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Corporate Registry

1301 1st Avenue

Regina, SK ***Via Courier***

S4R 8H2 ***Via Email*** [***donald.hobday@isc.ca***](mailto:donald.hobday@isc.ca)

Attention: Mr. Donald Hobday

Sir,

**RE: Keeley Lake Lodge; Our File # 3010 0081**

1. We represent Timothy Cimmer of Battleford in a civil matter before the Court of Queen’s Bench.

Background of this request

1. Mr. Cimmer lent money to a US citizen, Mr. Richard Lunemann. Mr. Lunemann resides at 196 Haddon Avenue, West Berlin, New Jersey, USA, 08091-1836. The Demand Loan Agreement (“DLA”) is enclosed as **Annexure “A”**. That loan is secured through a Share Option Agreement (“SOA”), enclosed as **Annexure “B”**. Collectively, these documents are the “Agreements”.
2. The object of security is 60 Class “A” common shares (the “Shares”) in a corporation incorporated pursuant to the laws of Saskatchewan, Keeley Lake Lodge (1989) Ltd. Enclosed as **Annexure “C”** is the certificate of incorporation. **Annexure “D”** is the certificate of amendment of Keeley’s registered name.
3. Mr. Cimmer entered into Agreements on the basis of Mr. Lunemann’s representations and the corporate documents. The corporate documents include:
   1. The agreement between Mr. Lunemann (buyer) and a Mr. Charles Niessner (seller) for the purchase of the Shares, dated June 1, 1990, a copy of which is enclosed as **Annexure “E”**;
   2. The promissory note of Mr. Lunemann pursuant to said agreement, executed on June 1, 1990, and the accounting of Mr. Niessner showing that Mr. Lunemann had paid the purchase price for the shares through his sweat equity. This is enclosed as **Annexure “F”**. It bears the initials of Mr. Niessner. The last payment was in December 1997;
   3. The financial statements of Keeley as at December 31, 1997, which indicates as paragraph 5 in Schedule 2 that: “In the coming calendar year the Class A voting shares have been sold.” This is enclosed as **Annexure “G”**;
   4. The share certificate of Mr. Lunemann, dated January 20, 1998 and showing that he is the holder of the Shares, enclosed as **Annexure “H”**;
   5. The cancelled share certificate of Mr. Niessner pursuant to which he held 51 of the 60 Shares, enclosed as **Annexure “I”**;
   6. The assignment showing that Mr. Niessner transferred 51 of the 60 Shares to Mr. Lunemann on January 30, 1998, enclosed as **Annexure “J”**;
   7. The cancelled share certificate of Mr. Niessner pursuant to which he held 49 shares in Keeley, and 9 thereof being of the 60 Shares, enclosed as **Annexure “K”**;
   8. The assignment showing that Mr. Niessner transferred the 9 shares to Mr. Lunemann on January 30, 1998, enclosed as **Annexure “L”**;
   9. The resulting share certificate of Mr. Niessner, after thee aforementioned transfers, evidencing that he holds 40 shares in Keeley, enclosed as **Annexure “M”**;
   10. The resolution by the shareholders of Keeley on January 30, 1998 approving the transfer of the Shares from Mr. Niessner to Mr. Lunemann, enclosed as **Annexure “N”**;
   11. The share register of Keeley, showing that Mr. Lunemann held the Shares as at January 30, 1998, enclosed as **Annexure “O”**;
   12. The ISC corporate registry profile report of Keeley, dated July 28, 2015, showing Mr. Niessner as the holder of 40 Class A shares and Mr. Lunemann as the holder of 60 Class A shares, enclosed as **Annexure “P”**.
4. A dispute ensued between Mr. Niessner and Mr. Lunemann in the Superior Court of New Jersey, Camden County Law Division. Enclosed as **Annexure “Q”** is the complaint of *inter alia* Mr. Niessner. This complaint was issued before the DLA and SOA were concluded.
5. Despite the documents listed in paragraph 4 above, Mr. Niessner alleged in the complaint that:

12. At all relevant times, C. Niessner has been the sole owner of the Lodge [Keeley].

…

15. In 1998, the Lodge booked its first hunting trip with the expectation that Defendant (Mr. Lunemann] would run the same.

16. However, the Canadian Fish and Wildlife authorities notified the Lodge that Defendant, a non-Canadian citizen and non-owner of the Lodge, could not run hunting trips in Canada without the requisite working papers. Defendant did not possess the requisite papers.

17. Because the Lodge had hunters soon arriving, C. Niessner sought the advice of the Lodge's corporate counsel ("Counsel') for a solution to allow Defendant to run the impending hunting trip.

18. Counsel informed C. Niessner that the Canadian government will only allow a non-Canadian citizen to work in Canada without the appropriate working papers if the non-Canadian citizen is a majority owner of the Canadian company for which he or she works.

19. Thereafter, in 1998, upon the advice of Counsel, C. Niessner executed an Agreement to Purchase Stock [Annexure “E”]…and a Promissory Note [included at Annexure “F”]...

1. Mr. Cimmer instructs me that Mr. Lunemann discussed the complaint with him after it was issued. Mr. Lunemann made the following representations to Mr. Cimmer:
   1. Mr. Niessner had issued the complaint because he was unhappy with Mr. Lunemann for limiting Mr. Niessner’s opportunities to shoot trophy deer at Keeley.
   2. Mr. Niessner wanted to push him out of Keeley.

* 1. The claims against him were unfounded.

* 1. Mr. Niessner issued the complaint against him because he knew that Mr. Lunemann was not in the same financially strong position as Mr. Niessner.
  2. He wanted to defend the Initial Complaint, but did not have money to do so.
  3. The Shares were lawfully his shares.

1. Mr. Cimmer inspected the corporate documents. He observed that Mr. Lunemann possessed the original share certificate attached as **Annexure “H”**.
2. Mr. Cimmer, on the basis of the corporate documents and Mr. Lunemann’s representations, *bona fide* believed these things that Mr. Lunemann told him. He relied on them to be true. He *bona fide* believed in the righteousness of Mr. Lunemann’s proposed defence. Mr. Lunemann had on numerous occasions in preceding years told Mr. Cimmer that he was the controller of the Lodge.
3. Mr. Cimmer told Mr. Lunemann that he would lend him money as a friend to defend the complaint. He *bona fide* believed at that time that his financial assistance was the only way that Mr. Lunemann could get access to justice.
4. Lunemann retained counsel in New Jersey. Mr. Cimmer agreed to act as surety for Mr. Lunemann’s legal fees. Enclosed as **Annexure “R”** is that acknowledgement.
5. The DLA and SOA were executed before Mr. Lunemann filed his defence in New Jersey. His defence was filed on December 15, 2015, and is attached as **Annexure “S”**. Unknown to Mr. Cimmer, Mr. Lunemann pled:

the Defendant demands judgment in his favor, against the Plaintiffs declaring instead that the, so called, agreement is a sham, and, before the time that the agreement was prepared in 1998, the Defendant had already paid in labor, service and other valuable consideration to the corporation, payment for the 60% ownership interest that he had acquired in the company, said payment acknowledged by the Plaintiff, W. Charles Niessner.

6…in 1990, the parties reached an oral agreement that would ultimately provide for the vesting of at least half of the company's equity in Lunemann's name…

10…From 1990 to 1998, the business was run on a handshake between the two…

11. In 1997, Lunemann learned from Niessner that there was an issue involving Canadian customs. Since the U.S. based hunting operations were the life blood of the Lodge, the repeat business from which had led to the remarkable growth and expansion of the company, Niessner indicated that he was having documents drafted that would memorialize their original oral stock purchase agreement, only, Lunemann would be 60% owner of the company…They were, however, not executed on the dates reflected in the documents but were executed in 1997, being backdated to appear as if they were executed in 1990. Niessner explained to Lunemann that these documents would have to be back-dated to demonstrate that Lunemann had begun acquiring equity in the company since soon after it was formed.

12. When presented with the documents, Lunemann expressed his concern to Niessner that the back-dated promissory note which he was being asked to sign, was inaccurate and did not reflect the actual equity that he had earned in the company since 1990. Niessner, indicating that the note needed to be worded in that fashion and be back-dated to satisfy the requirements of Canadian customs, insisted that the documents needed to be executed as written. He also indicated that he did not want to pay the fines that would be imposed if the documents were not executed in that form. To calm Lunemann 's concerns, Niessner and Lunemann jointly prepared a written memo reflecting credits given to Lunemann against the $60,000 stock purchase obligation contained in the stock sale agreement and note. Niessner affirmed that Lunemann had been credited with certain amounts against the principal amount due under the note, reflecting satisfaction of the principal amount due under the note by the end of 1997. The memo credited Lunemann with reductions of $1,850 in 1991, $4,000 in 1992, $14,000 in 1993, $12,000 in 1994, $3,000 in 1995, $11,000 in 1996 and $14,150 in 1997. In all, the accumulated credit extinguished any residual obligation due under the back-dated stock purchase agreement.

13. The unaudited financial statement for the Lodge in 1997 indicated that all 100 Class A voting shares of the Lodge's stock would be "issued and fully paid" in the “coming calendar year."…Moreover, in the "Notes" section of the financial statement, the auditors, Deutscher & Aldous, indicated that, “In the coming calendar year the Class A voting shares have been sold," reflecting Lunemann 's acquisition of controlling interest in the company…

14. A similar phrase was inserted by Deutscher & Aldous into the "Notes" section of the Lodge's 1998 Financial Statement…It read, "In this calendar year the Class A voting shares have been sold...

15. On July 21, 1998, at Niessner's direction, the Lodge's legal representative wrote to the local Canadian officials requesting that the Corporate Records be amended to reflect the following ownership status:

Charles Niessner 40 Class A Shares

Richard Charles Lunemann 60 Class A Shares

There was no indication in that notice to the government officials that those shares were restricted in any fashion. Thus, as of July 21, 1998, the official records in Saskatchewan reflected the Lodge's representation to the Canadian government that Lunemann, not Niessner was the corporation's majority shareholder. That representation accurately reflected the ownership of the company as of that date and was consistent with the Company's independently prepared financial statements…”

22. The company's unaudited financial statements reflect, as company liabilities, an inordinate amount of obligations to Niessner or companies owned by Niessner. The 1997 statement, believed to be the first financial statement issued by the company, reflects an "officer's loan" obligation to Niessner of $548,050…The only support for that obligation, however, was a statement in notes that read as follows: "Shareholder's loan is unsecured. There is no interest payable and no definite terms of repayment…"…Nowhere is the basis for the calculation of this figure provided

23. Between December 31, 1999 and November 22, 2012, Niessner withdrew $863,690.97 from the Lodge's accounts, ostensibly in satisfaction of his "officer's loan" to the company. As of December 31, 1999, the Lodge's books reflected no further obligation to Niessner associated with a shareholder's loan.

24. By November, 2012 Ms. Niessner was managing all of her husband's corporate affairs. She did not seek to have Niessner's 40% interest transferred to her name. Ms. Niessner did not seek a shareholder's meeting replacing Niessner as company president. She simply asserted control of the corporation in Niessner's stead and turned her back on Niessner's "hand shake'' agreements with key employees of the company, threatening those key employees, and inducing professionals who worked for the company to follow her instructions regarding the preparation and production of the company's books and records.

…

26. On December 31, 2012, Ms. Niessner directed the company's accountant to make two entries into the corporate books. The first was a $450,000 debit in Niessner's favor, classified as an officer's loan. Ms. Niessner, an accountant herself, indicated that the debit was associated with "land sold to the corporation" by Niessner. At the time she directed that entry in the corporate books Ms. Niessner knew the entry to be false. The land in question was purchased by Niessner for far less than the value of the property stated on the corporation's balance sheet. The figure entered on the books was well above the fair market value of the property. Moreover, the acquisition of the land by Niessner individually and its subsequent "paper sale" of the property to the corporation at an inflated price was a clear violation of Niessner's duty of loyalty to the corporation. The opportunity belonged to the corporation in the first instance and should have been a corporate transaction from its inception. Finally, there is no evidence that the so called "sale transaction" was ever authorized by Lunemann. The transaction was ultra vires. The entry of the $450,000 sale price between Niessner and the Lodge into the corporate books misrepresented the actual price or value of the investment to the corporation and intentionally skewed the company's balance sheets.

27. On that same date Ms. Niessner instructed the company's accountant to enter a second debit in the company's balance sheet of$ l 55,67 l .50 and identify the transaction with the notation: "move Riches shareholders loan."

28. This figure in the company books was intended to represent, in part, an antecedent debt related to the rental of property in New Jersey, which had nothing to do with the corporate accounts. It was allegedly related to amounts alleged to be outstanding regarding the 1999 Purchase of Keeley House, and distributions made to Lunemann after the corporation ceased paying him his regular salary in 2009…

29. Ms. Niessner denied that there had ever been an accord on the 60 shares of the Lodge which were transferred to Lunemann in 1998. She claimed that the $60,000 obligation referenced in the note remained unpaid and had also accrued an additional $38,400 in interest. Thus, in 2012, she claimed a right to payment of an additional $98,000 associated with the stock purchase that had been settled in 1998.

30. With the assertion of the additional "shareholder loan" amounts of$450,000 and $155,461 on December 31, 2012, in a single 24 hour period, the Lodge went from owing Niessner nothing by way of an officer's loan to an alleged obligation of $605,671.

40. Bousquet [the manager of Keeley at that time] indicated his belief that, since he became involved with the company in 1999, the Niessner's had been more than paid-back-in-full for any shareholder's loan that had been advanced to the company by Niessner in the years that the company was formed. Bousquet suggested that the Niessners had .. adjusted" or "factualized" the shareholder's loan over the years to avoid paying Lunemann or Bousquet any of the Lodge's profits. According to Bousquet, the company's books had failed to reflect $246,565 in profits from 2001, 2003, 2004, 2012 and 2013. He also indicated that there was an undeclared profit of $55,000 in 2011 and 2014's profit should total $55,804. If he was correct, $357,369 in corporate profits should have been distributed to him and Lunemann with a minimum of $89,342.25 being owed to the Defendant/counterclaimant.

1. Mr. Cimmer was at all material unaware that there were criminal or fraudulent activities at, or allegations of criminal or fraudulent activities relating to Keeley.
2. Mr. Cimmer’s litigation against Mr. Niessner and Mr. Lunemann started after these allegations came to light, and when Mr. Lunemann refused to honour the DLA and SOA agreements.

The proper Keeley corporate profile

1. The corporate profile of Keeley as at January 20, 2016 was as is enclosed hereto and marked as **Annexure “T”**.

The improper Keeley corporate profile

1. Mr. Niessner instituted proceedings against Mr. Cimmer in Saskatchewan. That statement of claim is attached hereto and marked as **Annexure “U”**. After that claim was issued, Mr. Niessner redundantly made Mr. Cimmer a party to the US litigation against Mr. Lunemann. That amended claim is attached hereto as **Annexure “V”**.
2. The New Jersey Court issued a decision enclosed as **Annexure “W”**. That matter is currently under appeal in the USA. It has not been enforced in Saskatchewan or Canada. Pursuant to *The Enforcement of Foreign Judgments Act*, SS 2005, c E-9.121, s 10 a foreign judgment shall not be enforced in Saskatchewan if the judgment debtor (i.e. Mr. Cimmer proves that there was an error of jurisdiction). Since no enforcement has been requested, the New Jersey Court Order can not be enforced in Saskatchewan.
3. However, at some point Mr. Niessner or Ms. Niessner made representations to the Director of Corporations or ISC to amend the corporate profile of Keeley. The resulting profile is as enclosed as **Annexure “X”** hereto. At no material time was that profile change permissible by reason that the New Jersey decision was not enforceable in Saskatchewan.

Relief sought

1. Mr. Cimmer request an inquiry pursuant to *The Business Corporations Act*, RSS 1978, c B-10, s 230 regarding the false representations made to the Director of Corporations by Mr. Niessner or Ms. Niessner with regards to fraudulent, erroneous, and false reports, returns, notice, or other documents submitted to the your office from incorporation to present date. Such request includes an inquiry with regards to the submission and acceptance of an unenforced USA decision.
2. Mr. Cimmer requests that the corporate profile of Keeley be restored to the form as indicated in **Annexure “T”** hereto. Alternatively, Mr. Cimmer requests direction from your office with regards to the procedure prescribed by your office in order to file an application with the Director to seek such relief.

Yours truly,

MERCHANT LAW GROUP LLP

Per:

E.F. ANTHONY MERCHANT, Q.C.

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