts of its agents, servants and employees, improperly exercised dominion or assumed control over these illegally obtained funds and have applied the funds to their own personal use, including use of the funds to purchase real property and pay other expenses to the detriment of **CMKM**.
11. **CMKM** has been damaged by **Eton’s** wrongful acts in an amount to be proven at trial but which exceeds \$10,000.

**SECOND CAUSE OF ACTION**  
**(Constructive Trusts against Counter-Defendant)**

12. **CMKM** realleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates the same herein as though set forth in full.
13. **Eton**'s improper acts as set forth herein resulted in the receipt by defendant of cash, stocks and other investments. **CMKM** requests the Court to exercise its equitable powers and order that all assets received by defendant from their wrongful acts and the resulting investments from those assets be awarded to **CMKM**. All assets, including but not limited to the 22.06 acres made the subject of this Lis Pendens received by **Defendants** through these illegal acts should be deemed held for **CMKM** as the results of a constructive trust.
14. **CMKM** has been damaged by **Eton**'s wrongful acts in an amount to be proven at trial but which exceeds \$10,000.

**THIRD CAUSE OF ACTION**  
**(Unjust Enrichment)**

15. **CMKM** realleges each and every allegation contained in the preceding paragraphs of this Complaint and incorporates the same herein as though set forth in full.
16. **Eton** enriched itself at the expense of **CMKM** by engaging in illegal activities and obtaining corporate stock of **CMKM** to which it was not entitled. Additionally **Eton** traded billions of shares of **CMKM** company stock and were unjustly enriched by the receipt of funds from the sale of such stock.
17. **CMKM** was the rightful recipient of the funds that were taken by **Eton**, and the unjust enrichment of **Eton** has come at **CMKM**'s expense.
18. **Eton** should be made to disgorge all benefits derived from unjustly owning, holding or disposing of company assets. **Eton** should be made to return all funds they received directly from the company or as proceeds from the sale of company stock or other assets. This would include the \$518,175 received by **Eton** from the sale of the 6.307 acre tract on January 12, 2006.
19. It would be contrary to the fundamental principals of equity and justice to allow **Eton** to retain the benefit and use of **CMKM**'s assets or the fruits of illegally obtained funds.
20. As a direct and proximate result of the joint actions of the **Eton**, **CMKM** has suffered damages in excess of \$10,000.
21. As a further direct and proximate result of the actions of the **Eton**, **CMKM** has been required to retain attorneys to prosecute this action and **CMKM** is entitled to recover attorneys' fees and costs of suit.

**FOURTH CAUSE OF ACTION**  
**(Alter Ego/Piercing The Corporate Veil)**

22. **CMKM** realleges each and every allegation contained in the preceding paragraphs and incorporates the same herein as though set forth in full herein.

23. John Edwards transacted business in the name of **Eton**. As officers or defacto officers of the corporation, **Eton** should not be allowed to use the shield normally afforded to officers and stockholders of the corporation in order to perpetuate criminal activity. Such corporate veil should be disregarded in order to avoid a fraud or injustice to **CMKM**.

**DAMAGES**

24. As a direct and proximate result of the occurrence made the basis of this lawsuit, and **Eton's** acts as described herein, **CMKM** was caused to suffer serious financial losses.

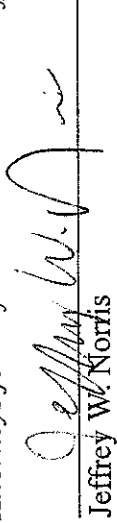
25. As a direct and proximate result of the occurrence made the basis of this lawsuit, **CMKM** has incurred the following actual damages:

- A. Financial losses to **CMKM** as set forth above; and
  - B. Attorneys' fees incurred by **CMKM**.
26. By reason of the above, **CMKM** has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

WHEREFORE, the Defendants pray that:

- A. The Complaint filed by Plaintiff/Counter Defendant be dismissed with prejudice and the Plaintiff/Counter Defendant have and recover nothing;
- B. The costs of this action be taxed against the Plaintiff/Counter Defendant;
- C. Defendant/Counter Plaintiff have and recover title to the 22.086 acres as a setoff and counterclaim against the Plaintiff/Counter Defendant;
- D. For the Defendants to be awarded their reasonable attorneys fees pursuant to N.C. Gen. Stat. §44A-35 or as otherwise provided by law; and
- E. The Defendant/Counter Plaintiff be granted such other and further relief as the Court may deem just and proper.

Jeffrey W. Norris & Associates, PLLC  
*Attorneys for Defendant/Counter Plaintiff*

  
By: Jeffrey W. Norris

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(828) 452-2221

Date: August 12, 2008

FILED

CERTIFICATE OF SERVICE

08 AUG 12 AM 10:18

I hereby certify that the foregoing has this date been served upon the parties by hand delivering a copy of the same addressed to counsel as follows:

BY \_\_\_\_\_

James W. Kirkpatrick, III., Esquire  
James W. Kirkpatrick, III., P.A.  
37 Branner Avenue  
Waynesville, North Carolina 28786

  
\_\_\_\_\_  
Jeffrey W. Norris

Date: August 12, 2008