

IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA

DOMENICK MARRARA, JR., individually and  
as co-Trustee of the SANDRA JEAN MARRARA TRUST,  
SANDRA JEAN MARRARA,  
as co-Trustee of the SANDRA JEAN MARRARA TRUST, and  
SANDRA JEAN MARRARA TRUST,

Plaintiffs,

v.

CIVIL ACTION NO. 13-c-198

Judge M. Her

ROCCO S. MARRARA, JR., individually and  
as Trustee of the MARY JANE MARRARA IRREVOCABLE TRUST, and  
as Trustee of the ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST  
MARY JANE MARRARA IRREVOCABLE TRUST,  
ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST,  
FIREBIRD CO.,  
D & R DISTRIBUTORS, INC., and  
PURE LAND, CO.,

Defendants.

COMPLAINT AND PETITION FOR CORPORATE DISSOLUTION

1. Plaintiff, Domenick Marrara, Jr., is a resident of Preston County, West Virginia, is the former President of Firebird Inc, D&R Distributors, Inc., and Pure Land, Co., and is the former manager of Ripley Associates, LLC.
2. Plaintiff, Sandra Jean Marrara, is a resident of Preston County, West Virginia.

3. Plaintiff/Petitioner<sup>1</sup>, Sandra Jean Marrara Trust, is a trust organized under the laws of the State of West Virginia.

4. Plaintiffs, Domenick Marrara, Jr., and Sandra Jean Marrara, are co-Trustees of Plaintiff Sandra Jean Marrara Trust.

5. Defendant, Rocco S. Marrara, Jr., is a resident of the State of West Virginia, is the current President of Firebird, Co., D&R Distributors, Inc., and Pure Land, Co, and the current manager of Ripley Associates, LLC.

6. Defendant, Mary Jane Marrara Irrevocable Trust is a trust organized under the laws of the State of West Virginia.

7. Defendant Rocco S. Marrara, Jr., is the Trustee of the Mary Jane Marrara Irrevocable Trust.

8. Defendant Rocco S. Marrara, Sr. Credit Shelter Trust is a trust organized under the laws of the State of West Virginia.

9. Defendant Rocco S. Marrara, Jr., is the Trustee of the Rocco S. Marrara, Sr. Credit Shelter Trust.

10. Robert Marrara is a resident of the State of West Virginia.

11. Mary Lou Marrara is a resident of the State of West Virginia.

12. Defendant/Respondent<sup>2</sup> Firebird Co. (hereinafter "Firebird"), is a West Virginia closely held corporation.

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<sup>1</sup> For the sake of uniformity Plaintiff/Petitioner Sandra Jean Marrara Trust will simply be characterized as a "Plaintiff" herein.

<sup>2</sup> For the sake of uniformity Defendant/Respondent Firebird, Co. will simply be characterized as a "Defendant" herein.

13. Defendant Firebird Co., has one thousand (1,000) outstanding shares.
14. Plaintiff Sandra Jean Marrara Trust possesses three hundred thirty-three and one-third (333 1/3 ) shares of Defendant Firebird.
15. Upon information and belief, Defendant Mary Jane Marrara Irrevocable Trust possesses three hundred thirty-three and one-third (333 1/3 ) shares of Defendant Firebird.
16. Upon information and belief, Robert Marrara possesses three hundred thirty-two and one-third shares (332 1/3) of Defendant Firebird.
17. Upon information and belief, Mary Lou Marrara possesses one (1) share of Defendant Firebird.
18. Upon information and belief, Defendant Rocco S. Marrara Sr. Credit Shelter Trust and/or Defendant Rocco Marrara, Jr. may also have an interest in Defendant Firebird. Plaintiffs are unsure as to the scope of any such interest, due to the actions of Defendants, as set forth herein.
19. Defendant Firebird is a holding company.
20. Defendant D & R Distributors, Inc., (hereinafter "D&R") is a West Virginia closely held corporation.
21. Defendant D & R is a wholly owned subsidiary of Defendant Firebird.
22. Defendant Pure Land, Co. (hereinafter "Pure Land"), is a West Virginia closely held corporation.

23. Defendant Pure Land is a wholly owned subsidiary of Defendant Firebird.

24. Ripley Associates, LLC (hereinafter "Ripley") is a West Virginia limited liability company.

25. Defendant Pure Land owns a two-thirds (2/3) distributional interest in Ripley.

26. Upon information and belief, either Defendant Rocco S. Marrara, Sr. Credit Shelter Trust or Defendant Rocco Marrara, Jr. individually, owns a one-third (1/3) distributional interest in Ripley.

27. Accordingly, Plaintiff Sandra Jean Marrara Trust, has an interest, through Defendant Firebird, in Defendant D&R, Defendant Pure Land, and Ripley.

28. Ripley is the major revenue source for Pure Land.

29. On or about November 4, 2011, Defendant Rocco S. Marrara Jr. became president of Firebird, D&R, and Pure Land, and became managing member of Ripley.

30. Prior to November 4, 2011 Plaintiff Domenick Marrara, Jr. was the president of Firebird, D&R, and Pure Land, and was the managing member of Ripley.

#### **Count I- Oppressive Conduct**

31. Plaintiff hereby incorporates and re-alleges all of the allegations made in the preceding paragraphs as if set forth fully herein.

32. As a shareholder of Defendant Firebird, Plaintiff Sandra Jean Marrara Trust is entitled to certain records and financial information of Firebird.

33. On approximately May 25, 2012, Plaintiff Domenick Marrara, Jr., as the representative of Plaintiff Sandra Jean Marrara Trust, requested certain records from Firebird, through its President Defendant Rocco Marrara, Jr.

34. Defendant Rocco Marrara, Jr. unlawfully ignored Plaintiff Sandra Jean Marrara Trust's request and has refused to comply, in any way, with said request for records and information.

35. On approximately January 11, 2013, Plaintiff Domenick Marrara, Jr., as the representative of the Sandra Jean Marrara Trust, renewed its request for certain records from Firebird, through its officer Defendant Rocco Marrara, Jr.

36. Once again, Defendant Rocco Marrara, Jr., individually and as President of Firebird, unlawfully ignored Plaintiff Sandra Jean Marrara's request to inspect corporate records.

37. Defendant Firebird has completely failed to comply with Plaintiff Sandra Jean Marrara Trust's prior requests for documents and information.

38. Since becoming President of Firebird and President or Manager of its subsidiaries on November 4, 2011, Rocco Marrara, Jr. has authorized payments from Firebird and/or its subsidiaries to Robert Marrara.

39. Robert Marrara provides no meaningful services to Firebird or any of its subsidiaries.

40. Since November 4, 2011, Plaintiff Sandra Jean Marrara Trust has not received any salary, dividends, profit shares, or any other payments or benefits from Firebird or its subsidiaries.

41. Since November 4, 2011 Plaintiff Sandra Jean Marrara Trust has been treated oppressively and unequally to other Firebird shareholders.

42. Since November 4, 2011, Firebird, and/or its subsidiaries and/or its officers have taken several other actions and/or omissions that have resulted in Plaintiff Sandra Jean Marrara Trust's complete exclusion from participation in Firebird and its subsidiaries. Such includes, but is not limited to, the following actions by Firebird and its subsidiaries:

(a) failed to respond to communications and requests for documents and information from Plaintiff Sandra Jean Marrara Trust;

(b) failed to cooperate with, illicit advice, or even obtain routine information from Plaintiff Domenick Marrara, Jr. regarding the management of Firebird, and its subsidiaries, despite Defendant Rocco Marrara, Jr.'s management inexperience and Plaintiff Domenick Marrara, Jr.'s over fifty (50) years of experience in management of the Defendant companies; and

(c) acted maliciously and adversely towards Plaintiffs since taking over the companies on November 4, 2011. Examples of said malicious and adverse actions include failing to reasonably cooperate with Plaintiffs in business transactions, making unreasonable and baseless demands to Plaintiffs for records, and filing completely baseless lawsuits against Plaintiffs.

43. Defendant Rocco Marrara, Jr. has, at all times pertinent herein, ignored Plaintiff Sandra Jean Marrara Trust's rights and privileges as a minority shareholder of Firebird.

44. Because of Defendant Rocco Marrara, Jr.'s actions as officer of Defendant Firebird, Plaintiff Sandra Jean Marrara Trust has suffered financial harm and has been unable to realize any benefit from its ownership shares of Firebird.

45. Defendant Rocco Marrara, Jr. has attempted to "squeeze out" and/or "freeze out" Plaintiff Sandra Jean Marrara Trust from deriving any benefit from its investment in Firebird, Co., and its subsidiaries.

#### **Count II- Breach of Fiduciary Duty**

46. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs as if set forth fully herein.

47. As President of Firebird, Defendant Rocco Marrara, Jr. has a fiduciary duty to act in the interests of the shareholders of Firebird.

48. Since November 4, 2011, Defendant Rocco Marrara, Jr. has engaged in several actions detrimental to interests of the shareholders of Firebird.

49. On or about November 20, 2012, Defendant Rocco Marrara, Jr., as the President, for and on behalf, of Pure Land, authorized Pure Land to purchase a one-half interest in certain property situated in Westover, West Virginia, ["Westover Property"} from seller Defendant Rocco S. Marrara, Jr.

50. The price paid for the half-interest of Westover was well above the fair market value for a one-half interest in said property.

51. The transaction noted above benefitted Defendant Rocco Marrara, Jr. personally, to the detriment of Plaintiff Sandra Jean Marrara, Trust and the remaining shareholders of Firebird.

52. Said transaction constitutes self-dealing by Defendant Rocco Marrara, Jr., and was a breach of Defendant Rocco Marrara's fiduciary duty to Plaintiffs.

53. Since taking control of Firebird, and its subsidiaries on November 4, 2011, Defendant Rocco Marrara, Jr. has authorized payments from Firebird. and/or its subsidiaries to himself personally.

54. The payments are in excess of a reasonable fee for the services that Defendant Rocco Marrara, Jr. provides Firebird and its subsidiaries.

55. Defendant Rocco Marrara, Jr. has acted in bad faith.

56. Defendant Rocco Marrara, Jr. has breached his duty of loyalty he owes to the shareholders of Firebird.

57. Since taking control of Firebird and its subsidiaries on November 4, 2011, Defendant Rocco Marrara, Jr. has made several grossly negligent and reckless business decisions in the management of the shopping center in Ripley, West Virginia owned by Ripley. Such mismanagement is to the detriment of the shareholders of Firebird, as two-thirds (2/3) of Ripley is owned by Pure Land, which is a wholly owned subsidiary of Firebird. Specific examples of said negligent and/or reckless business decisions specifically include, but are not limited to:

a) failing to timely attend to a necessary roof repair for the Ripley Shopping Center;



b) failing to be available for contact by tenants of the Ripley Shopping Center;

c) failing to timely pay the liability insurance premium for the Ripley Shopping Center;

d) failing to invoice and/or bill tenants at the Ripley Shopping Center for their rent; and

e) failing to provide the necessary resources to the maintenance personnel at the Ripley Shopping Center.

58. Defendant Rocco Marrara, Jr. has engaged in reckless and grossly negligent conduct with regards to his management of Firebird and its subsidiaries.

59. Defendant Rocco Marrara, Jr. has wasted corporate assets.

60. Defendant Rocco Marrara, Jr. has breached his duty of care he owes to the shareholders of Firebird.

61. Defendant Rocco Marrara, Jr. has breached his fiduciary duty he owes to the shareholders of Firebird.

### **Count III- Unjust Enrichment**

62. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs.

63. Defendant Rocco Marrara, Jr., received a personal benefit by selling an interest in real property in Westover, West Virginia to Pure Land, for above the fair market value.

64. The benefit received by Defendant Rocco Marrara, Jr. individually, came at the expense of Plaintiff Sandra Jean Marrara Trust and the other shareholders of Firebird, because Pure Land is a wholly owned subsidiary of Firebird.

65. No representative or trustee of Plaintiff Sandra Jean Marrara Trust was ever consulted as to the decision to purchase the interest in real property in Westover, West Virginia.

66. It would be unjust for Defendant Rocco Marrara, Jr. to retain the benefit for the above market value sale of the real property in Westover, West Virginia.

#### **Count IV-Petition for Corporate Dissolution**

67. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs, as if set forth fully herein.

68. As a shareholder of Firebird, Plaintiff Sandra Jean Marrara Trust has standing to Petition the court for judicial dissolution of Firebird under West Virginia Code § 31D-14-1430(2).

69. Defendant Rocco Marrara, Jr.'s aforementioned actions and omissions, as an officer of Firebird and/or its subsidiaries, constitute illegal, oppressive, and fraudulent actions. Said actions include but are not limited to: his refusal to respect shareholder rights; his violation of West Virginia statutes; his refusal to deal in good faith with minority shareholders; and his repeated self-dealing at the expense of minority shareholders.

70. Defendant Rocco Marrara, Jr.'s aforementioned actions and omissions, as an officer of Firebird and/or its subsidiaries, constitute a misapplication and/or waste of corporate assets. Said actions include but are not limited to: mismanagement of the Ripley shopping center; use of Firebird corporate funds and/or its subsidiaries' funds to unjustly compensate himself; and use of corporate and/or its subsidiaries funds for purchasing property above market value.

71. Firebird Co. should be dissolved under the West Virginia Code, § 31D-14-1430(2).

72. Based upon Defendant Rocco Marrara, Jr.'s misapplication and/or waste of corporate actions, as well as his breach of fiduciary duties to other shareholders, sufficient grounds exist for the Court to appoint a receiver or a custodian pendente lite to preserve the corporate assets until a full hearing can be held, pursuant to West Virginia Code § 31D-14-1431 and § 31D-14-1432.

#### **Count V-Purchase of Interest in Lieu of Dissolution**

73. Plaintiffs hereby incorporate and re-allege all of the allegations made in the preceding paragraphs, as if set forth fully herein.

74. Alternatively, pursuant to the West Virginia Code, in lieu of dissolution, Firebird, or any of its shareholders, may elect to purchase the shares owned by Plaintiff Sandra Jean Marrara Trust for its fair market value.

75. Pursuant to West Virginia Code § 31D-14-1434, within ninety (90) days of the filing of this Petition, Firebird or any of its shareholders may file with the Court an election to purchase the shares of Petitioner Sandra Jean Marrara Trust.

76. If any of the eligible Defendants elect to purchase the shares currently owned by Plaintiff Sandra Jean Marrara Trust, said purchaser and Plaintiff Sandra Jean Marrara Trust have sixty (60) days after the filing of the initial election to agree on the value of Plaintiff Sandra Jean Marrara Trust's shares.

77. If the elected purchaser and Plaintiff Sandra Jean Marrara Trust fail to come to an agreement within sixty (60) days of the filing of the initial election, Plaintiff Sandra Jean Marrara Trust requests this court to determine the value of its shares in Defendant Firebird as the date of the filing of this Complaint/Petition, pursuant to West Virginia Code § 31D-14-1434(d).

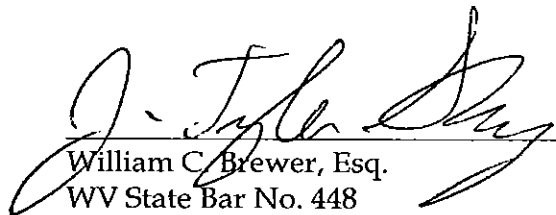
**WHEREFORE**, based upon the facts set forth herein, the Plaintiffs respectfully request that the Court:

- a) Order that Firebird Co. be dissolved and that all assets owned by Firebird Co., or any of its wholly owned subsidiaries, be distributed and/or transferred to the shareholders of Firebird, Co. in proportion to their respective ownership interests.
- b) Appoint a Receiver to continue operation of the businesses for the benefit of all shareholders while this action is pending, and until corporate dissolution is completed.

- c) Find that Defendant Rocco Marrara, Jr. has breached his fiduciary duty he owes to Plaintiff Sandra Jean Marrara Trust
- d) Find that Defendant Rocco Marrara, Jr. has been unjustly enriched by his actions as an officer of Firebird and its subsidiaries.
- e) Award compensatory and punitive damages to Plaintiffs to account for said breaches of fiduciary duty and unjust enrichment in an amount sufficient to compensate Plaintiffs for their injuries.
- f) Award Plaintiffs' attorney's fees, costs, or any other reasonable expenses incurred by Plaintiffs in this proceeding.
- g) Award Plaintiffs such other and further relief, both general and special, as the Court deems just and proper.

**PLAINTIFFS DEMAND TRIAL BY JURY.**

RESPECTFULLY SUBMITTED,  
PLAINTIFFS, BY COUNSEL



William C. Brewer, Esq.  
WV State Bar No. 448  
J. Tyler Slavey, Esq.  
WV State Bar No. 10786  
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Attorneys at Law, PLLC  
Of Counsel

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&  
GIGGENBACH, PLLC  
ATTORNEYS AT LAW  
MORGANTOWN, WV

PLAINTIFF: RII DII, LLC  
DEFENDANT: MARRARA GENERAL INCORPORATED

CASE NUMBER:  
13-C-

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input checked="" type="checkbox"/> <b>Miscellaneous Civil</b>
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☒ Yes ☐ No

CASE WILL BE READY FOR TRIAL BY (Month/Year): February / 2014

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIFIC ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ Yes ☒ No  
IF YES, PLEASE SPECIFY:


- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: \_\_\_\_\_

Attorney Name: J. Tyler Slavey, Esq. Representing:

Firm: BREWER & GIGGENBACH, PLLC ☒ Plaintiff ☐ Defendant

Address: P.O. Box 4206, Morgantown, WV 26504 ☐ Cross-Complainant ☐ Cross-Defendant

Telephone: 304-291-5800 Dated: 9/3/13

  
Signature

CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES

In the Circuit Court, Preston County, West Virginia

I. CASE STYLE:

Plaintiff(s)

Case #: 13-C-198

DOMENICK MARRARA, JR., individually and  
as co-Trustee of the SANDRA JEAN MARRARA TRUST,  
SANDRA JEAN MARRARA,  
as co-Trustee of the SANDRA JEAN MARRARA TRUST, and  
SANDRA JEAN MARRARA TRUST

c/o BREWER & GIGGENBACH, PLLC

P.O. BOX 4206

MORGANTOWN, WV 26504

vs.

Defendant(s)	Days to Answer	Type of Service
<u>Rocco S. Marrara, Jr., Individually</u> <u>105 Kingwood Avenue</u> <u>Kingwood, WV 26537</u>	<u>20</u>	<u>Private Process</u>
<u>Rocco S. Marrara, Jr., as Trustee of the</u> <u>Mary Jane Marrara Irrevocable Trust</u> <u>105 Kingwood Avenue</u> <u>Kingwood, WV 26537</u>	<u>20</u>	<u>Private Process</u>
<u>Rocco S. Marrara, Jr., as Trustee of the</u> <u>Rocco S. Marrara, Sr. Credit Shelter Trust</u> <u>Mary Jane Marrara Irrevocable Trust,</u>	<u>20</u>	<u>Private Process</u>

FILED  
13 SEP -4 AM 9:47  
CLERK  
PRESTON COUNTY WV

Rocco S. Marrara, Sr. Credit Shelter Trust

105 Kingwood Avenue

Kingwood, WV 26537

Firebird Co.

30

Private Process

c/o Rocco S. Marrara, Jr.  
Agent for Service

P.O. Box 178

Kingwood, WV 26537

D & R Distributors, Inc.

30

Private Process

c/o Rocco S. Marrara, Jr.  
Agent for Service

P.O. Box 178

Kingwood, WV 26537

Pure Land, Co.

30

Private Process

c/o Rocco S. Marrara, Jr.  
Agent for Service

P.O. Box 178

Kingwood, WV 26537

Original and 6 copies of Complaint furnished herewith.