

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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EDWARD A. RADBURN, individually and
derivatively on behalf of M S N AIR SERVICES, INC.,

Index No. :
Date Filed:

Plaintiff,

SUMMONS

- against -

ROOPNARINE SINGH a/k/a Rudy Singh,

Defendant.
-----X

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the Verified Complaint in this action and to serve a copy of your answer, or, if the Verified Complaint is not served with this Summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Verified Complaint.

Dated: Mineola, New York
April 29, 2014

MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP

By:  _____

Thomas J. McGowan, Esq.
Attorneys for Plaintiff
190 Willis Avenue
Mineola, New York 11501
(516) 747-0300

TO:

Roopnarine Singh a/k/a Rudy Singh
121-05 107th Avenue
Richmond Hill, New York 11419

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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EDWARD A. RADBURN, individually and
derivatively on behalf of M S N AIR SERVICES, INC.,

Index No. :

Plaintiff,

- against -

VERIFIED COMPLAINT

ROOPNARINE SINGH a/k/a Rudy Singh,

Defendant.

-----X

Plaintiff EDWARD A. RADBURN, by his attorneys, MELTZER, LIPPE,
GOLDSTEIN & BREITSTONE, LLP, sets forth the following as and for his verified complaint
herein:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff is a 45% shareholder in, and director of, M S N AIR SERVICES, INC. ("MSN"), a domestic corporation in good standing duly organized under the Business Corporation Laws of the State of New York.
2. MSN has its principal place of business located at Cargo Building 86, JFK International Airport, Jamaica, New York 11430.
3. MSN is in the business of air cargo/freight shipping at Kennedy Airport.
4. Defendant Roopnarine Singh ("Singh") is a resident of the State of New York residing at 121-05 107th Avenue, Richmond Hill, New York 11419.
5. Plaintiff is a shareholder, officer and director of MSN; having purchased a forty-five (45%) percent interest in MSN.
6. Defendant Singh owns the remaining fifty-five (55%) percent of MSN.

7. Singh is the President of MSN.
8. Plaintiff and defendant Singh executed a Shareholder's Agreement on or about August 7, 2006 (the "Shareholder's Agreement").
9. Singh is one of the two directors of MSN.
10. Plaintiff is the other director as well as a vice president of MSN.
11. Plaintiff has not resigned as an officer or director of MSN.
12. Article II, para. 1 of the Shareholder's Agreement provides that "[t]he Board of Directors of the Corporation [i.e. MSN] shall consist of all of the stockholders which currently are as follows: Roopnarine Singh, Edward A. Radburn, so long as they are shareholders and not disqualified to serve as directors under the laws of New York."
13. Article II, para. 2 of the Shareholder's Agreement provides that "[t]he Board of Directors of the Corporation [i.e. MSN] shall make all decisions regarding the election of officers and the decisions of the Corporation."
14. The Shareholder's Agreement provides at Article XII, paragraph 1 that it can only be altered, amended or terminated by a writing signed by MSN and all of the shareholders.
15. The Shareholder's Agreement has never been altered, amended or terminated.
16. Plaintiff has never signed any writing altering, amending or terminating the Shareholder's Agreement.
17. Plaintiff and Singh were to be full time employees of the corporation entitled to full time employment, salary and benefits in accordance with the industry standard under the terms of the Shareholder's Agreement.
18. Singh, however, failed and refused to pay plaintiff any salary for the three years he was there, even though Singh paid salary to himself-

19. The Board of Directors is responsible, pursuant to the express terms of the Shareholder's Agreement, for overall general business matters and the day to day operations for the business, including sales, preparation of contracts, and hiring and firing of employees.

20. The salaries of the employees of MSN are required to be determined by the Board of Directors under the terms of the Shareholder's Agreement.

21. Singh has failed and refused to consult with plaintiff as a director and officer of MSN as to the general business matters, election of offices, the day to day operation of MSN's business, salaries of employees and as to the hiring and firing of employees, etc.

22. The Shareholder's Agreement further expressly provides that "[a]ny net profits or losses that may accrue to [MSN] will be distributed or shared by the shareholders based on their percentage of stock ownership, I.e. [sic] any profits shall be divided as follow: fifty five (55) percent to Roopnarine Singh; forty five (45) per cent [sic] to Edward A. Radburn".

23. Upon information and belief, Singh has been paying distributions to himself without making any distributions to plaintiff in violation of the Shareholder's Agreement.

24. Notwithstanding the fact that plaintiff purchased 45% of the shares of MSN, defendant Singh issued a stock certificate to himself representing all two hundred of the authorized and issued shares of the corporation.

25. Singh's counsel falsely contended that plaintiff is not a shareholder and director in MSN as the basis for MSN refusing plaintiff access to the books and records of MSN that plaintiff has an absolute right under well settled law to review.

26. Notwithstanding his counsel's false contention, Singh has sworn under oath that plaintiff is a 45 percent shareholder in MSN.

27. Singh moved in an earlier proceeding between the parties to elect to buy plaintiff's 45 percent shareholder interest in MSN.

28. Singh, however, never purchased Plaintiff's shares in MSN because the earlier dissolution proceeding was discontinued.

29. Singh repeatedly refused to produce discovery in the latter proceeding.

30. Singh has unilaterally and wrongfully taken over exclusive control of MSN's check book.

31. Upon information and belief, Singh has misappropriated corporate funds for his own use and has removed plaintiff's name from the corporate account, thereby usurping all financial control of MSN.

32. Singh has unilaterally discontinued paying for plaintiff's automobile expenses after approximately three payments while, upon information and belief, continuing to pay for his own vehicle with corporate funds.

33. Plaintiff's demands for access to MSN's books and records have been wrongfully denied by Singh through his counsel.

34. Upon information and belief, the income and profits generated by the operation of MSN are being misappropriated, dissipated and otherwise siphoned by Singh for his own personal use.

35. Singh has refused to allow plaintiff to participate in the business affairs of MSN and has, to date, refused to account for the income generated by the operation of MSN.

36. Upon information and belief, Singh continues to take money from MSN and to make unilateral expenditures and payments without plaintiff's permission or consent.

AS AND FOR A FIRST CAUSE OF ACTION
(Accounting)

37. Plaintiff respectfully repeats and realleges each and every allegation set forth in paragraphs "1" to "36" of this Verified Complaint as if more fully set forth herein.

38. Plaintiff and defendant owe a fiduciary duty to each other and to MSN as shareholders, officers and directors of MSN.

39. Plaintiff relied upon and trusted defendant to collect the revenue generated by the operation of MSN and to distribute to him his pro rata share of all profits or losses.

40. Plaintiff is entitled under the terms of the Shareholder's Agreement to 45% of any profits or losses generated by the operation of MSN.

41. Defendant is required under the terms of the Shareholder's Agreement not to pay himself salary and benefits in excess the industry standard.

42. Defendant was required under the terms of the Shareholder's Agreement to pay to plaintiff salary and benefits in accordance with the industry standard.

43. Despite due demands by plaintiff, defendant has failed and refused to account for the profits and losses generated by the operation of MSN.

44. Despite due demands by plaintiff, defendant has failed and refused to pay to plaintiff his 45% interest in and to the profits generated by the operation of MSN and/or to provide plaintiff the benefit of his 45% interest in any losses of MSN.

45. Upon information and belief, defendant has paid himself salary and benefits in excess of the industry standard.

46. Defendant failed to pay salary and benefits to plaintiff in accordance with the industry standard.

47. Based on the foregoing, defendant must: account to plaintiff for the profits and losses generated by the operation of MSN; account to plaintiff for the salary and benefits paid to defendant that were in excess of industry standard; and account to plaintiff for the salary and benefits that were not paid to plaintiff in accordance with industry standard. Plaintiff will also be entitled to a money judgment as against defendant equal to 45% of the profits or tax benefits of any losses generated by the operation of MSN together with an amount equal to the sum paid to defendant for salary and benefits in excess of industry standard and together with an amount equal to the sum that should have been paid to plaintiff for salary and benefits in accordance with industry standard.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

48. Plaintiff respectfully repeats and realleges each and every allegation set forth in paragraphs "1" to "47" of this Verified Complaint as if more fully set forth herein.

49. Plaintiff and defendant executed the Shareholder's Agreement.

50. Notwithstanding the terms therein, defendant has breached said agreement by, *inter alia*, failing to pay plaintiff salary and benefits in accordance with industry standards and failing to make distributions of profits and losses to plaintiff.

51. Defendant's breach of the Shareholder's Agreement has caused damage to plaintiff, and plaintiff is thus entitled to a money judgment against defendant, in an amount to be determined at trial.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

52. Plaintiff respectfully repeats and realleges each and every allegation set forth in paragraphs "1" to "51" of this Verified Complaint as if more fully set forth herein.

53. Defendant owes a fiduciary duty to both plaintiff and to MSN.

54. Defendant has breached that fiduciary duty by, *inter alia*, paying himself salary and benefits that are not in accordance with industry standards and by misappropriating corporate funds for his personal use.

55. Demand upon the Board of Directors to pursue this claim as against defendant was not made by plaintiff since defendant is the only other director of MSN and it would be futile to demand that he authorize a lawsuit against himself.

56. Defendant's breach of his fiduciary duties has caused damage to plaintiff and to MSN in an amount to be determined at trial but which amount should include the disgorgement of all remuneration of any type received by defendant during the period he was in breach of his fiduciary duties to MSN.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

57. Plaintiff respectfully repeats and realleges each and every allegation set forth in paragraphs "1" to "56" of this Verified Complaint as if more fully set forth herein.

58. Defendant has distributed profits and/or losses to himself while refusing to distribute the same to plaintiff.

59. Defendant has paid salary and benefits to himself while refusing to pay the same to plaintiff.

60. Defendant has misappropriated assets of MSN for his own personal use to the exclusion of plaintiff.

61. It is against equity and good conscience for defendant to be allowed to retain these payments and benefits to the exclusion of plaintiff.


62. Based on the foregoing, plaintiff is entitled to an order directing defendant to turn over an amount equal to 45 percent of the foregoing to plaintiff and, should he fail to do so, a money judgment equal in amount to same against defendant.

WHEREFORE, Plaintiffs respectfully request that the Court: (i) issue an order to defendant to account to plaintiff for the profits and losses generated by the operation of MSN; account to plaintiff for the salary and benefits paid to defendant that were in excess of industry standard; and account to plaintiff for the salary and benefits that were not paid to plaintiff in accordance with industry standard and award plaintiff Edward A. Radburn a money judgment as against defendant equal to 45% of the profits or tax benefits of any losses generated by the operation of MSN together with an amount equal to the sum paid to defendant for salary and benefits in excess of industry standard and together with an amount equal to the sum that should have been paid to plaintiff for salary and benefits in accordance with industry standard on the first cause of action; (ii) award plaintiff Edward A. Radburn a money judgment against defendant on the second cause of action in an amount to be determined at trial; (iii) award MSN and plaintiff Edward A. Radburn a money judgment against defendant on the third cause of action in an amount to be determined at trial; (iv) issue an order directing defendant to turn over to plaintiff Edward A. Radburn an amount equal to 45 percent of distributions etc.

identified in paragraphs 58 to 60 above; (v) together with such other and further relief as may be deemed just and proper, together with costs, interest and attorneys' fees of these proceedings.

Dated: Mineola, New York
April 21, 2014

MELTZER, LIPPE, GOLDSTEIN & BREITSTONE, LLP
Attorneys for Plaintiffs

By: 
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