

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NICOLE LAWI ZEKRY

Index No.

Plaintiff(s),

-against-

Summons

08102550

PINHAS ZEKRY and R. DAVID BEN BAROUCK CORP.

Date Index No. Purchased:

Defendant(s).

To the above named Defendant(s)

Pinhas Zekry/R. David Ben Barouck Corp.
428 Columbus Ave.
New York, New York 10024

FILED
FEB 14 2008
COUNTY CLERK'S OFFICE
NEW YORK

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 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 complaint.

The basis of venue is personal jurisdiction over defendants pursuant to New York CPLR § 301. which is proper in this Court as designated by the plaintiff under New York CPLR § 503 (a) and (c) and § 509.

Dated: February 14, 2008

KAYE SCHOLER LLP

by

Michael A. Lynn

Michael A. Lynn

Attorneys for Plaintiff

Nicole Lawi Zekry
425 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NICOLE LAWI ZEKRY,

: Index No. 102550/08

Plaintiff,

: **VERIFIED COMPLAINT**

-- against --

PINHAS ZEKRY and R. DAVID BEN BAROUCK CORP.,

Defendants.
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NEW YORK

Plaintiff Nicole Lawi Zekry ("Lawi"), by her attorneys Kaye Scholer and for her Complaint against Pinhas Zekry ("Zekry") and R. David Ben Barouck Corp. ("Barouck Corp."), alleges upon knowledge as to her own acts and otherwise upon information and belief as follows:

NATURE OF THE ACTION

1. Lawi, a 40% shareholder of Barouck Corp., brings this action against Barouck Corp and Zekry, its majority shareholder, to recover damages for defendants' breaches of contract and for Zekry's breach of his fiduciary duties and fraud in connection with the operation of Barouck Corp. Lawi also seeks reformation of a shareholders agreement that she entered into with Zekry and, alternatively rescission of that agreement, and return of her capital contribution to Barouck Corp. Finally, in light of Zekry's manipulation of Barouck Corp.'s books and records, his mismanagement of the business, and his admission that he destroyed books and records of Barouck Corp. despite his knowledge of pending discovery requests and a pending motion for an order directing him to preserve the corporation's computers, Lawi seeks the appointment of a receiver for Barouck Corp.

2. On April 30, 2004, Lawi, Zekry and Barouck Corp. entered into an agreement (the "Shareholders Agreement") whereby Zekry became a 60% shareholder of Barouck Corp. and Lawi became a 40% shareholder of Barouck Corp. Under the Shareholders Agreement, Lawi was entitled to 40% of Barouck Corp.'s profits.

3. In order to induce Lawi to contribute \$189,120 in exchange for her purchase of a 40% interest in Barouck Corp., Zekry falsely represented to Lawi that he had already made a capital contribution to Barouck Corp. of \$472,800 that was to be used to pay the start-up costs for a hair salon – Amour De Hair – to be operated by Barouck Corp. Lawi relied on Zekry's representation in agreeing to make a capital contribution of \$189,120 to Barouck Corp. Unbeknownst to Lawi, Zekry did not, in fact, make a \$472,800 capital contribution to Barouck Corp. at the time the Shareholders Agreement was executed, nor any time thereafter.

4. Under the terms of the Shareholders Agreement, Zekry was given full and exclusive control for managing the business and running its day-to-day operations. In breach of his contractual and fiduciary duties, Zekry, as President and Treasurer of Barouck Corp, manipulated the books and records of Barouck Corp. by, among other things, failing to report all income received by the business, diverting cash and other assets of Barouck Corp. for his own personal interests, and overstating expenses incurred by Barouck Corp.

5. As a result of Zekry's misconduct, Barouck Corp's profits were artificially suppressed and Lawi did not receive the full amount of profits that she was contractually entitled to receive under the Shareholders Agreement. In addition, the cash and other assets belonging to Barouck Corp. that Zekry diverted to further his own business and personal interests were used by Zekry to partially fund the construction of another hair salon at East 62nd Street in Manhattan and to pay his personal expenses.

6. Zekry has attempted to cover the tracks of his financial misdeeds by, among other things, destroying Barouck Corp. records, including the daily and weekly intake sheets that would show the actual revenues of Barouck Corp. during each of the years it has been in operation. Zekry has also admitted to destroying a computer containing Barouck Corp. records, despite the fact that the computer records were the subject of a pending document request and Lawi had made a motion in another proceeding for an order directing Zekry to preserve the corporation's computers.

7. Although Zekry and Lawi agreed that Lawi would receive compensation of \$400 per week with respect to the salon as a draw against her share of the profits, and Barouck Corp. paid Lawi such compensation for the period from May 2004 through March 2006, Barouck Corp. stopped paying Lawi that compensation in March 2006 in breach of that agreement.

8. As a result of Zekry's misconduct, Lawi seeks the following remedies:

a. Reformation of the Shareholders Agreement to provide her with a greater ownership interest in Barouck Corp. than the 40% share that she received based on the fact that her ownership in the business was based on the percentage of start up costs that she contributed to the business and she, in fact, contributed a greater percentage of the actual start-up costs to Barouck Corp. than what was recited in the Shareholders Agreement;

b. Damages consisting of her share of the actual profits earned by Barouck Corp. for each of the years it has been in operation plus interest;

c. The return of any funds and other assets belonging to Barouck Corp. that were misappropriated by Zekry for his personal or other business interests plus interest, and consequential and punitive damages; and

d. The appointment of a receiver for Barouck Corp.

9. Alternatively, Lawi seeks rescission of the Shareholders Agreement and return of the \$189,120 that she contributed to Barouck Corp. because Zekry fraudulently induced her to contribute such amount in exchange for a 40% share of Barouck Corp. by falsely representing to Lawi that he had already made a capital contribution to Barouck Corp. of \$472,800 that was to be used to pay for start-up costs for the hair salon. Lawi would not have entered in the Shareholders Agreement if she had known that Zekry's representation was false.

THE PARTIES

10. Plaintiff Lawi is a resident of New York and is a 40% shareholder of R. David Ben Barouck Corp. She is the wife of defendant Zekry and is seeking a divorce from him.

11. Defendant Zekry is a resident of New York and is the Chairman of the Board, President and Treasurer, as well as a 60% shareholder of R. David Ben Barouck Corp.

12. Defendant Barouck Corp. is a corporation incorporated under the laws of the State of New York with its principal place of business at 428 Columbus Avenue, New York, New York. It is operating as a hair salon under the name "Amour De Hair."

JURISDICTION AND VENUE

13. This Court has personal jurisdiction over defendants pursuant to New York CPLR § 301.

14. Venue is proper in this Court as designated by the plaintiff under New York CPLR § 503 (a) and (c) and § 509.

STATEMENT OF FACTS

The Shareholders Agreement

15. On April 30, 2004, Barouck Corp., Zekry and Lawi entered into a Shareholders Agreement, a copy of which is attached as Exhibit A. The Shareholders Agreement

recited that Lawi and Zekry desired to enter into a business for conducting a hair salon, spa, and cosmetology business located at 428 Columbus Avenue, New York, New York.

16. The hair salon, Amour de Hair, opened for business in the fall of 2003.

17. Zekry represented in the Shareholders Agreement that he had paid \$472,800 to the credit of the business, "representing 100% of the corporate expenses for construction, security, accounting, architectural, legal, etc." Shareholders Agreement § 7.

18. Under the Shareholders Agreement, Lawi agreed to pay \$189,120 to Barouck Corp. on or before May 5, 2004, "representing 40% of the corporate expenses for construction, security, accounting, architectural, legal, etc." Shareholders Agreement § 7. In exchange, Lawi received 40% of the stock of Barouck Corp. Shareholders Agreement § 13.

19. On or about May 5, 2004, Lawi paid Zekry \$189,120 and received a 40% interest in Barouck Corp. A copy of the Stock Certificate representing her 40% ownership interest in Barouck Corp. is attached as Exhibit B.

20. Pursuant to Section 6 of the Shareholders Agreement, after deducting all expenses, Zekry was to receive 60% of Barouck Corp.'s profits whereas Lawi was to receive 40% of Barouck Corp.'s profits.

Zekry's Capital Contribution to the Business Was Substantially Less than \$472,800

21. Zekry's representation in the Shareholders Agreement that he had paid \$472,800 to Barouck Corp. for the "expenses for construction, security, accounting, architectural, legal, etc." was false.

22. Zekry paid substantially less than the \$472,800 that he represented. Indeed, Barouck Corp.'s corporate tax returns for 2003 and 2004 reflect a total potential investment of, at most, \$176,971 in Barouck Corp., and as little as \$76,971, in Barouck Corp.

Zekry's Diversion and Conversion of Lawi's Capital Contribution to Barouck Corp.

23. Induced by Zekry's false representation that he had already contributed \$472,800 to Barouck Corp. for corporate expenses incurred in connection with the opening of the hair salon, Lawi paid Zekry \$189,120, on or about May 5, 2004, for her 40% interest in Barouck Corp.

24. On May 7, 2004, Zekry deposited Lawi's check in the corporate account of the salon in a bank account maintained at Citibank.

25. On May 13, 2004, Zekry wrote a check payable to himself for \$129,120 and deposited the salon check for \$129,120 to his personal account at Citibank.

Zekry's Mismanagement of Barouck Corp.

26. Barouck Corp. operates Amour de Hair, a hair salon located at 428 Columbus Avenue in New York City. From 2004 to the present, that salon has employed on a regular basis between four and six hair stylists during the week and between seven and nine hair stylists on weekends, as well as several assistants, a receptionist, a store manager and a bookkeeper. At certain times, the hair salon has also provided spa services, including facials, manicures, waxing and tanning services.

27. Customers of the salon pay for services in cash and by credit card. A description of the services provided and the amounts charged for those services are recorded by the employees of the salon, on what is referred to as daily intake records. Amour de Hair also prepared weekly reports of the work that was done by the stylists. These records are referred to informally as "dailies" and "weeklies." Information recorded in the weeklies and dailies was also recorded at the time of the transactions, on the salon's computer.

28. Under the terms of the Shareholders Agreement, Zekry was put in sole charge of the management of Barouck Corp. Thus, Section 8(b) of the Shareholders Agreement provides that, "Zekry shall exercise full and exclusive control over the management and conduct of the business and all decisions affecting the policy and management including compensation, salary, bonuses, commissions, and personnel policies (including hiring and firing of employees)."

29. In breach of his contractual and fiduciary duties, Zekry, as President and Treasurer of Barouck Corp, manipulated the books and records of Barouck Corp. by, among other things, failing to report all income received by the business and by overstating the business's expenses. Zekry did not properly report the cash received by the business on its books and records. Nor did he properly report all of the income that the business received on Barouck Corp.'s corporate tax return.

30. For example, at the end of work weeks, Zekry often took cash earned by the business for his own personal use, sometimes storing it in a variety of safes under his control, or in safety deposit boxes. Zekry's misappropriation of cash earned by the business for his own personal and business uses reduced the distributable profits that were actually earned by Barouck Corp. for each of the years that it has been in business.

31. In addition to manipulating the books and records of Barouck Corp. to reduce the amount of profits that it appeared to have earned, Zekry also used the cash he diverted from the business to further his own personal and business interests to Lawi's detriment. Among other things, Zekry used cash that he unlawfully removed from Barouck Corp. to partially fund the construction of another hair salon at East 62nd Street in Manhattan. He also used Barouck Corp.'s cash to pay his personal and travel expenses.

32. Moreover, Zekry, who independently owns four other salons, removed business furniture and fixtures from the 428 Columbus location to use in his other salons, and replaced that furniture with old unusable items.

33. Lastly, Zekry has halted the hair salon's spa services thereby reducing the hair salon's ability to generate income.

Destruction of Corporate Books and Records

34. Zekry has admitted under oath that he destroyed corporate books and records of Barouck Corp, namely, the "dailies" and "weeklies" that reflected intake for several years. Those records would show the actual revenues of Barouck Corp. for each of its years of operation, which would enable the precise calculation of the true and correct profits of Barouck Corp. Zekry also admitted under oath that he removed computers from several of his salons, separately unscrewed the hard drives from the computers and threw both the hard drives and the computers down an incinerator in his apartment building.

35. In the case of *Zekry v. Zekry*, Index No. 35065/05 (New York County), Lawi served a discovery request on Zekry in May 2006 seeking, among other things, the books and records of Barouck Corp, including weekly payroll sheets and records of cash payments to employees. On June 26, 2006, Justice Jacqueline W. Silbermann ordered Zekry to produce documents responsive to Lawi's notice for discovery including the books and records of Barouck Corp.

36. Zekry produced some, but not all documents responsive to Lawi's demand. Upon reviewing Zekry's document production, Lawi's matrimonial counsel observed that, among other things, Zekry failed to produce any of the dailies or weeklies for Barouck Corp. On September 11, 2006, Justice Silbermann ordered Zekry to produce the daily and weekly intake sheets, and, if such documents were not within Zekry's possession, Zekry was required to provide an affidavit so

stating and, further state that such documents were not destroyed or caused to be destroyed by him. A copy of the September 11, 2006 Order is attached as Exhibit C.

37. Notably, on September 29, 2006, Zekry provided an affidavit, in response to the Court's September 11, 2006 Order, in which he stated that he "destroyed or caused to be destroyed" the "daily and weekly scrap papers from the business." September 29, 2006 Zekry Affidavit, attached as Exhibit D. As described above, the "daily and weekly" papers were the hair salon's intake sheets which recorded Barouck Corp.'s actual and true daily and weekly revenues of cash and credit.

38. After Zekry admitted that he had destroyed crucial documents, Lawi requested that she be permitted to inspect Zekry's and Barouck Corp.'s computers, where the information from the dailies and weeklies was also recorded on an ongoing basis. On or about October 17, 2006, Zekry's matrimonial attorney assured Lawi's matrimonial attorney that the data relating to the salons contained on the computers would be made available.

39. On or about October 25, 2006, Lawi moved, by order to show cause, before Justice Silbermann for a site inspection order (the "Site Inspection Motion") permitting her to have "a computer forensics expert make mirror images of relevant information contained on the hard disks on the computers in each of [Zekry's] office, home and in each of the salons."

40. While the Site Inspection Motion was pending, Zekry removed all of the computers from the hair salons.

41. Upon learning that Zekry had removed the computers from the hair salons, but unaware that Zekry had already destroyed the computers, on October 30, 2006, Lawi moved for another order directing Zekry to preserve the computers and to deliver the computers to Lawi's matrimonial attorneys' offices for safekeeping until further order of the Court (the "Preserve

Motion”). Pending a hearing and determination of the Preserve Motion, Justice Silbermann enjoined Zekry and anyone acting on his behalf from “deleting, erasing, destroying or otherwise acting upon any computer located, or formerly located, in any hair salon in which [Zekry] had an interest, or in any apartment, home or office in which [Zekry] had an interest, so as to make the data contained thereon inaccessible to [Lawi].” Justice Silbermann also ordered that pending the hearing and determination of this motion, “[Zekry] shall retain for delivery to [Lawi’s matrimonial counsel] each and every computer currently located or previously located in every hair salon and every apartment and office in which [Zekry] has an interest for a date ordered by the Court.” (the “Injunction”). A copy of the Injunction is attached as Exhibit E.

42. On November 9, 2006, Zekry stated in a another affidavit submitted in opposition to the Site Inspection Motion that he had “intentionally not responded” to the Injunction because “those computers do not exist.” Zekry said that he would explain at the appropriate time – at “trial or at a confidential ‘*in camera*’ discussion with the court.” November 9, 2006 Zekry Affidavit, attached as Exhibit F. As would become clear, they did “not exist” because he destroyed them so that Lawi would not obtain information on Barouck Corp.’s true revenues.

43. On December 14, 2006, Justice Silbermann entered another order in resolution of the Preserve Motion enjoining Zekry and anyone acting on his behalf from “deleting, erasing, destroying, or otherwise acting upon any computer located, or formerly located, in any hair salon in which defendant has an interest or in any apartment, home or office in which [Zekry] had an interest, so as to make the data contained thereon inaccessible to Lawi.” A copy of the Order is attached as Exhibit G.

44. Furthermore, on January 29, 2007, in a memorandum decision on the Site Inspection Motion, Justice Silbermann ruled: “[Lawi’s] request for a site inspection of all computers

in [Zekry's] salons, in his office and in his home, so that her computer forensics expert can make mirror image copies of information relating to [Zekry's] income on the hard disks of the computers is granted." A copy of the decision is attached as Exhibit H.

45. Zekry never fully complied with any of the orders requiring him to turn over the computers or preserve information because he destroyed all of them, but one. Although he ultimately did turn over one computer to Lawi – a computer that was *not* kept in the salons – Lawi's forensic experts determined that the data on that computer had been tampered with.

46. At his January 23, 2007 deposition in *Zekry v. Zekry*, Zekry admitted that he destroyed computers containing Barouck Corp. records, despite his knowledge of the pending discovery requests and the pending Preserve Motion.

Q. Before that, there was a motion to the court for an order directing you to preserve all the computers. Then you destroyed them, then we made the emergency motion; is that correct?

A. Yes.

January 23, 2007 Deposition of Zekry, Excerpt attached as Exhibit I. His only proffered explanation was that Lawi was "contaminating the computer with all kinds of sales and printing." (VC, Ex. J., p. 145). Zekry destroyed the computers in a very low-tech manner. He claimed he removed the computers from the salons that had computers, loaded them into the trunk of his car, brought them to his residence, removed the hard drives with a screwdriver and then threw the hard drives and the rest of the computer down the incinerator. January 23, 2007 Deposition of Zekry, Excerpt attached as Exhibit I, pp. 138-154.

Zekry's Movement of Funds to Israel

47. Zekry is a citizen of Israel and the United States, and holds both Israeli and U.S. passports. As a way to secrete the profits from Barouck Corp. and other funds, he has on

numerous occasions moved funds from the United States to Israel. He has done so by, among other means, wire transfer and bulk cash smuggling by him and others at his behest.

FIRST CAUSE OF ACTION
(Reformation of Contract)

48. Plaintiff repeats the allegations in paragraphs 1-47 as if fully set forth herein.

49. In the Shareholders Agreement, Zekry represented that he had paid \$472,800 to Barouck Corp. "representing 100% of the corporate expenses for construction, security, accounting, architectural, legal, etc."

50. Pursuant to the Shareholders Agreement, Lawi's 40% shareholder interest in Barouck Corp. was based on her contribution of 40% of the alleged \$472,800 in start-up costs for Barouck Corp. Thus, the Shareholders Agreement required Lawi to pay \$189,120, *i.e.* 40% of \$472,800, in exchange for receiving 40% of the shares of Barouck Corp.

51. At no time did Zekry made a capital contribution of \$472,800 to Barouck Corp. In fact, Barouck Corp.'s corporate tax returns for 2003 and 2004 reflect a total potential investment of, at most, \$176,971, and possibly as little as \$76,971, in Barouck Corp. Thus, Lawi's \$189,120 capital contribution to Barouck Corp. represents far more than 40% of Barouck Corp's start-up costs, indeed, as much as 100% of the costs. As a result, Lawi is entitled to receive a greater than 40% interest in Barouck Corp.

52. Lawi seeks reformation of the Shareholders Agreement so that Lawi's and Zekry's share ownership in Barouck Corp. properly reflects their respective actual contributions for Barouck Corp.'s start up costs.

SECOND CAUSE OF ACTION
(Breach of Contract)

53. Plaintiff repeats the allegations in paragraphs 1-47 as if fully set forth herein.

54. On April 30, 2004, Lawi and Zekry entered into the Shareholders Agreement pursuant to which, as a 40% shareholder, Lawi is entitled to receive 40% of the profits of the business.

55. But for Zekry's manipulation of Barouck Corp.'s books and records and his mismanagement of the finances of Barouck Corp., including, among other things, failing to report all income received by the business, diverting cash and other assets of Barouck Corp. for his own personal interests, and overstating expenses incurred by Barouck Corp., Barouck Corp. would have had greater profits to distribute in all of its years of operations and Lawi would have been entitled to receive 40% of such profits.

56. Lawi seeks as damages: (i) 40% (or a percentage commensurate with her actual ownership interest as determined in the First Cause of Action) of the profits that were actually earned by Barouck Corp., plus interest, (ii) the return of any funds diverted by Zekry for his personal or other business interests, plus interest, and (iii) any profits that Zekry may have earned at the East 62nd Street salon that were the product of funds that he diverted from Barouck Corp., plus interest.

57. Furthermore, in light of Zekry's manipulation of Barouck Corp.'s books and records, his mismanagement of the business, and his admission that he has destroyed books and records of Barouck Corp. at a time when discovery requests had been made for such documents and a motion had been filed to preserve the corporation's computers, Lawi seeks the appointment of a receiver for Barouck Corp.

THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

58. Plaintiff repeats the allegations in paragraphs 1-47 as if fully set forth herein.

59. As the majority and controlling shareholder of Barouck Corp., Zekry owed fiduciary duties of care and loyalty to Lawi, the minority shareholder.

60. Zekry breached those fiduciary duties of care and loyalty that he owed to Lawi by, among other things, manipulating Barouck Corp.'s books and records and mismanaging the finances of Barouck Corp as described above. As a result of Zekry's misconduct, Barouck Corp's profits were understated for each of the years that it has been in operation.

61. In addition, Zekry breached his fiduciary duties of care and loyalty to Lawi by diverting cash and other assets belonging to Barouck Corp. for his own personal and business interests.

62. Lawi has been damaged by Zekry's breaches of fiduciary duty in that, among other things, Zekry's misconduct has resulted in the understatement of Barouck Corp.'s profits for each of the years that it has been in operation and Lawi has received a much smaller distribution of profits than she would have received had Zekry faithfully fulfilled his duties. Lawi has also been damaged by Zekry's diversion of corporate assets for his own personal and business interests in that, but for the diversion of the cash and assets, such cash and assets would have increased the profits of Barouck Corp. and Lawi would have been entitled to receive 40% (or her commensurate share as determined in the first cause of action) of such profits.

63. Lawi seeks as damages: (i) 40% (or a percentage commensurate with her actual ownership interest as determined in the First Cause of Action) of the profits that were earned by Barouck Corp., plus interest, (ii) the return of any funds diverted by Zekry for his personal or other business interests, plus interest and (iii) any profits that Zekry may have earned at the East 62nd Street salon that were the product of funds that he diverted from Barouck Corp., plus interest.

64. In addition, Zekry's conduct in manipulating Barouck Corp's books and records to suppress the corporation's profits, in diverting corporate assets for his own personal and business uses, and in destroying Barouck Corp.'s books and records has been willful and wanton. Lawi seeks punitive damages in an amount to be determined at trial.

65. Furthermore, in light of Zekry's manipulation of Barouck Corp.'s books and records, his mismanagement of the business, and his admission that he has destroyed books and records of Barouck Corp. at a time when discovery requests had been made for such documents and a motion had been filed to preserve the corporation's computers, Lawi seeks the appointment of a receiver for Barouck Corp.

FOURTH CAUSE OF ACTION
(Conversion)

66. Plaintiff repeats the allegations in paragraphs 1-47 as if fully set forth herein.

67. In order to induce Lawi to enter into the Shareholders Agreement and contribute \$189,120 to Barouck Corp, Zekry falsely represented that he had already paid to Barouck Corp. \$472,800, which purportedly represented the expenses that were incurred in establishing a salon to be operated by Barouck Corp.

68. Zekry's representation that he had paid \$472,800 to Barouck Corp. for such corporate expenses was false. Zekry never paid \$472,800 to Barouck Corp.

69. Lawi reasonably relied on the truthfulness of Zekry's representation that he had already contributed \$472,800 to Barouck Corp. as payment for corporate expenses in deciding to enter into the Shareholders Agreement and contribute \$189,120 to Barouck Corp. in exchange for receiving a 40% interest in Barouck Corp.

70. After Lawi contributed \$189,120 to Barouck Corp., Zekry misappropriated and unlawfully converted at least \$129,120 of such funds to his own account by having Barouck Corp. issue a check to himself that represented a portion of the proceeds that Lawi had contributed to Barouck Corp.

71. Zekry has no legal right to the possession of such funds.

72. Zekry fraudulently concealed his misappropriation of the funds by, among other things, destroying books and records of Barouck Corp.

73. Lawi has been damaged by Zekry's conversion of her funds in the amount of at least \$129,120, plus interest.

74. In addition, Zekry's conduct in misappropriating and converting Lawi's funds has been willful and wanton. Lawi seeks punitive damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(In the Alternative, Fraud in the Inducement)

75. Plaintiff repeats the allegations in paragraphs 1-47 as if fully set forth herein.

76. In order to induce Lawi to enter into the Shareholders Agreement and contribute \$189,120 to Barouck Corp., Zekry falsely represented that he had already paid to Barouck Corp. \$472,800, which purportedly represented the start-up costs that were incurred in establishing the Amour De Hair salon operated by Barouck Corp.

77. Zekry's representation that he paid \$472,800 to Barouck Corp. for such corporate expenses was false. Zekry never paid \$472,800 to Barouck Corp.

78. Lawi reasonably relied on the truthfulness of Zekry's representation that he had already contributed \$472,800 to Barouck Corp. as payment for corporate expenses in deciding to enter in the Shareholders Agreement and contribute \$189,120 to Barouck Corp. in exchange for

receiving a 40% interest in Barouck Corp. If Lawi had known that Zekry, in fact, had not contributed \$472,800 to Barouck Corp. to pay for start-up costs, she would not have entered into the Shareholders Agreement and would not have agreed to pay \$189,120 to Barouck Corp. in exchange for her 40% interest in Barouck Corp.

79. As a result of Zekry's fraud, Lawi seeks rescission of the Shareholders Agreement and return of the \$189,120 that she paid to Barouck Corp., plus interest, and any other consequential and punitive damages.

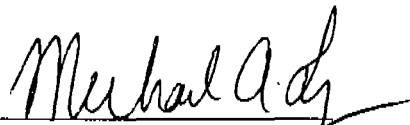
WHEREFORE, plaintiff Lawi requests judgment against defendants Zekry and Barouck Corp. as follows:

- A. On her first cause of action, reformation of the Shareholders Agreement so that Lawi's and Zekry's ownership interest in Barouck Corp. properly reflect their actual contributions of Barouck Corp.'s start-up costs;
- B. On her second cause of action, 40% (or a percentage commensurate with her actual ownership interest as determined in the First Cause of Action) of the profits that were earned by Barouck Corp. in each of the years of its operation, plus interest; (b) the return of any funds and assets diverted by Zekry for his personal or other business interests, plus interest; (c) any profits that Zekry may have earned at the East 62nd Street salon that were the product of funds that he diverted from Barouck Corp., plus interest; and (d) the appointment of a receiver;
- C. On her third cause of action, 40% (or a percentage commensurate with her actual ownership interest as determined in the First Cause of Action) of the profits that were earned by Barouck Corp. in each of the years of its

- C. On her third cause of action, 40% (or a percentage commensurate with her actual ownership interest as determined in the First Cause of Action) of the profits that were earned by Barouck Corp. in each of the years of its operation, plus interest; (b) the return of any funds diverted by Zekry for his personal or other business interests, plus interest; and (c) any profits that Zekry may have earned at the East 62nd Street salon that were the product of funds that he diverted from Barouck Corp., plus interest (d) punitive damages; and (e) the appointment of a receiver;
- D. On her fourth cause of action, for damages in the amount of at least \$129,120, plus interest, consequential damages, and punitive damages; or
- E. Alternatively, on her fifth cause of action, for rescission of the Shareholders Agreement, and return of the \$189,120 that Lawi paid to Barouck Corp., plus interest, consequential and punitive damages; and
- F. For such other relief as the Court may deem appropriate, including the award of costs and expenses, including reasonable attorneys' fees.

Dated: February 14, 2008
New York, New York

KAYE SCHOLER LLP

By: 

Michael A. Lynn
Daniel R. Alonso
425 Park Avenue
New York, NY 10022
(212) 836-8000

Attorneys for Nicole Lawi Zekry

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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NICOLE LAWI ZEKRY, : Index No.

Plaintiff, :

- against -- :

VERIFICATION

PINHAS ZEKRY and R. DAVID BEN BAROUCK CORP., :

Defendants. :

----- X

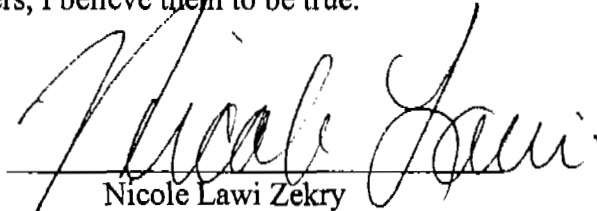
STATE OF NEW YORK)

ss.:

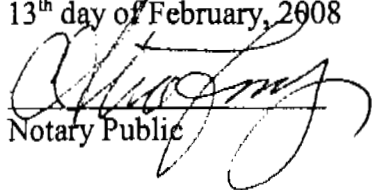
COUNTY OF NEW YORK)

NICOLE LAWI ZEKRY, being duly sworn, deposes and says:

1. I am the Plaintiff in the above-captioned action.
2. I have read the annexed Verified Complaint and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters, I believe them to be true.


Nicole Lawi Zekry

Sworn to before me this
13th day of February, 2008


Notary Public

ALICE FONG
NOTARY PUBLIC, State of New York
 No. 01FO0173398
 Qualified in Kings County
 Certificate Filed in New York County
 Commission Expires Aug. 27, 2012