

FILED  
 06-04-2024  
 Clerk of Circuit Court  
 Winnebago County, WI  
 2024CV000519  
 Honorable John A.  
 Jorgensen  
 Branch 5

STATE OF WISCONSIN      CIRCUIT COURT      WINNEBAGO COUNTY

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BAYLAND BUILDINGS, INC.  
 3323 Bay Ridge Court  
 Oneida, WI 54155

Plaintiff,

-vs-

Classification Code: 30404

FOX VALLEY PRO BASKETBALL, INC.  
 2370 State Road 44, Suite A  
 Oshkosh, WI 54902,

Case No. \_\_\_\_\_

GREGORY PIERCE  
 1156 Westwind Drive  
 Neenah, Wisconsin 54956,

TWO WILLOWS, LLC  
 3243 French Road  
 De Pere, WI 54115,

CINTAS CORPORATION  
 6800 Cintas Blvd.  
 Mason, OH 45040,

and

STATE OF WISCONSIN  
 17 W. Main Street  
 PO Box 7857  
 Madison, WI 53707

Defendants.

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**SUMMONS**

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THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiff, Bayland Buildings, Inc., has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, Defendant must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Winnebago County Courthouse, 415 Jackson Drive, Oshkosh, Wisconsin 54903, and to Law Firm of Conway, Olejniczak & Jerry, S.C., Plaintiff's attorneys, whose address is 231 South Adams Street, P.O. Box 23200, Green Bay, Wisconsin, 54305-3200. You may have an attorney help or represent you.

If you do not provide a proper answer within the time period stated above, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 4<sup>th</sup> day of June, 2024.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.  
Attorneys for Bayland Buildings, Inc.

*Electronically filed by Steven J. Krueger*

By: \_\_\_\_\_

Steven J. Krueger, State Bar No. 1064350

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**COMPLAINT**

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The Plaintiff, Bayland Buildings, Inc., by its attorneys, the Law Firm of Conway, Olejniczak & Jerry S.C., alleges and shows the Court the following:

**THE PARTIES**

1. Plaintiff, Bayland Buildings, Inc. (“Bayland”), is a domestic corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 3323 Bay Ridge Court, Green Bay, Wisconsin, 54155.

2. Bayland is a construction company that specializes in commercial and industrial construction projects throughout the United States and Canada.

3. Upon information and belief, Defendant Fox Valley Pro Basketball, Inc. (“FVPB”), is a domestic corporation organized and existing under the laws of the State of Wisconsin with its principal place of business located at 2370 State Road 44, Suite A Oshkosh, Wisconsin, 54902.

4. Upon information and belief, FVPB is in the business of operating an event arena, located at 1212 S. Main St., Oshkosh, Wisconsin 54902, capable of hosting sporting and other entertainment events (the “Arena”).

5. Upon information and belief, Defendant, Gregory Pierce, is a resident of Wisconsin and residing at 1156 Westwind Drive, Neenah, Wisconsin 54956 (“Pierce”).

6. Upon information and belief, Pierce is the President of FVPB and manages the day-to-day operations of FVPB.

7. Upon information and belief, Defendant, Two Willows, LLC, is a domestic limited liability company organized and existing under the laws of the State of Wisconsin with its principal place of business located at 3243 French Road, De Pere, Wisconsin, 54115.

8. Upon information and belief, Defendant, Cintas Corporation, is a Washington corporation with its principal place of business located at 6800 Cintas Blvd., Mason, OH 45040.

9. Defendant, State of Wisconsin is, upon information and belief, a sovereign entity and body politic with an office located at 17 W. Main Street, Madison, Wisconsin 53707.

### JURISDICTION AND VENUE

10. This Court has jurisdiction over FVPB pursuant to WIS. STAT. § 801.05(1)(c) because FVPB is a Wisconsin corporation.

11. This Court has jurisdiction over Pierce pursuant to WIS. STAT. § 801.05(1)(b) because Pierce is a natural person domiciled in the State of Wisconsin.

12. Venue is proper in the Wisconsin Circuit Court located in Winnebago County, Wisconsin, pursuant to Section 801.50(2), Wis. Stats., as it is the county in which the claim arose and is the county lawfully designated by the Plaintiff, Bayland.

### GENERAL ALLEGATIONS COMMON TO ALL CLAIMS

13. Bayland accepted a promissory note from FVPB (“Secured Promissory Note”) providing that FVPB would pay the amount owed at that time, which equaled \$13,155,307.33, by or before the maturity date of August 31, 2018. A copy of the Secured Promissory Note, dated May 25, 2018, is attached hereto and incorporated herein as **Exhibit A**.

14. FVPB filed for Chapter 11 Bankruptcy protection on August 19, 2019 in the Eastern District of Wisconsin (E.D. Wis. Bankr. 19-28025).

15. A Chapter 11 Plan of Reorganization was proposed by FVPB and approved by the Bankruptcy Court on or about August 26, 2020 (the “Chapter 11 Plan”). A copy of the Chapter 11 Plan is attached hereto and incorporated herein as **Exhibit B**.

16. As part of the Chapter 11 Plan, FVPB and Bayland agreed to amend the Secured Promissory Note, as reflected in the First Amendment to Secured Promissory Note (the “Amended Note”) dated August 17, 2020. A copy of the Amended Note is attached hereto and incorporated herein as **Exhibit C**. The Secured Promissory Note and Amended Note shall be collectively referred to herein as the “Note.”

17. As security for repayment of the Note, FVPB executed a Collateral Assignment of Land Lease on May 25, 2018 (“Collateral Assignment”) and a Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 25, 2018 (“Mortgage”) in favor of Bayland for property located at 1212 S. Main St., Oshkosh, Wisconsin 54902, capable of hosting sporting and other entertainment events (the “Arena”). A copy of the Collateral Assignment is attached and marked as **Exhibit D** and a copy of the Mortgage is attached and marked as **Exhibit E**.

18. The Mortgage granted Bayland an interest in the Arena and all assets of FVPB (“Collateral”).

19. In addition to the Collateral Assignment and Mortgage, Pierce executed a personal guaranty dated May 25, 2018 for the benefit of Bayland (“Personal Guaranty”), which irrevocably and unconditionally guaranteed “the full and timely payment and performance” of FVPB’s obligations under the Note. A copy of the Personal Guaranty is attached hereto and incorporated herein as **Exhibit F**.

20. FVPB and Pierce failed to comply with their obligations under the Note by, among other things, failing to make required monthly payments and failing to pay real estate taxes.

21. FVPB has not made a payment to Bayland since March of 2024 and has consistently been delinquent with payments.

22. FVPB is currently delinquent on its 2023 real estate tax obligation and owes the City of Oshkosh, upon information and belief, at least \$625,575.69 as of the date of this filing.

23. FVPB has failed and refused to provide Bayland with Financial Reports pursuant to the terms of the Amended Note.

24. Pursuant to the Chapter 11 Plan, “If [FVPB] (i) fails to make any installment to Bayland within 15 days after it is due; (ii) commits waste as the [Arena], including the failure to pay real estate taxes or keep the [Arena] insured, or (iii) materially defaults in other obligations to Bayland under the Plan and does not cure the default within 30 days after Bayland gives notice of the default, the entire amount due Bayland shall be due and payable to Bayland. In the event of such an uncured default, and at the sole election of Bayland, Bayland shall be able to foreclose its mortgage and obtain the appointment of a receiver, and injunction under the Plan shall not apply to Bayland’s collection efforts.”

25. Bayland has continuously notified FVPB of its default under the Note. Copies of default notices that were sent to FVPB by Bayland are collectively attached hereto as **Exhibit G**.

26. FVPB remains in default of the Note.

27. At the time of this submission, FVPB owes Bayland an outstanding balance of Twelve Million Four Hundred Seventeen Thousand Four Hundred Sixty-four and 82/100 Dollars (\$12,417,464.82).

28. Pursuant to, among other things, the Note, FVPB and Pierce are obligated to pay Bayland’s attorney fees and all costs incurred by Bayland as a result of the default.

29. Bayland has incurred attorneys’ fees and other costs resulting from FVPB’s breach of contract and attempts to obtain payments from FVPB, which are not included in the balance set forth above.

30. Defendant, Two Willows, LLC may claim an interest in the Collateral by virtue of a Leasehold Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing.

31. The interest of Two Willows, LLC is junior and subordinate to the interest of Bayland.

32. Defendant, Cintas Corporation, may claim an interest in the Collateral by virtue of a Judgment lien stemming from Winnebago County Case No. 23CV810.

33. The interest of Cintas Corporation is junior and subordinate to the interest of Bayland.

34. Defendant, State of Wisconsin, may claim an interest in the Collateral by virtue of a Unemployment Tax Lien stemming from Winnebago County Case No. 23UC100.

35. The interest of the State of Wisconsin is junior and subordinate to the interest of Bayland.

36. To date, FVPB has demonstrated an inability to pay Bayland the amount owed pursuant to the Note.

37. Upon information and belief, in addition to the default under its obligation to Bayland, FVPB is also in default of the Development Agreement with the City of Oshkosh, its obligations to the Milwaukee Bucks, LLC, and its obligations to other creditors.

38. Waste is being committed by FVPB.

#### **COUNT I – RECEIVERSHIP**

39. Bayland restates paragraphs 1 – 38 as if fully set forth herein.

40. FVPB has failed to make payments to Bayland when due, has failed to meet its obligations to the City of Oshkosh, and has failed to meet its obligations to the Milwaukee Bucks, LLC.

41. By its actions, FVPB has demonstrated an inability to (a) pay obligations due to Bayland and other creditors, or (b) refinance or raise additional capital to pay such obligations now or in the future.

42. Upon information and belief, FVPB is insolvent or in imminent danger of insolvency.

43. Pursuant to the terms of the Mortgage, upon the filing of a complaint to foreclose the Mortgage, “the court in which such complaint is filed **shall**, upon petition by Mortgagee [i.e., Bayland], appoint a receiver for the Premises in accordance with Wisconsin law” (emphasis added) and “[s]uch appointment may be made either before or after sale, without notice...”.

44. By this action, Bayland seeks the immediate appointment of Paul Swanson, Esq., 107 Church Avenue, Oshkosh, Wisconsin 54901 (“Receiver”) as Receiver of FVPB (the “Receivership”), and requests that the Receiver have control over all property of FVPB, both real and personal, tangible and intangible, of whatever description and location, including, without limitation, the Collateral, all of FVPB’s cash on hand or on deposit with a financial institution, all accounts receivable, claims, demands and causes of action, liquidated and unliquidated, together with all collateral or security therefore, all machinery, equipment, fixtures, furnishings, vehicles, supplies, inventory, contract rights, general intangibles, patents, trademarks, copyrights, trade names, licenses, intellectual property, books and records, customer lists and any and all other assets owned by FVPB (collectively, the “Property”), all of the Property to be held, administered and disposed of by Receiver in trust and upon the terms and conditions of the Court’s Order, for the benefit of all of the creditors of FVPB, the Receiver having all of the usual powers vested in him pursuant to Chapter 128 of the Wisconsin Statutes, and the laws applicable thereto, including, but not limited to:

- a. Authority to take possession of the Property and notify all creditors of FVPB of the Receivership and thereafter to liquidate the Property upon notice, free and clear of all liens, claims and encumbrances, with liens, claims and encumbrances

attaching to the proceeds of the sale, through public or private proceedings in a commercially reasonable manner, subject to the prior consent of Bayland, to the extent it is subject to its security interests, and subject to the prior approval of this Court;

- b. Authority to commence or continue litigation or other proceedings regarding any claims or causes of action now existing in favor of FVPB or which arise during the course of the Receivership and inure to the benefit of the estate;
- c. Authority to enforce, collect, settle, compromise, sell or dispose of any accounts receivable, rents receivable, claims, demands and causes of action existing in favor of FVPB, as the case may be, and to settle and compromise any and all claims against FVPB, as the case may be;
- d. Authority to employ such help and incur such reasonable expenses as he may deem necessary to properly carry out the Receivership and to employ the services of attorneys, consultants, accountants, property managers, brokers, investment bankers, appraisers, liquidators and other professionals and independent contractors when it appears to him necessary and advisable to do so;
- e. Authority to retain appropriate brokers/consultants to market the Property; and
- f. Authority to execute, acknowledge and deliver all agreements, leases, contracts, bills of sale, assignments, releases, deeds, conveyances, transfers and other documents necessary and proper to carry out the Receivership.

45. As further support of its request for the immediate appointment of a Receiver, the Affidavit of Chad Calmes, has been filed contemporaneously herewith in support of Bayland's

*Ex Parte* Motion for Temporary Injunction/Temporary Restraining Order and Motion for Appointment of Receiver and is incorporated herein by reference.

**COUNT II - BREACH OF CONTRACT**  
**(Against Fox Valley Professional Basketball, Inc.)**

46. Bayland restates paragraphs 1 – 45 as if fully set forth herein.

47. FVPB had and continues to have a contractual duty to make timely payments to Bayland under the Note.

48. FVPB has failed to make payments to Bayland and is in material breach of its contractual obligations.

49. As a result of FVPB's breach of its obligations, and considering Bayland's compliance with any of its obligations and satisfaction of any conditions therein, FVPB owes Bayland, and Bayland is entitled to a money judgment in the amount of Twelve Million Four Hundred Seventeen Thousand Four Hundred Sixty-four and 82/100 Dollars (\$12,417,464.82), plus attorneys' fees and costs that have accrued and will continue to accrue, plus all other fees, costs, charges, penalties, and expenses allowed under the Note, the Chapter 11 Plan and related documents.

**COUNT III - BREACH OF CONTRACT**  
**(Against Greg Pierce)**

50. Bayland restates paragraphs 1 – 49 as if fully set forth herein.

51. Under the terms of the Personal Guaranty, Pierce promised to irrevocably and unconditionally make full payment of the amount owed to Bayland under the Note upon FVPB's default, plus costs of collection, interest and attorneys' fees.

52. Although FVPB defaulted and continues to be in default of the Note, Pierce has failed to make timely payment despite demand by Bayland.

53. As a result, Pierce is in material breach of his contractual obligations owed to Bayland.

54. Pierce owes Bayland, and Bayland is entitled to a money judgment in the amount of Twelve Million Four Hundred Seventeen Thousand Four Hundred Sixty-four and 82/100 Dollars (\$12,417,464.82), plus attorneys' fees and costs that have accrued and will continue to accrue, plus all other fees, costs, charges, penalties, and expenses allowed under the Personal Guaranty and related documents.

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**COUNT IV – FORECLOSURE**

**(Against Fox Valley Professional Basketball, Inc. and Two Willows, LLC)**

55. Bayland restates paragraphs 1- 54 as if fully set forth herein.

56. Defaults under the Mortgage have occurred and, furthermore, the Mortgage provides that upon a default thereunder, Bayland is entitled to foreclose the Mortgage.

57. By reason of the default, and pursuant to applicable law and the terms of the Mortgage, Bayland is entitled to foreclose the Mortgage and Bayland is entitled to a judgment of foreclosure on the Mortgage related to the Arena.

**COUNT V – REPLEVIN**

**(Against Fox Valley Professional Basketball, Inc. and Two Willows, LLC)**

58. Bayland restates paragraphs 1-57 as if fully set forth herein.

59. Pursuant to the Mortgage, upon default by FVPB, Bayland is entitled to the immediate possession of the Collateral.

60. FVPB is wrongfully detaining the Collateral by failing and refusing to turn it over to Bayland.

61. Upon information and belief, the tangible Collateral is located within the Arena.

62. The value of the Collateral is unknown, but, upon information and belief, is less than the amount of the debt it secures.

63. No proceedings have been had at law or otherwise for the recovery of the sums due under the Note and Mortgage.

64. Bayland is still the lawful owner and holder of the Note and Mortgage which have not been sold or assigned.

65. Continued possession and use by FVPB will diminish the value of the Collateral and substantially impair the value of Bayland's security interest in the Collateral.

WHEREFORE, Bayland requests an Order of Court as follows:

A. Issuing and *ex parte* Injunction pursuant to WIS. STATS. §§ 813.02(1) and 813.025(2), restraining FVPB, its officers, directors and agents from disposing of or removing any assets pending a hearing on this matter.

B. For an Order Appointing Paul Swanson, Esq. as Receiver of all the assets of FVPB.

C. For finding that FVPB and Pierce are indebted to Bayland for goods and services delivered by Bayland, but not paid for by FVPB or Pierce;

D. For an immediate money judgment against FVPB and Pierce, jointly and severally, for the full amount due to Bayland, with any interest;

E. Entering a decree of foreclosure of the Mortgage to satisfy the debt owed to Bayland, for the sale any and all collateral set forth in the Security Agreement related thereto by the Winnebago County Sheriff subject to a six-month redemption period, with the proceeds applied to the debt owed by FVPB and Pierce to Bayland as provided by law and the terms of the

Note, and to bar and foreclose the Defendants, and all persons claiming under them, from any interest in the Arena lease or the collateral, except the right to redeem as provided by law;

F. For a judgment of replevin granting the right to recover the Collateral and to sell the Collateral pursuant to WIS. STAT. § 409.

G. For an award of Bayland's costs, expenses and actual attorneys' fees;

H. For such other and further relief as the Court deems just and equitable.

Dated this 4<sup>th</sup> day of June, 2024.

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LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.  
Attorneys for Bayland Buildings, Inc.

*Electronically filed by Steven J. Krueger*

By: \_\_\_\_\_

Steven J. Krueger, State Bar No. 1064350

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