

**IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY**

---

|  |   |                                      |
|--|---|--------------------------------------|
| Dennis Hill,                           | ) |                                      |
|  | ) | CASE NO. LACV070811                  |
| Plaintiff-Counterclaim Defendant,      | ) |                                      |
|  | ) |                                      |
| v.                                     | ) | <b>ANSWER, AFFIRMATIVE DEFENSES,</b> |
|  | ) | <b>and COUNTERCLAIM</b>              |
| Brent Luscombe, Michelle Luscombe, and | ) |                                      |
| Luscombe Enterprises, Inc.             | ) |                                      |
|  | ) |                                      |
| Defendants-Counterclaim Plaintiffs,    | ) |                                      |
|  | ) |                                      |
| and                                    | ) |                                      |
|  | ) |                                      |
| Country Partners, Inc.                 | ) |                                      |
|  | ) |                                      |
| Nominal Party.                         | ) |                                      |

---

COME NOW the Defendants-Counterclaim Plaintiffs Brent Luscombe (“Brent”), Michelle Luscombe (“Michelle”), Luscombe Enterprises, Inc., and nominal party Country Partners, Inc. (“Country Partners”), and for their Answer hereby state:

**THE PARTIES AND VENUE**

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.

**FACTUAL BACKGROUND**

7. Admit.
8. Admit.
9. Admit.

10. Deny and further state that Dennis Hill (“Dennis”) is the sole and duly-authorized Secretary for Country Partners.
11. Admit.
12. Admit.
13. Admit.
14. Deny. Further state that Michelle has periodically assisted with Country Partners’ financial records in a limited capacity. Further state that Dennis is the sole and duly-authorized Secretary for Country Partners.
15. Admit.
16. Admit.
17. Admit.
18. Deny.
19. Admit.
20. Deny. Further state that Dennis reviewed and signed a financial statement for Country Partners approximately one year earlier, on February 9, 2016, that showed the corporation’s net worth was approximately -\$824,183, and Dennis was aware of the corporation’s financial position at all material times.
21. Deny for lack of information. Further state that Dennis had full, complete, and unencumbered access to the bank account records for Country Partners, including each and every bank statement, which fully set forth and itemized all loans between Green Belt Bank & Trust and Country Partners.
22. Admit that County Partners owes certain debts to Green Belt Bank & Trust for business loans. Deny the remaining allegations in Paragraph 22 for lack of information.

23. Admit that in August of 2017, employees and agents of Green Belt Bank & Trust asked Dennis to execute a document acknowledging his previously-executed personal guaranty of Country Partners' debts. Further state that Dennis requested and on October 6, 2017 received a copy of the guaranties he previously executed, the existence of which cannot be seriously disputed. Deny the remaining allegations in Paragraph 23 for lack of information.

24. Deny. Further state that Dennis has reviewed, approved, and signed as Secretary the annual financial statements that were submitted Green Belt Bank & Trust in the years 2016, 2015, 2014, 2013, and in prior years, all for the purpose of securing additional credit for Country Partners. Further state that Dennis received state and federal tax documents for Country Partners each year that demonstrated recurring losses the corporation suffered. Further state the tax returns establish a loss of more than \$2,000,000 in the past five years alone. Further state that additional corporate losses were incurred in the liquidation of Country Partners' assets in 2017, with the full knowledge and consent of Dennis. Further state that bank records indicate that employees of Green Belt Bank & Trust met with Dennis on multiple occasions, beginning in at least 2016, to discuss the debt load of Country Partners and the financial shortfall of the corporation. Deny that Dennis could plausibly have "no idea" how Country Partners incurred debt.

25. Deny.

26. Admit.

27. Deny.

28. Deny.

29. Deny.

30. Deny.

31. Deny.

32. Deny.

33. Admit that Green Belt Bank & Trust generally required cash flow projections for new hog purchases. Deny the remaining allegations in Paragraph 33. Further state that the term “loan application” is unclear and undefined in Plaintiff’s Petition. Green Belt Bank & Trust generally required annual financial statements as a condition of lending to Country Partners, in addition to loan guarantees, periodic collateral checks, and other lending requirements.

34. Deny.

35. Deny.

36. Admit.

37. Admit.

38. Deny.

39. Deny.

**COUNT I**

**APPLICATION FOR INSPECTION OF RECORDS**

40. Defendants-Counterclaim Plaintiffs restate their Answer to Paragraphs 1–39 as if set forth fully herein.

41. Admit.

42. Admit that shareholders have certain rights to inspect corporate records, if the shareholder meets the requirements of Iowa Code section 490.1602(3).

43. Admit that directors have a right to inspect corporate records for purposes that are reasonably related to director duties, pursuant to Iowa Code section 490.1605(1).

44. Admit that more than two months have passed since Dennis' letter of September 5, 2017.

Further state that financial records are already available to Dennis, and that Dennis has previously requested and received numerous financial records from Green Belt Bank & Trust.

45. Deny.

46. Admit that Dennis has a right to access Country Partners' records in a manner consistent with Iowa law. Deny the remaining allegations of Paragraph 46.

47. Admit.

WHEREFORE the Defendants-Counterclaim Plaintiffs resist Count I of Plaintiff's Petition and the requests for relief therein.

## **COUNT II**

### **APPLICATION FOR JUDICIAL DISSOLUTION AND FOR RECEIVERSHIP**

48. Defendants-Counterclaim Plaintiffs restate their Answer to Paragraphs 1–47 as if set forth fully herein.

49. Deny.

50. Deny.

51. Admit.

52. Admit.

53. Deny. Further state that there are no business activities for any proposed receiver to oversee or manage. Country Partners has already liquidated its entire livestock holdings, its machinery, and its equipment, with Dennis' full knowledge and consent.

54. Deny.

55. Deny.

56. Deny.

WHEREFORE the Defendants-Counterclaim Plaintiffs resist Count II of Plaintiff's Petition and the requests for relief therein. Plaintiff's request fails to comply with Iowa Rule of Civil Procedure – Division XV, and Plaintiff cannot make a prima facie case for a temporary injunction.

**COUNT III**

**BREACH OF FIDUCIARY DUTY**

57. Defendants-Counterclaim Plaintiffs restate their Answer to Paragraphs 1–56 as if set forth fully herein.

58. Admit that Brent and Dennis owed fiduciary duties to each other as provided by both Iowa law and the corporation's governing documents.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

63. Deny.

64. Deny.

65. Deny.

WHEREFORE the Defendants-Counterclaim Plaintiffs resist Count III of Plaintiff's Petition and the requests for relief therein.

**COUNT IV**

**DERIVATIVE ACTION - BREACH OF FIDUCIARY DUTY**

66. Defendants-Counterclaim Plaintiffs restate their Answer to Paragraphs 1–65 as if set forth fully herein.

67. Admit that Brent and Dennis owed fiduciary duties to Country Partners as provided by both Iowa law and the corporation's governing documents.

68. Deny.

69. Deny.

70. Deny.

71. Deny.

72. Deny. Further state that Dennis' relationship with Green Belt Bank & Trust (concerning Dennis' personal accounts and other farm/agricultural businesses) was threatened by the financial shortfall of Country Partners and by other losses that Dennis incurred in his farm-related businesses. Further state that Dennis falsified bank records to conceal the true nature of Dennis' business activities from bank personnel, including engaging in fraudulent and misleading transfers from Country Partners to "Hill & Son, Inc." and falsifying a transfer memorandum on Country Partners' ledger to hide investment activity from Green Belt Bank & Trust employees and officers.

73. Deny.

74. Deny.

WHEREFORE the Defendants-Counterclaim Plaintiffs resist Count IV of Plaintiff's Petition and the requests for relief therein.

**AFFIRMATIVE DEFENSES**

COME NOW the Defendants-Counterclaim Plaintiffs Brent Luscombe, Michelle Luscombe, Luscombe Enterprises, Inc., and nominal party Country Partners, Inc., and assert the following affirmative defenses:

1. Plaintiff has failed to mitigate Plaintiff's damages, if any.

2. Plaintiff has waived and/or ratified issues complained of in Plaintiff's Petition.
3. The applicable statute(s) of limitations bar(s) recovery for issues complained of in Plaintiff's Petition.
4. Plaintiff's losses, if any, were substantially caused by Plaintiff's own fraud or illegal conduct, which does not permit the Court to afford Plaintiff any affirmative relief.

**COUNTERCLAIM AGAINST PLAINTIFF DENNIS HILL**

**BREACH OF FIDUCIARY DUTY**

COME NOW the Defendants-Counterclaim Plaintiffs Brent Luscombe ("Brent"), Michelle Luscombe, Luscombe Enterprises, Inc., and nominal party Country Partners, Inc. ("Country Partners"), and for their Counterclaim against Dennis Hill ("Dennis") hereby state:

1. Defendants-Counterclaim Plaintiffs restate their Answer to Paragraphs 1–5 as if set forth fully herein.
2. Venue is proper with this Court because County Partners' principal place of doing business is situated in Cerro Gordo County, Iowa.
3. Country Partners was incorporated as an Iowa corporation on March 8, 2000.
4. Country Partners has always had, and presently has, two directors: Dennis and Brent.
5. Officer duties have been shared between Dennis and Brent as follows: Dennis is the corporate Secretary and Brent is the corporate President and Treasurer.
6. As an officer and director of County Partners, Dennis owed fiduciary duties of loyalty and care, among other duties, to both Country Partners and to Brent.
7. Dennis breached his fiduciary duties in at least the following particulars:
  - a. Failing to properly monitor and manage the hedging account for County Partners, which resulted in losses of approximately \$130,000 to the corporation;



- b. Failing to properly monitor, manage, and care for the hogs raised in Dennis' nursery facility, which resulted in disproportionate death losses in Dennis' facility and created significant financial losses for the parties; and,
  - c. Any other particulars as shown by the evidence in this case.
8. The damages as described herein were within the scope of Dennis' liability, and the damages were caused by Dennis.
  9. Making a demand on Dennis to bring this counterclaim would be futile because Dennis is unlikely to bring an action by Country Partners and against himself for the tortious acts described herein.

WHEREFORE, Defendants-Counterclaim Plaintiffs Brent Luscombe, Michelle Luscombe, Luscombe Enterprises, Inc., and nominal party Country Partners, Inc., pray for an award of damages against Dennis Hill in an amount that will fully compensate them for their losses, in addition to an award of costs, attorney's fees and for any other relief the Court deems just and equitable.

Respectfully submitted,

DUTTON, BRAUN, STAACK  
& HELLMAN, P.L.C.

*Attorneys for Defendants-Counterclaim Plaintiffs*

BY: /s/Erich D. Priebe  
Matthew M. Craft, AT0001713  
Erich D. Priebe, AT0012350  
3151 Brockway Road  
P.O. Box 810  
Waterloo, IA 50704  
(319) 234-4471  
(319) 234-8029 FAX  
Email: [craftm@wloolaw.com](mailto:craftm@wloolaw.com)  
[priebee@wloolaw.com](mailto:priebee@wloolaw.com)

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on the 29<sup>th</sup> day of November, 2017.

ORIGINAL FILED.

Copy to:

*Attorneys for Plaintiff-Counterclaim Defendant*

Julie J. McLean, AT0005185

Jason R. Lawrence, AT0013301

Davis, Brown, Koehn, Shors & Roberts, P.C.

215 10<sup>th</sup> St.

Ste. 1300

Des Moines, IA 50309

(515) 288-2500

FAX (515) 243-0654

Email: [juliemclean@davisbrownlaw.com](mailto:juliemclean@davisbrownlaw.com)

[jasonlawrence@davisbrownlaw.com](mailto:jasonlawrence@davisbrownlaw.com)

By:  U.S. Mail  Fax  
 Hand Delivered  UPS  
 Federal Express  E-mail  
 EFC or EDMS System Participant (Electronic Service)

Signature:  /s/Jamie Showalter