

STATE OF NORTH CAROLINA  
COUNTY OF BLADEN

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
14-CVS-\_\_\_\_\_

SHERRY L. SHAW, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 MICHAEL H. SHAW, JOHNNY W. )  
 SHAW, RUBY KATHRYN SHAW f/k/a )  
 Ruby Kathy Nutley, and a/k/a Kathi )  
 Shaw, MKJS CORPORATION, and )  
 HOME & INDUSTRIAL, INC., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**VERIFIED COMPLAINT**

Plaintiff, complaining of Defendants, alleges and says as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Sherry L. Shaw ("Plaintiff" or "Sherry Shaw") is an adult citizen and resident of Gaston County, North Carolina.
2. Upon information and belief, Defendant Michael H. Shaw ("Mike Shaw") is an adult citizen and resident of Bladen County, North Carolina.
3. Upon information and belief, Defendant Ruby Kathryn Shaw ("Kathi Shaw") is an adult citizen and resident of Bladen County, North Carolina. Kathi Shaw was formerly known as Ruby Kathy Nutley, and is also known as Kathy Shaw and as Kathi Shaw.
4. Upon information and belief, Defendant Johnny W. Shaw ("Johnny Shaw") is an adult citizen and resident of Bladen County, North Carolina.
5. Upon information and belief, Home & Industrial, Inc. ("H&I") is a North Carolina corporation with its principal office located in Bladen County, North Carolina. Upon further information and belief, H&I is owned by Mike Shaw, his wife Amy Shaw, and Johnny Shaw, in equal shares. Upon further information and belief, the management and governance of H&I is controlled by Mike Shaw and Amy Shaw.
6. MKJS Corporation ("MKJS" or the "Company"), is a North Carolina corporation with its principal office located in Bladen County, North Carolina.

7. Mike Shaw, Kathi Shaw, and Johnny Shaw are hereinafter referred to collectively as the "Individual Defendants." The Individual Defendants, H&I and the Company are hereinafter referred to collectively as the "Defendants."

8. This Court has jurisdiction over the parties and subject matter of this action.

9. Venue is proper in Bladen County because all Defendants are located here, and pursuant to N.C.G.S. § 55-14-31(a).

10. The amount in controversy exceeds \$25,000.

### FACTUAL ALLEGATIONS

11. MJKS Corporation was formed in February 1991 for the purpose of owning and operating a hog farm, along with the real estate upon which that hog farm operation lies.

12. Upon information and belief, at all times since the inception of MJKS, Sherry Shaw has owned, 10 shares of the Company, for a 25% shareholder interest in MKJS.

13. Upon information and belief, at all times since the inception of MJKS, Mike Shaw has owned 10 shares of the Company, for a 25% shareholder interest in MKJS.

14. Upon information and belief, at all times since the inception of MJKS, Johnny Shaw has owned 10 shares of the Company, for a 25% shareholder interest in MKJS.

15. Upon information and belief, at the inception of MKJS, Kathi Shaw owned 10 shares of the Company. The Company's stock book reflects that Kathi Shaw transferred her shares in 1998 to Hal W. Shaw. Kathi Shaw apparently believes that the shares were later transferred back to her, though that subsequent transfer is not reflected in the Company's stock book. Therefore, Plaintiff does not know with any certainty what Kathi Shaw's ownership of the Company actually is.

16. Sherry Shaw and the Individual Defendants are all officers and directors of MKJS. Mike Shaw is the President of MKJS.

17. At all times since the inception of MKJS, Mike Shaw has controlled the governance of MKJS' corporate affairs.

18. At all times since the inception of MKJS, Mike Shaw has controlled the management of MKJS' business interests and affairs.

19. Over the course of time, MKJS has acquired numerous and substantial assets in addition to the hog farm and property on which it lies. That additional property includes, but is not limited to, numerous residential homes and lots in and around Elizabethtown, North Carolina, a beach house in Ocean Isle Beach, North Carolina, a deep sea fishing boat,

automobiles, certain rental properties, the office and building used by H&I, and various other items of personal property.

20. Since the formation of MKJS, all of the Individual Defendants have received substantial benefits by virtue of their ownership of MKJS, including the following:

- a. Mike Shaw has received a regular salary, reimbursement or direct payment of various personal expenses, medical insurance for himself, his wife, and his children, and regular use of various properties owned or rented by MKJS (such as automobiles and associated expenses, the beach house, a camper, and the boat), and he has received substantial additional benefits through H&I as discussed below;
- b. Johnny Shaw has received a regular salary, reimbursement or direct payment of various personal expenses, medical insurance for himself, and upon information and belief, his wife, and his children, and regular use of various properties owned or rented by MKJS (such as automobiles and associated expenses, the beach house, a camper, and the boat), and he has received substantial additional benefits through H&I as discussed below; and
- c. Kathi Shaw has received medical insurance, and regular use of various properties owned or rented by MKJS (such as the beach house, a camper, and the boat).

21. In contrast, and despite repeated requests for additional and appropriate benefits as a shareholder of MKJS, since 1991, Sherry Shaw has received scant benefits resulting from her ownership interest in the Company. The only monetary benefit ever received was a \$1,000 distribution in 1999 (which was also received by the other shareholders), and limited use of the Company's beach house, boat and camper. The differential between her benefit and those received by other Defendants in the aggregate (even excluding their salaries and employment benefits) is material.

22. It has always been, and remains Sherry Shaw's reasonable expectation as a shareholder that she enjoy regular and tangible economic benefits via her ownership in the Company. This expectation is both objectively and subjectively reasonable, in that the Company's hog farm is a successful business and the Company owns assets worth many millions of dollars.

23. Throughout the Company's history, the Company has held no formal meetings of its shareholders and directors, such that Sherry Shaw has remained mostly in the dark as to the Company's governance, management and operations. More specifically, she was kept in the dark as to the Company's cash flow and many ways in which its funds were being used.

24. Fed up with her lack of benefit as a shareholder, and growing ever more concerned regarding the manner in which the Company's funds and assets were being utilized, in January 2013, Sherry Shaw, through her counsel, sent a letter to Mike Shaw (as the Company's

President) pursuant to N.C. Gen. Stat. § 55-16-02, *et seq.*, requesting the right to inspect the Company's financial records and record of stockholders.

25. Upon subsequent review of the Company's financial records, Sherry Shaw is now informed and believes that the following acts and practices occurred, which either violate applicable law, violate the terms of the Company's Bylaws, and/or serve to benefit the Individual Defendants, their other family members, and/or H&I, to Sherry Shaw's exclusion:

- a. MKJS failed to ensure that the Company follow its legal requirements to notice and hold shareholder meetings, to elect directors, to conduct directors' meetings, to obtain shareholder and director approval for those decisions and acts that require such approval (such as compensation and the approval of transactions), and to make annual financial disclosures to its shareholders;
- b. MKJS failed to allow its directors to manage the business and affairs of the Company, and rather, Mike Shaw usurped that authority;
- c. For years, all hog farming payments intended for MKJS (and which were paid by its customer, Murphy Brown) were deposited into a bank account in H&I's name. Then, over the course of time, H&I transferred certain funds to MKJS's bank accounts. This appears to have been done for the purpose of intermingling MKJS's funds with those of H&I, in order to allow H&I or its owners to receive funds intended for MKJS in a manner that excluded Sherry Shaw. MKJS failed to produce information showing the amounts that MKJS was to have received from Murphy Brown over the years, or that these funds were ultimately transferred to MKJS or used for MKJS's benefit;
- d. While MKJS owns the real property upon which H&I's business is located, MKJS never collected rent from H&I, and never required H&I to enter into a lease agreement. Essentially, at the expense of MKJS's shareholders (including Sherry Shaw), the value of H&I was vastly improved to the benefit of H&I's owners. By not requiring H&I to pay a fair market rent to MKJS, MKJS lost tens or hundreds of thousands of dollars in rental income;
- e. MKJS purportedly entered into one or more unwritten loan transactions with H&I, pursuant to terms which are impossible to determine. The supposed loan balance is now up to over \$200,000, yet there is little, if any paper trail showing the purpose of these loan transactions, whether they are fair to MKJS, whether they were entered into upon a commercially reasonable basis, or whether or how these loan transactions benefit MKJS. Furthermore, these transactions were entered into without Sherry Shaw's knowledge or consent, and they appear to benefit H&I and its owners;
- f. Without Sherry Shaw's consent, for years, MKJS (and not H&I) paid the Blue Cross Blue Shield health insurance premiums for Mike Shaw, Amy Shaw, and their son, and for Johnny Shaw and upon information and belief, his

immediate family, and for Kathi Shaw, some of whom provide little or no benefit to MKJS. MKJS does not pay health insurance premiums for Sherry Shaw;

- g. Mike Shaw and possibly Johnny Shaw apparently used MKJS's BB&T credit cards for personal expenses, and caused MKJS to pay these expenses for many years – these charges include gas, travel, and entertainment apparently wholly unrelated to MKJS business, and for which they never reimbursed MKJS. This occurred without Sherry Shaw's knowledge or consent;
- h. MKJS receives monthly income from various rental properties, which until last year, were not disclosed to Sherry Shaw, and none of which were used to pay a distribution to Sherry Shaw;
- i. For years, MKJS received tens of thousands of dollars from a farmer that rents acreage on MKJS' property, pursuant to a verbal agreement which had never been disclosed to Sherry Shaw. None of that income was ever used to pay a distribution to Sherry Shaw;
- j. MKJS paid compensation to Mike Shaw and to Johnny Shaw, and others that was determined solely by Mike Shaw, and/or others, without input from Sherry Shaw, and without director or management oversight, review or analysis, and in market terms may be more than MKJS would have had to pay a third party to perform the work performed for MKJS;
- k. MKJS appears to have paid compensation to one or more of the Individual Defendants and their family members, and potentially others, that are improperly reflected on the books and records of MKJS;
- l. MKJS has failed to object to, or to pursue its legal rights with respect to the above-referenced unauthorized payments and transactions;
- m. MKJS repeatedly made false and/or misleading statements to Sherry Shaw regarding the Company's financial performance and condition, and other particulars of MKJS' governance and operations;
- n. MKJS has failed to pay Sherry Shaw yearly, substantial dividends that properly reflect the Company's true earnings; and
- o. MKJS failed and refused to comply with N.C.G.S. §§ 55-7-01, *et seq.*

26. In July 2013, Sherry Shaw, through her counsel, sent a letter to MKJS demanding that the Company investigate and take action to rectify the above-referenced issues.

27. Due to deadlock, MKJS failed and refused to take any action whatsoever.

28. Furthermore, since that time, the shareholders have engaged in various discussions, and participated in one shareholders meeting on March 31, 2014 (at Sherry Shaw's request). At all times, the shareholders have remained deadlocked, and unable to make decisions regarding the governance or management of the Company.

29. Sherry Shaw was a shareholder of the Company at the time of the acts and omissions complained of herein.

30. Sherry Shaw fairly and adequately represents the interests of the Company in enforcing the right of the Company.

31. Sherry Shaw has satisfied all conditions precedent to filing this action, including those set forth in N.C.G.S. § 55-7-42.

32. The Company is a close corporation. All of the attributes permitting a direct action by Sherry Shaw are present. All requirements to assert derivative claims have been met, and derivative claims are asserted below, in the alternative to Sherry Shaw's direct claims..

**FIRST CLAIM FOR RELIEF**

**[Demand for an Accounting, Information, Dissolution of the Company, and Demand for  
*Pro Rata* Recovery]**

33. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

34. Pursuant to N.C.G.S. 55-14-30, Sherry Shaw is entitled to the entry of an order dissolving the Company for at least the following reasons, in addition to those set forth above:

- a. Liquidation of the Company's assets is reasonably necessary for the protection of her rights and interests as a shareholder in the Company;
- b. The assets of the Company are being, or have been, misapplied and wasted;
- c. Sherry Shaw has been frozen out of the governance and management of the Company, which does not hold regular shareholder or directors meetings;
- d. Irreparable injury to the Company is being threatened and suffered, and the business and affairs of the Company can no longer be conducted to the advantage of Sherry Shaw; and
- e. The shareholders are deadlocked in voting power.

35. Sherry Shaw is entitled to have the Company dissolved and to be paid the fair value of her ownership interest in the Company, along with all funds rightly owed to her by the Company, but which were wrongly diverted by and to the other Defendants, as set forth above.

36. Sherry Shaw is entitled to have the Company provide her with all requested information.

37. Sherry Shaw is entitled to an accounting of all of assets and income streams of the Company.

38. Sherry Shaw is entitled to receive a *pro rata* recovery of all assets of the Company.

39. In the alternative, upon the dissolution of the Company, Sherry Shaw requests that the Court enter such orders as are necessary to wind up the Company and to distribute the assets of the Company to its shareholders in accordance with applicable law.

### **SECOND CLAIM FOR RELIEF**

#### **[Individual and Derivative Claims for Constructive Fraud, Breach of Fiduciary Duty, Breach of the Duties of Good Faith and Fair Dealing and Breach of the Duty of Loyalty]**

40. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

41. As officers and directors of the Company, the Individual Defendants owed and still owe fiduciary duties, a duty of loyalty, and are required to act in good faith and with due care for the interests of the Company and its shareholders.

42. The Individual Defendants used their positions of trust and confidence to alter the books and records of the Company; to divert the Company's income streams to themselves to the exclusion of Sherry Shaw, and to engage in the other improper acts identified herein, for the purpose of benefitting themselves to the detriment of the Company and Sherry Shaw.

43. Upon information and belief, these actions occurred to provide direct financial benefit for the Individual Defendants, their family members, and H&I.

44. As a direct and proximate result of the Individual Defendants' constructive fraud, breach of fiduciary duty, breach of the duty of loyalty, breach of the duty of good faith and fair dealing, and breach of the duty of due care, Sherry Shaw and the Company have suffered damages in an amount believed to exceed \$25,000.00.

### **THIRD CLAIM FOR RELIEF**

#### **[Individual and Derivative Claims for Unjust Enrichment]**

45. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

46. As set forth above, the Individual Defendants engaged in unlawful conduct intended to benefit themselves, their family members, and H&I financially, at the expense of the Company and Sherry Shaw.

47. To the extent that the Defendants (other than the Company) or their family members have gained financial benefits by virtue of their inappropriate conduct alleged herein, they have been further unjustly enriched at the Company's and Sherry Shaw's expense.

48. As a direct and proximate result of the Defendants' (other than the Company) unjust enrichment, the Company and Sherry Shaw have been damaged in an amount to be proven at trial, such amount believed to exceed \$25,000.00.

**FOURTH CLAIM FOR RELIEF**  
**[Individual and Derivative Claims for Constructive Trust]**

49. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

50. All Defendants other than the Company are required to hold in trust all profits and benefits they derived from the transactions set forth herein without Sherry Shaw's informed consent. This includes, but is not limited to any and all real and personal property purchased by any of them with funds that rightfully belong to the Company and/or Sherry Shaw.

51. Sherry Shaw reposed trust and confidence in the Individual Defendants to safeguard the Company's assets. The Individual Defendants had and have a fiduciary duty to safeguard those assets for the Company and Sherry Shaw.

52. The Individual Defendants breached their fiduciary duties to the Company and to Sherry Shaw.

53. The Company has an ownership interest in whatever funds and benefits have flowed to the Individual Defendants and to H&I by virtue of the improper conduct set forth above.

54. Sherry Shaw and the Company are therefore entitled to an order of the Court placing a constructive trust upon the real and personal property of the Individual Defendants and H&I that were purchased using the assets of the Company. The Company has an equitable interest in such personal and real property.

**FIFTH CLAIM FOR RELIEF**  
**[Individual and Derivative Claims for Conversion]**

55. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

56. As set forth above, the Individual Defendants and H&I converted to their own use and benefit Company funds to pay them excess earnings and benefits, and otherwise diverted the Company's income streams for their own personal use.



57. At the time Sherry Shaw became a shareholder, it was her reasonable expectation that she would receive her fair share of profits as an owner in the business.

58. In addition to taking their share of Company profits out of the business without disclosing their actions, the Individual Defendants and H&I converted Sherry Shaw's profits, without her approval, by causing the Company to pay them Sherry Shaw's rightful share of profits, in an amount believed to exceed \$25,000.

59. As a direct and proximate result of the Individual Defendants' and H&I's conversion, Sherry Shaw and the Company are entitled to recover from them, jointly and severally, all funds and assets converted by them, plus interest at the legal rate, plus such other actual, consequential, incidental and other damages Sherry Shaw may prove at trial.

**SIXTH CLAIM FOR RELIEF**  
**[Embezzlement – N.C.G.S. § 1-538.2]**

60. Plaintiff realleges and restates the preceding allegations as if fully set forth herein.

61. The actions set forth herein constitute a violation of North Carolina's criminal laws, including, but not limited to N.C.G.S. § 14-90 and/or § 14-100.

62. Pursuant to N.C.G.S. § 1-538.2, Sherry Shaw and the Company are entitled to recover their actual damages, consequential damages, punitive damages and reasonable attorneys' fees, in an amount to be proven at trial, plus interest.

**SEVENTH CLAIM FOR RELIEF**  
**[Breach of Contract]**

63. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

64. The Company's Bylaws constitute a valid and enforceable contract supported by valid and adequate consideration.

65. By virtue of the facts set forth herein, the Individual Defendants have repeatedly breached the Bylaws.

66. As a direct and proximate result of the repeated breaches of the Bylaws, Sherry Shaw has been damaged in an amount to be proven at trial, but believed to exceed \$25,000.

**EIGHTH CLAIM FOR RELIEF**  
**[Individual and Derivative Claims for Punitive Damages]**

67. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

68. The conduct described herein was willful, wanton, intentional and done with a complete and reckless disregard for Sherry Shaw's and the Company's rights. Pursuant to N.C.G.S. §1D-1, *et seq.*, Sherry Shaw and the Company are entitled to recover punitive damages.

**NINTH CLAIM FOR RELIEF**  
**[Appointment of Receiver]**

69. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

70. A receiver should be appointed by the Court pursuant to N.C.G.S. § 55-14-31 to preserve the Company's assets and to carry on the business of the Company.

71. A receiver should be appointed by the Court pursuant to N.C.G.S. 55-14-32(a) to wind up and liquidate, or to manage, the business and affairs of the Company. Pursuant to N.C.G.S. § 55-14-32(c), the receiver's powers should include at least the following powers:

- a. To dispose of all or any part of the assets of the Company wherever located, at a public or private sale, if authorized by the court;
- b. To sue and defend in his own name as receiver of the Company in all courts of this State; and
- c. To exercise all of the powers of the Company through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the Company in the best interests of its shareholders and creditors.

**PRAYER FOR RELIEF**

WHEREFORE, Sherry Shaw respectfully prays the Court for the following relief:

1. Entry of an award of actual damages to her (or alternatively, to the Company), plus interest at the legal rate, for Defendants' constructive fraud, breach of fiduciary duty, breach of the duty of loyalty, breach of the duty of good faith and fair dealing, unjust enrichment, conversion, and breach of contract;

2. Entry of an order otherwise finding the Individual Defendants and H&I to be jointly and severally liable for all or part of Sherry Shaw's and the Company's damages;

3. Entry of preliminary and permanent injunctive relief preventing continued violations of fiduciary duties, as set forth above;

4. Appointment of a receiver to manage the affairs of the Company, to preserve the Company's assets, to carry on the business of the Company, and as otherwise set forth above;

5. For entry of judgment against the Individual Defendants and H&I, jointly and severally in whole or in part, for punitive damages pursuant to N.C.G.S. § 1D-1, *et seq.*;

6. For an Order dissolving the Company, winding up, selling and distributing the Company's assets as set forth above, and awarding Sherry Shaw the full and fair value of her ownership interest in Company;

7. For an Order requiring that the Defendants provide Sherry Shaw with an accounting of all of the Company's assets, liabilities and income streams;

8. For an Order requiring that Defendants provide Sherry Shaw with access to or copies of all Company records and information that she is entitled to receive pursuant to North Carolina law;

9. That the costs of this action be taxed against the Defendants;

10. For an award of Plaintiff's reasonable attorneys' fees to the fullest extent allowed by North Carolina law;

11. For a trial by jury; and

12. For all such other and further relief that the Court deems just and equitable.

This the 25<sup>th</sup> day of April, 2014.

**JAMES, McELROY & DIEHL, P.A.**



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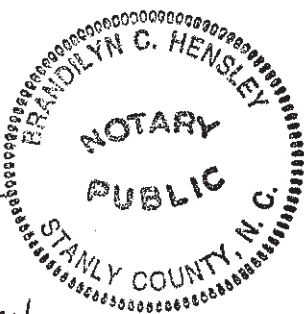
VERIFICATION

Sherry Shaw, being first duly sworn, deposes and says that she has read the foregoing Complaint, that the statements of fact contained therein are true to the best of her knowledge, except as to those matters stated upon information and belief, and as to those matters, she believes them to be true.

Sherry L. Shaw  
Sherry L. Shaw

Sworn to and subscribed before me,  
this the 25<sup>th</sup> day of April 2014

Brandilyn C Hensley  
Notary Public



Printed name: Brandilyn C Hensley

My commission expires: 07/27/2017