

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

Dennis Hill, an Individual,

Plaintiff

v.

Brent Luscombe, an Individual

Michelle Luscombe, an Individual

Luscombe Enterprises, Inc., an Iowa Corporation

Defendants

and

Country Partners, Inc., an Iowa Corporation,

Nominal Defendant.

Case No. _____

PLAINTIFFS' PETITION AT LAW, AND

**(1) APPLICATION FOR INSPECTION
OF CORPORATE RECORDS,**

**(2) APPLICATION FOR JUDICIAL
DISSOLUTION,**

**(3) APPLICATION FOR TEMPORARY
INJUNCTION AND IMMEDIATE
APPOINTMENT OF A RECEIVER,**

**(4) PETITION FOR BREACH OF
FIDUCIARY DUTIES, AND**

(5) JURY DEMAND

****EXPEDITED RELIEF REQUESTED****

COMES NOW Plaintiff Dennis Hill, an individual, through his undersigned counsel bringing his Petition at Law and Jury Demand as follows:

THE PARTIES AND VENUE

1. Plaintiff Dennis Hill is an individual and resident of the State of Iowa, residing at 3085 Briggs Woods Road, Stanhope, IA 50246.

2. Defendant Brent Luscombe is an individual and resident of the State of Iowa and, upon information and belief, resides at 7442 Balsam Avenue, Thornton, IA.

3. Defendant Michelle Luscombe is an individual and resident of the State of Iowa and, upon information and belief, resides at 7442 Balsam Avenue, Thornton, IA.

4. Defendant Luscombe Enterprises, Inc. (“Luscombe Enterprises”) is an active Iowa corporation with its principal place of business at 7442 Balsam Avenue, Thornton, IA.

5. Nominal Defendant and Derivative Plaintiff Country Partners, Inc. is an active Iowa corporation registered with the Iowa Secretary of State, listing its registered agent as Brent Luscombe of 7442 Balsam Ave., Thornton, IA, and its home address at the same address.

6. Venue is proper with this Court because Country Partners, Inc.’s principal place of doing business and its corporate records are situated in Cerro Gordo County, Defendants Brent and Michelle Luscombe are residents of Cerro Gordo County, and some or all of the events and transactions giving rise to this Petition, upon information and belief, took place in Cerro Gordo County.

FACTUAL BACKGROUND

7. Country Partners, Inc. (“Country Partners”) was incorporated as an Iowa corporation on March 8, 2000.

8. Country Partners has always had, and presently has, two directors: Dennis Hill and Brent Luscombe.

9. Dennis and Brent each own 50% of Country Partners.

10. Since its incorporation, Brent has been the President and Treasurer of Country Partners and Michelle has been in charge of maintaining the books and records of Country Partners.

11. Upon information and belief, Brent and Michelle Luscombe are married as husband and wife.

12. Upon information and belief, Brent is the President and Treasurer of Luscombe Enterprises, and Michelle is its Secretary, and they are Luscombe Enterprise's only corporate officers.

13. Upon information and belief, Brent is ill with some form of cancer or other illness and is in poor health.

14. Michelle Luscombe, upon information and belief, wholly, or in part with Brent, keeps the books and records, including financial records, of one or both of Country Partners and Luscombe Enterprises.

15. Dennis and Brent formed Country Partners to provide manure application services to farmers for agricultural purposes, and the business expanded to crop farming and buying hogs to raise them for commercial sale.

16. With respect to its hog-raising business, Country Partners' business model was generally that it would borrow money to finance the purchase of piglets and the feed necessary to raise them, and then sell the fully-grown hogs commercially. Country Partners would then use the proceeds to pay off the loan taken out to purchase the piglets and reinvest or distribute the profits at the discretion of Brent and Dennis. Similarly, with respect to Country Partners' crop farming business, Country Partners borrowed money to finance the purchase of the crop inputs and then used the proceeds from the crop harvest to pay off the crop inputs loan.

17. Country Partners operated profitably some years, but not all years, with amicable relations between Brent and Dennis as its officers and shareholders.

18. Recently, upon information and belief, Country Partners has been grossly mismanaged by Brent.

19. During 2016, Dennis and Brent each injected approximately \$187,000 into Country Partners as working capital.

20. Dennis learned in January of 2017 that Country Partners was approximately \$800,000 in debt, in contrast to the company's \$400,000 positive net worth a year prior in January 2016.

21. Dennis then learned in or around February of 2017, from Country Partners' bank, Green Belt Bank & Trust ("Green Belt Bank"), that Country Partners was in substantial debt, having a negative net worth of approximately \$4,500,000.

22. Dennis further learned that Country Partners' \$4,500,000 in debt was almost entirely owed to Green Belt Bank, the bank with whom Country Partners had exclusively done business during the duration of its existence and with whom Dennis also did his personal and business banking (related to his other farm and agricultural businesses).

23. Subsequently in August of 2017, employees and agents of Green Belt Bank asked Dennis to execute a document acknowledging his alleged personal guaranty to Green Belt Bank of all of Country Partners' debts to Green Belt Bank. Dennis has not executed this document.

24. At the time Dennis was confronted by Green Belt Bank, he had no idea how Country Partners could have ended up \$4,500,000 in debt in a matter of a few months in 2017: feed prices had not spiked; hog commodity prices had not crashed; and the business had no need to otherwise spend such exorbitant sums of money.

25. Also, during August of 2017, when Dennis and Dennis's son were at Brent's house, Brent said to Dennis that "he (Brent) didn't tell me (Dennis) what was going on, that way if anybody goes to jail, it would be just him (Brent)" or words to that effect.

26. In the course of investigating this matter, Dennis, through his counsel, sent a letter dated September 5, 2017, to Brent, Michelle and Luscombe Enterprises demanding access to and inspection of all of Country Partners' records pursuant to Iowa Code §§ 490.1605, 490.1602, and 490.1603. A true and correct copy of that letter is attached hereto as "Exhibit A."

27. Brent asked Dennis on or around September 12, 2017, when Dennis and his son had taken some farm equipment to Brent's farm, to discuss Dennis's request for the records.

28. In the course of that conversation, Brent told Dennis words to the effect of: "I hope your attorneys don't dig too deep into the records because I don't want to spend the next few years in prison." None of the requested records were provided to Dennis at that time.

29. On or around October 31, 2017, Dennis and his wife met with Brent. During the course of that meeting, Brent admitted to the following:

- a. Falsifying Country Partners' inventories and other corporate documents;
- b. Falsifying Country Partners' loan applications to Green Belt Bank; and
- c. Falsifying Country Partners' tax returns (believed to be both state and federal).

30. At that October 31, 2017 meeting, Brent also said that he had consulted an attorney and that Brent's attorney advised him if Green Belt Bank learned what Brent had done, there was a "1000 percent chance" that Brent would go to jail, or words to that effect.

31. At that October 31, 2017 meeting, Brent also expressed a willingness to sell his farm and do whatever was necessary to pay back Green Belt Bank, so Dennis would not have any liability to Green Belt Bank.

32. During the October 31, 2017 meeting, Brent gave Dennis ten (10) years of profit and loss statements of Country Partners, but he stated that the statements contained false

information. None of the other records requested by Dennis in the letter from his counsel were provided to him at that time.

33. Upon information and belief, Brent was required by Green Belt Bank to submit loan applications to obtain additional loans that totaled approximately \$4,500,000 for Country Partners from Green Belt Bank.

34. Upon information and belief, Brent made false representations to Green Belt Bank in order to obtain approximately \$4,500,000 in loans for Country Partners.

35. Based on Brent's statements, and upon information and belief, it appears that Brent and/or Michelle may have unlawfully removed monies from Country Partners in an amount of approximately \$4,500,000 or, alternatively, made misrepresentations to Green Belt Bank in order to continue their livelihood of farming.

36. Upon information and belief, neither Brent nor Michelle have, as individuals, guaranteed Country Partners' debt to Green Belt Bank.

37. Upon information and belief, Luscombe Enterprises has guaranteed Country Partners' debt to Green Belt Bank.

38. Upon information and belief, and based on his admissions, it appears that Brent has intentionally operated one or both of Country Partners and Luscombe Enterprises in an actionable, unlawful, and criminal manner.

39. Upon information and belief, Brent, possibly with the aid of Michelle, continues to operate one or both of Country Partners and Luscombe Enterprises in an actionable, unlawful, and criminal manner so as to carry out the wrongful, unlawful and criminal conduct that Brent admitted to Dennis.

COUNT I

**APPLICATION FOR INSPECTION OF RECORDS AS
SHAREHOLDER AND DIRECTOR
PURSUANT TO IOWA CODE §§490.1602 AND 490.1605.**

40. Plaintiff realleges allegations 1 - 39 as if fully stated herein.

41. Country Partners is required by Iowa law to keep corporate records, including “appropriate accounting records,” “financial statements furnished for the past three years,” and other such records. *See* Iowa Code § 490.1601.

42. As a shareholder of Country Partners, Dennis has a legal right to inspect Country Partners’ books and records. *See* Iowa Code § 490.1602.

43. As a director of Country Partners, Dennis has a legal right to inspect Country Partners’ books and records. *See* Iowa Code § 490.1605.

44. A reasonable amount of time - now more than two months - has passed since Dennis made his demand on Brent to inspect Country Partners’ records. *See* Exhibit A.

45. Brent has not made Country Partners’ records available to Dennis, presumably because Brent has acknowledged those records contain evidence that he has committed one or more crimes.

46. It is of the utmost importance that Dennis be allowed complete, total, and unfettered access to all of Country Partners’ records so that Dennis can ascertain how Country Partners accrued \$4,500,000 in debt in less than a year and to understand the statements made by Brent regarding the commission of a crime.

47. This Court, as the Court in the county where Country Partners’ records are located, is empowered by statute to hear this application and required to dispose of this application “on an expedited basis.” *See* Iowa Code §§ 490.1604(2), 490.1605(2).

WHEREFORE, Plaintiff Dennis Hill seeks EXPEDITED RELIEF as follows:

- (i) ordering Brent Luscombe, Michelle Luscombe, Luscombe Enterprises, and Country Partners to immediately surrender all of Country Partners' corporate and financial records in their possession to this Court, or to other such neutral, third-party entity that the Court deems just and proper,
- (ii) ordering that Dennis Hill be allowed to immediately inspect those records at such location and, if applicable, under the custodianship of such neutral entity;
- (iii) for statutory costs and attorney's fees assessed individually against Brent and Michelle Luscombe, and
- (iv) any and all other relief that the Court deems just and fair.

COUNT II

APPLICATION FOR JUDICIAL DISSOLUTION AND TEMPORARY INJUNCTION FOR THE IMMEDIATE APPOINTMENT OF A RECEIVER FOR COUNTRY PARTNERS PURSUANT TO IOWA CODE §§ 490.1430 and 490.1431

48. Plaintiff realleges allegations 1 - 47 as if fully stated herein.

49. Brent, as President and Treasurer of Country Partners, has been and continues to be in charge of Country Partners and, as he has admitted, has operated and is operating Country Partners in a manner that is illegal, oppressive, or fraudulent. *See* Iowa Code § 490.1430(b)(2).

50. From Brent's admissions, it appears that Brent has also misapplied or wasted Country Partners' assets. *See* Iowa Code § 490.1430(b)(4).

51. Venue is proper in this Court for a judicial dissolution proceeding because Country Partners' principal place of business is located in Cerro Gordo County. *See* Iowa Code § 490.1431(1).

52. The Court has the power and authority to “issue injunctions, appoint a receiver or custodian pendent lite with all powers and duties the court directs, [and to] take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation....” Iowa Code § 490.1431.

53. Brent’s admission that he operated Country Partners illegally and/or in furtherance of his apparent criminal behavior makes it necessary for the Court to appoint a neutral, third-party receiver to preserve Country Partners’ corporate assets, especially its records, which Brent admitted contain evidence of his crime(s), and to carry on the business of Country Partners and/or complete the liquidation of its assets, if applicable.

54. Brent’s admission that he operated Country Partners illegally and/or in furtherance of his apparent criminal behavior makes it necessary for the Court to enjoin Brent and Michelle from transacting any further business on behalf of Country Partners, disposing of Country Partners’ remaining assets, if any, disposing of, altering, amending, or destroying, any or all of Country Partners’ business records, or taking any other action harmful to Country Partners and/or to disguise or further their criminal operation of Country Partners.

55. Because the admitted crimes were committed recently, and criminal activity may still be ongoing, it is imperative that the Court hear this matter on an expedited basis, *ex parte* if necessary.

56. This Petition, supported by Plaintiff’s affidavit pursuant to Iowa Rule of Civil Procedure 1.1502(1), shows that Plaintiff is entitled to injunctive relief, including the restraint of the commission or continuance of actions by Defendants that may greatly and irreparably injure Plaintiff and Country Partners.

WHEREFORE, Plaintiff Dennis Hill seeks EXPEDITED RELIEF as follows:

- (i) appointing a receiver or custodian pendent lite with the power to manage all affairs of Country Partners and to take any and all actions necessary to preserve the assets and records of Country Partners;
- (ii) enjoining Brent and Michelle Luscombe from transacting any business on behalf of Country Partners, disposing of Country Partners' assets, disposing of, altering, amending, or destroying any or all of Country Partners' business records, or taking any other action harmful to Country Partners and/or to disguise or further their criminal operation of Country Partners;
- (iii) an award of costs and attorney's fees; and
- (iv) all other relief that the Court deems just and fair.

COUNT III

BREACH OF FIDUCIARY DUTY

57. Plaintiff realleges allegations 1 - 56 as if fully stated herein.

58. As an officer and director of Country Partners, Brent owed Dennis the utmost fiduciary duties, including duties of honesty, trust, loyalty, good faith, and fair dealing.

59. Brent breached his fiduciary duties to Dennis by, admittedly, operating Country Partners in a criminal manner.

60. Dennis's damages as described herein were within the scope of Brent's liability for his admittedly criminal conduct, and Dennis's damages were caused by Brent's admittedly criminal conduct.

61. Dennis has been damaged by Brent's breach of fiduciary duty by being forced to defend himself against Green Belt Bank's demand that Dennis guarantee debt of approximately \$4,500,000 that Country Partners allegedly owes to Green Belt Bank.

62. Dennis has been damaged by Brent's breach of fiduciary duty by rendering his ownership interests and all investments that Dennis has made in Country Partners, including amounts or supplies provided Country Partners on account by other businesses in which Dennis and his family have an interest, worthless with no prospect of future return or repayment.

63. Based on Brent's admission of criminal liability, it appears that Brent may have operated Country Partners as an alter ego of himself and Michelle, individually, and/or as an alter ego of Luscombe Enterprises, and as an intermediary to perpetrate fraud.

64. Dennis may pierce Country Partners' corporate veil and recover damages from one or more of Brent, Michelle, and Luscombe Enterprises.

65. Brent's admitted criminal conduct rises to the level of fraud necessary for the Court or a jury to award Dennis punitive damages, and it is oppressive and tainted with legal malice towards Dennis, because Brent wrongfully interfered with Dennis's rights as a shareholder.

WHEREFORE, Plaintiff Dennis Hill seeks an award of damages against Brent Luscombe, Michelle Luscombe, and Luscombe Enterprises, jointly and severally, in unspecified amounts believed to be in excess of \$4,500,000, in addition to punitive damages, costs, attorney's fees, and for any other relief the Court deems just and fair.

COUNT IV

DERIVATIVE ACTION - BREACH OF FIDUCIARY DUTY

66. Plaintiff realleges allegations 1 - 65 as if fully stated herein.

67. As an officer and director of Country Partners, Brent owed Country Partners the utmost fiduciary duties, including duties of honesty, trust, loyalty, good faith, and fair dealing.

68. Brent breached his fiduciary duties to Country Partners by, admittedly, operating Country Partners in a criminal manner.

69. Making demand on Brent to bring this suit would be futile, because Brent has admitted to operating Country Partners in a criminal manner.

70. Country Partners' damages as described herein were within the scope of Brent's liability for his admittedly criminal conduct, and Country Partners' damages were caused by Brent's admittedly criminal conduct.

71. Country Partners has been damaged by Brent's breach of fiduciary duty by rendering Country Partners insolvent.

72. Based on Brent's admission of criminal liability, it appears that Brent may have operated Country Partners as an alter ego of himself and Michelle, individually, and/or as an alter ego of Luscombe Enterprises, and as an intermediary to perpetrate fraud.

73. Country Partners may pierce its corporate veil and recover damages from one or more of Brent, Michelle, and Luscombe Enterprises.

74. Brent's admitted criminal conduct rises to the level of fraud necessary for the Court or a jury to award Country Partners punitive damages.

WHEREFORE, Derivative Plaintiff and Nominal Defendant Country Partners seeks an award of damages against Brent Luscombe, Michelle Luscombe, and Luscombe Enterprises, jointly and severally, in unspecified amounts believed to be in excess of \$4,500,000, in addition to punitive damages, costs, attorney's fees and for any other relief the Court deems just and fair.

JURY DEMAND

Plaintiff demands a jury trial on all matters so triable.

Dated this 8th day of November, 2017.

/s/ Jason R. Lawrence
Julie Johnson McLean, AT#0005185
Jason R. Lawrence, AT#0013301
Davis, Brown, Koehn, Shors & Roberts, P.C.
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Electronically filed.

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served electronically by EDMS upon all attorneys of record herein on November 8, 2017.

Signature: /s/ Julie Johnson McLean
Julie Johnson McLean

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Plaintiff

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Michelle Luscombe, an Individual
Luscombe Enterprises, Inc., an Iowa Corporation

Defendants

and

Country Partners, Inc., an Iowa Corporation,

Nominal Defendant.

Case No. _____

**PLAINTIFFS' CERTIFIED AFFIDAVIT
IN SUPPORT OF INJUNCTIVE RELIEF**

COMES NOW Plaintiff Dennis Hill, pursuant to Iowa Rules of Civil Procedure

1.1502(1) and 1.413 submitting the following certified affidavit stating as follows:

1. My name is Dennis Hill, and I am a resident of Stanhope, in Hamilton County, Iowa.

2. I am a 50% owner of Country Partners, Inc.

3. I have personal knowledge of the facts alleged in the Petition, have reviewed them, know the contents thereof, and the statements and allegations made therein are true and correct as I verily believe.

Further Affiant Sayeth Not.

I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Date:

Nov. 7, 2017

Signature:

[Signature]