

Firm ran out of cash at start of sales

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As of June 1, the city claims, the company owes \$481,429 plus court and lawyers' fees and interest. Interest on all the loans continues to accrue, the city says in its suit.

The suit says Embark owes the city \$400,000 for the first loan plus \$475 and costs per month for required jobs not filled. The company also needs to pay the city \$81,815 for the roof work at the Inlow building, plus \$190 and costs per month for required jobs not filled, the city claims.

The two mortgage loans were given to Embark based on the expectation they would create a certain number of jobs per year. The suit says Embark promised to create 30 jobs its first year. The wording in the first city loan requires the company to pay \$25 per month for every projected job not created. The second city loan requires the company to pay \$10 per month for every job not created.

City Attorney John Gatz said after a judgement of foreclosure on the security interest and real estate, Embark will have to pay the city and state the money it owes in 10 days or there could be a public sale of the real estate and the company's personal property, including computer programs, business machinery, furniture, data bases and the like. He said the city will have to pay the state \$200,000 of any money it generates from selling the building.

The Thomas County Economic Development Alliance also provided loans to Embark, said Director Rick Patrick. The agency gave the company one loan and got Embark another loan through Network Kansas, a group the alliance gave Embark \$55,000 through the Economic Development Alliance loan fund and Network Kansas provided the company with \$45,000.

Embark has been looking for money for several months now. The investment climate is difficult right now, Brouthers said, and that has slowed his search for money.

He said he was able to raise \$2.5



Thomas County Commissioner Paul Steele chatted with Michelle Mercer, chief operating officer for Embark Health from Daytona Beach, Fla., during the company's opening-day reception in Col-

by last February. Michael Brouthers, chief executive officer of Embark, can be seen in the background at far right.

VERA SLOAN/Colby Free Press

million in private capital in 2008 and 2009, but he hasn't been able to raise anything this year despite having a more to offer than before, including a ready-to-run computer system. He said people are not optimistic about the economy and are scared to spend money.

A former advisor, Gregory Olinyk, disagreed, saying there is always room for good deals.

"It's tough time, but people are still raising money," he said.

Bill Behnke, chief development officer for Embark, said there's just not that much money out there

right now. "Few venture capitalists are investing in start-up companies right now," Behnke said.

He said the two main reasons companies fail is lack of money and bad management. He said in Embark's case, the money just ran out.

Behnke added that Embark raised the majority of its money after Olinyk had been let go.

Olinyk said Frederick Lane, vice chairman of the financial firm Raymond James, made a "contingent commitment" to investing \$2

to \$4 million in Embark without determining whether it would be using a private group that he could personally put together or the venture arm of his firm. He said Lane's commitment depended on his satisfaction with a "due diligence" review of the company and its business plan.

Lane, reached by phone, said due diligence meant asking questions like "how much will people pay? What are the risks? What is the competition? Who are the customers?"

Olinyk said, however, that

Lane's firm would not invest in the deal if he wasn't involved. He said by firing him, Brouthers missed his chance to borrow money through Lane.

Lane said he never got to know the management at Embark, but he would have had a keener interest in the company if Olinyk had played a more central role. He called the company's concept "compelling."

Later in an e-mail, he reiterated he was "keenly interested" in exploring the business concept.

"I liked the ideas presented by

Greg," Lane said. "The target markets identified were large and growing; the recurring monthly revenue model is very attractive; and large health-care companies and financial service companies would want to market this service to customers, whose purchases of the service would increase those companies' revenue while lowering their servicing costs."

In the same e-mail, he outlined what he would have to do before he decided to invest in the company.

"I would have to conduct a month of confirmatory due diligence, analyzing the market, talking to health-care and financial service companies, assessing or recruiting management. That opportunity never came to fruition."

Lane added that he could not assess whether or not he would have invested in Embark. Olinyk said Lane's answer was as close to a funding "yes" that any company or deal could hope for — regardless of its condition at the time. Lane agreed.

Brouthers asked the city to consider giving the company a \$100,000 loan at a council meeting on March 2. He and the city discussed a deal which required Embark to raise \$100,000 to match the city's loan, to be repaid over four years at a 6 percent interest. The loan was going to be used to cover utility and payroll costs in Colby. If the company was able to create 130 jobs in four years, the remaining amount would have been forgiven.

The council unanimously rejected giving the company the loan at a heavily attended meeting on April 6 at the Community Building after hearing from citizens opposed to giving the firm more money.

Olinyk said he wasn't sure if the company could be saved, but no one will ever know unless an expert is allowed to come down to the city to assess the situation.

"It's the best thing I've ever done with the best reasons for doing it," said Brouthers about the trying to get Embark going in Colby, "and that's why this is so terrible."

Fired advisor believes the concept still sound

From "ADVISOR," Page 1

2009 and Olinyk was fired when the two were trying to work out a new contract. Olinyk said he was fired because he wanted Brouthers to tell investors about the source code. Brouthers denies this. He said the way he handled the matter was based on advice from a corporate attorney who was originally introduced to him by Olinyk.

"So when Gregory criticizes my actions on the issue of the code and how he was terminated, he knows full well that all of my actions were taken after significant consultation with an attorney, a man he introduced me to and who he gave the highest praise," Brouthers said in an e-mail.

He said Embark then licensed a data system from Microsoft and informed his

shareholders about the switch on Feb. 15, 2009. He said Olinyk didn't know about this because he no longer was involved with the company.

"Even a business school freshman knows, attorneys and clients, no matter how adept they may be, do not make decisions for CEOs," Olinyk said.

Brouthers said Olinyk's argument about Embark's need to own the source code is misguided. He said the only companies that own source codes are those that build codes themselves, such as Microsoft. Brouthers said the source code for the program that replaced Ponce De Leon is owned by Microsoft and is used by thousands of companies.

Each of these companies, including Embark, owns a customized application of the source code tailored to meet their specific needs. He called this the applica-

tion code. Brouthers said the main difference between Ponce De Leon's source code and Microsoft's is that the former is a small private company, while the latter is a large public company that isn't at risk of going out of business.

Olinyk filed a lawsuit against Brouthers after refusing to sign a release form that the firm wanted before he could receive his pay in February. Brouthers and Olinyk had agreed that Olinyk would get 30 days notice if his contract was terminated. Olinyk said the release form told him not to discuss the business now that he was no longer working for the company, but he refused to sign it.

Embark ended up paying Olinyk \$47,000 and his company received \$211,000 in stock from Embark after Olinyk threatened a lawsuit. There was a nondisclosure agreement, said Brouthers,

and the amount Olinyk received was not supposed to be made public. But Olinyk said he thought he was in the clear after former Embark manager Junelle Hills allegedly told him the lawsuit had been disclosed at a meeting.

Hills said she couldn't remember talking to Olinyk, but she conceded that the existence of the lawsuit was revealed at a public meeting between the city's economic development committee and Embark in late March. Olinyk said he wanted to know why the lawsuit had to be secret. Brouthers said the details of the settlement were worked out between the attorneys representing the two parties and he had nothing to do with it.

"It was properly disclosed to investors as was the settlement," he said. He added that he wouldn't disclose the details of the settlement to the *Colby Free Press*, nor

should Olinyk. Brouthers said Olinyk is basically just a disgruntled ex-employee. He said Olinyk is just bringing this all up because he wanted the city to hire him to assess Embark's condition.

Olinyk said he just wants to help the investors and lenders who are involved in the company. He said he also believes the concept of Embark was and still is a great idea that could be marketable if it was managed properly. Olinyk said he had already gotten his money in the settlement, so his interest in the fate of the company is not based on material incentives.

City Manager Carolyn Armstrong said, however, that the city will not be hiring Olinyk.

—Andy Heintz

Moran tries to reunite Republican Party after bitter primary

By John Hanna

AP Political Writer

OVERLAND PARK — Kansas Rep. Jerry Moran appears likely to win an open U.S. Senate seat as Republicans showed signs they would quickly get past the nasty primary battle that made them their nominee.

Moran overcame a strong challenge from fellow Rep. Todd Tiahrt and questions raised by Tiahrt supporters about Moran's commitment to being a conservative. He will face Democrat Lisa Johnson — a political newcomer in a GOP-leaning state that hasn't elected a Democrat to the Senate since 1932 — in November.

With most of the vote counted from Tuesday's election, Moran had just shy of 50 percent to Tiahrt's 45 percent, with two minor candidates splitting the rest.

For many GOP voters, a key issue was which longtime congressman would be more aggressive in fighting President Barack Obama and his fellow Democrats. Both enjoyed strong ratings from groups such as the National Rifle Association, the American Conservative Union and the National Right to Life Committee.

Many Republicans saw both as acceptable nominees and seemed prepared to vote for either can-

didate in the November general election.

"It was literally a coin flip," said Kevin Bosworth, a 43-year-old high school physics teacher from the Kansas City-area of suburb who voted for Moran.

Republican Pam Drummond, 54, of Overland Park, a self-employed house cleaner, said she voted for Moran but wouldn't have been upset if Tiahrt won.

"To be honest I don't see a whole lot of difference between the two. I think either one would do a good job."

Johnston, a Baker University administrator from Overland Park, emerged from a five-person Democratic race that also included state Sen. David Haley, of Kansas City, and Charles Schollenberger, a former newspaper reporter and editor from Prairie Village.

The Moran-Tiahrt race was the hottest of the year in Kansas — and among the nastiest in the last generation, as the two candidates hashed over small differences in their records. Moran painted Tiahrt as a Washington insider, while Tiahrt suggested Moran was hiding a moderate streak from voters.

But Tiahrt promised to endorse Moran, and the new GOP nominee said he doubted he would have a difficult time attracting Tiahrt's

supporters. The two agree on some issues, such as eliminating federal income taxes in favor of a national sales tax and continuing the war in Afghanistan without setting a timetable for withdrawal.

"There are opportunities for us to try to make sure that there is no permanent division. Primaries within the family are a very difficult thing," Moran said. "Our country is in desperate need of leadership. It's way past time for Republicans to continue having bickering."

At his own election-night party in Wichita, Tiahrt congratulated Moran as the state's next senator and promised to work for GOP candidates.

"I do not want a Democrat senator from the state of Kansas," he said.

The seat they're seeking is held by Sam Brownback, a conservative Republican who is running for governor instead of seeking another term in the Senate. Brownback overwhelmingly won his GOP primary race against token opposition.

Republicans also winnowed

crowded fields for the U.S. House seats that Moran and Tiahrt are leaving and the one held by retiring Democratic Rep. Dennis

Moore. Kansas City-area law professor Kris Kobach, who helped write Arizona's new law on illegal immigration, won a three-person

GOP contest for secretary of state and will face Democratic incumbent Chris Biggs.

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