

STATE OF MAINE  
PENOBSCOT, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO.

LAURA CUSHING MCINTYRE an  
individual with a residence in Hermon,  
County of Penobscot, State of Maine,

Plaintiff

v.

ANDRE CUSHING, III., an individual with  
a residence in Newport, County of  
Penobscot, State of Maine,

GWEN CUSHING, an individual with a  
residence in Newport, County of Penobscot,  
State of Maine,

ANDRE CUSHING, IV, an individual with  
a residence in Hampden, County of  
Penobscot, State of Maine,

GRACE ALYSON MARTIN, an individual  
with a residence in Land O' Lakes, County  
of Pasco, State of Florida,

GERALD CROMMETT CUSHING, an  
individual with a residence in Newport,  
County of Penobscot, State of Maine,

CUSHING FAMILY CORPORATION, a  
Maine corporation with a place of business  
in Bangor, County of Penobscot, State of  
Maine,

COLONIAL CONTRACTING  
CORPORATION, a Maine corporation with  
a place of business in Newport, County of  
Penobscot, State of Maine,

NEW ENGLAND FOREST PRODUCTS,  
LLC. a Maine limited liability company  
with a place of business in Hampden,  
County of Penobscot, State of Maine,

**COMPLAINT**

NEW ENGLAND FIREWOOD, LLC a  
Maine limited liability company with a  
place of business in Hampden, County of  
Penobscot, State of Maine,

Defendants

NOW COMES Plaintiff and hereby complains against Defendants as follows:

1. Plaintiff is an individual with a residence in Hermon, County of Penobscot, state of Maine.
2. Defendant Andre Cushing, III (hereafter AEC III) is an individual with a residence in Newport, County of Penobscot, state of Maine.
3. Defendant Gwen Cushing (hereafter Gwen Cushing) is an individual with a residence in Newport, County of Penobscot, state of Maine.
4. Defendant Andre Cushing, IV (hereafter AEC IV) is an individual with a residence in Hampden, County of Penobscot, state of Maine.
5. Defendant Grace Alyson Martin (hereafter Grace Martin) is an individual with a residence in Land O' Lakes, County of Pasco, state of Florida.
6. Defendant Gerald Crommett Cushing (hereafter Gerald Cushing) is an individual with a residence in Newport, County of Penobscot, state of Maine.
7. Cushing Family Corporation (hereafter CFC) is a Maine corporation with a place of business in Newport, County of Penobscot, state of Maine.
8. Colonial Contracting Corporation (hereafter CCC) is a Maine corporation with a place of business in Newport, County of Penobscot, state of Maine.
9. New England Forest Products, LLC (hereafter NEFP) is a Maine corporation with a place of business in Hampden, County of Penobscot, state of Maine.
10. New England Firewood, LLC (hereafter NEF) is a Maine limited liability company with a place of business in Hampden, County of Penobscot, state of Maine.

#### **BACKGROUND FACTS**

11. Plaintiff and AEC III are siblings and shareholders in CFC.
12. Plaintiff owns about 11% of the CFC shares.

13. AEC III and Gwen Cushing are husband and wife.
14. AEC III owns about 8% of the CFC shares.
15. Gwen Cushing owns about 1.5% of the CFC shares.
16. AEC IV, Grace Alyson Martin, and Gerald Crommett Cushing (hereafter the Cushing children) are the children of AEC III and Gwen Cushing.
17. The Cushing children each own about 1.5% of the shares of CFC.
18. In 1995, CFC was formed by the parents of Plaintiff and AEC III, Andre Cushing, Jr. and Jane Cushing, for the purpose of owning and managing timberlands, and was also authorized to own and trade in securities listed on a national securities exchange or issued by a United States or state government entity or agency.
19. Andre Cushing, Jr. died on or about December 4, 2013. His shares were distributed when his estate was probated.
20. Jane Cushing owns or controls about 45% of the shares of CFC.
21. AEC III exerts control and undue influence over Jane Cushing.
22. There are eight other shareholders in CFC.
23. The corporate bylaws provide that all loans from CFC must be authorized by a 2/3 vote of the series A common voting shares.
24. There are nine owners of series A common voting shares of CFC, each owning one share (except for Jane Cushing who owns two): AEC III, Gwen Cushing, AEC IV, Grace Martin, Gerald Cushing, Jane Cushing, Vincent, Plaintiff and Peter Noble.
25. This provision of the bylaws was repeatedly restated in correspondence from CFC's Corporate Counsel, Samuel W. Lanham, Jr. Copies were provided to the individual Defendants.
26. AEC III was the Managing Director for CFC until January 2013. He was the Vice President, Assistant Treasurer, Secretary, and Treasurer for CFC during various years.
27. In his capacity as the Managing Director of CFC, AEC III was in charge of the CFC Real Estate Division. His roles included the acquisition, planning, construction and marketing for CFC real estate development.
28. AEC III was the sole shareholder and President of Colonial Contracting Corporation (CCC).

29. CFC and CCC do not have identical shareholders; Plaintiff is not a shareholder in CCC but she is a shareholder in CFC.
30. AEC III is a licensed real estate agent with ERA Dawson Bradford.
31. AEC III received a fee from CFC as Managing Director. He also received a real estate commission for acquiring and selling properties for CFC, including transactions involving both CFC and CCC, and AEC III made self-serving real estate transactions involving CFC assets, including having mortgages he owed discharged without consideration.
32. On or about July 19, 2007 CFC acquired a Line of Credit (LOC) from Farm Credit in the amount of \$1,500,000.00.
33. At that time, there were already outstanding loans from CFC to CCC, titled CCC Spec and CCC 2.
34. CFC made additional loans to CCC. During the time period November 28, 2005 to November 28, 2011, the total amount paid to CCC was \$1,370,289.27. The promissory notes issued total \$550,000.00. Corporate documents indicated that there were a total of \$900,000.00 of promissory notes signed.
35. However, the only loan approval by the shareholders was on June 30, 2009. At that time the shareholders approved a loan to CCC of up to \$150,000.00.
36. These loans were made at the behest of and approval of the individual Defendants.
37. NEFP was owned by AEC III and Kelly Paul from August 5, 2008 until November 1, 2009 when CFC purchased Kelly Paul's shares for \$50,000.00 at the request of AEC III.
38. During the time period August 28, 2008 through June 30, 2009 CFC and/or Farm Credit (using CFC assets as collateral) issued checks totaling \$482,828.95 to NEFP.
39. On November 1, 2009, when CFC purchased Kelly Paul's shares, the \$482,828.95 was gone and unaccounted for.
40. NEF is owned 50% by AEC III and 50% by CFC.
41. During a shareholder meeting on August 5, 2008, AEC III asked for a loan of \$30,000.00 to start a firewood business, which AEC, III made into NEF, again with the Paul family. AEC III made the motion for the loan and it was approved by the CFC Board of Directors (hereafter the Board). There are two promissory notes listed for NEF for \$5,000.00 each, dated January 12, 2008 and November 11, 2009.
42. During the time period September 8, 2008 through August 2, 2011, CFC issued checks

totaling \$249,000.00 to NEF.

43. Subsequently, Plaintiff discovered the \$249,000 issued to NEF was gone and unaccounted for.
44. AEC III formed both NFP and NEF using a different law firm from corporate counsel to handle the filing of the paperwork. That law firm was used instead of Lanham & Blackwell. CFC did not authorize the creation of these entities.
45. On December 10, 2011, Plaintiff became the Treasurer of CFC.
46. In early 2012, Gayle Davis, CPA replaced Frank Martin as the corporate accountant for CFC.
47. AEC, III and Frank Martin were close confidants. Frank Martin answered only to AEC, III, and Frank Martin withdrew corporate funds from CFC without Board approval.
48. The CFC Stock Portfolio account started with a net value in 1999 of \$1,439,549.44. By 2009, it had been reduced to \$325,558.62. As of December 31, 2013, the value was down to \$85,225.62. By December 31, 2014, the value was down to \$16,751.42.
49. Funds from the CFC Stock Portfolio account were transferred into some shareholders' personal accounts, including some or all of the individual Defendants, without authorization by the Board, but excluding Plaintiff.
50. AEC III was elected to the Maine House of Representatives in 2008. He served two 2year terms. He was elected to the Maine Senate in 2012. He is currently serving his second 2 year term. He is also the Assistant Republican leader of the Maine Senate.
51. On information and belief, funds were disbursed from NEFP to the AEC III senate campaign and a political action committee controlled by AEC III.
52. Various corporate Defendants also disbursed funds, in excess of \$20,000.00, to individuals for the benefit of AEC III's political career.
53. On August 30, 2007, the CFC office was relocated to AEC III's residence at 54 Constitutional Avenue, Hampden, Maine. On September 1, 2009 the Board authorized AEC III to expend funds to create an office at his house not to exceed \$15,000.00.
54. Shareholder meetings were then held in the dining room at AEC III's house or in this new office.
55. The individual Defendants controlled the agenda and CFC.
56. At some point in time, the shareholder and director meetings that took place in AEC III's home became hostile toward Plaintiff, with individual Defendants interfering with

Plaintiff's rights to participate in the meetings, including but not limited to AEC III holding up his hand as if to shield Plaintiff from making any remarks when AEC III was promoting his agenda. AEC III's sons would use profanity directed at Plaintiff at the meetings.

57. Plaintiff received her last shareholder disbursement in October 2014, while other individual Defendants and other shareholders have continued to receive shareholder disbursements quarterly.
58. Board meetings were subsequently moved to the office at Lanham & Blackwell.
59. The individual Defendants, or some of them, misused a facsimile signature of Andre Cushing, Jr., to obtain loans from Farm Credit, which were secured by CFC assets.

## **COUNTS OF THE COMPLAINT**

### **I. CORPORATE DISSOLUTION**

Plaintiff reasserts the information in paragraphs 1 – 59 above as if fully set forth herein.

60. Plaintiff has been oppressed as a minority shareholder by the individual Defendants.
61. Corporate assets have been and continue to be misapplied and wasted by the individual Defendants.
62. The individual Defendants have committed fraud, and *ultra vires* and illegal acts that have subjected Plaintiff and CFC to potential liability.
63. Under 13-C M.R.S. section 1430, such oppressive, fraudulent, illegal, and *ultra vires* acts constitute grounds for an action for judicial dissolution of the corporate Defendants, including CFC.

### **II. BREACH OF FIDUCIARY DUTY OF OFFICERS AND DIRECTORS**

Plaintiff reasserts the information in paragraphs 1 – 63 above as if fully set forth herein.

64. Defendants breached the applicable standard for officers and directors of a closely held corporation.
65. Such breaches include but are not limited to: misappropriating corporate assets for personal use; misappropriating corporate opportunities; dealing on both sides of transaction where a conflict of interest was present; failing to make disclosures of conflicts of interest or potential conflicts of interest; acting beyond any standard of reasonable care that a person in a like position would operate under; acting in ways that clearly were not in the best interest of CFC; and failing to act with good faith toward Plaintiff.

66. Such breaches caused Plaintiff harm.

### **III. EQUITABLE ACCOUNTING**

Plaintiff reasserts the information in paragraphs 1 – 66 above as if fully set forth herein.

67. Defendants have used corporate funds for their own personal benefit and without appropriate corporate authority.

68. It is unknown to Plaintiff what Defendants have done with the monies and other assets they took from the corporations.

69. It is unknown to what extent the monies and other assets taken from the corporations by Defendants have yielded profits and/or proceeds to the Defendants from their inequitable conduct.

### **IV. RESTITUTION / UNJUST ENRICHMENT**

Plaintiff reasserts the information in paragraphs 1 – 69 above as if fully set forth herein.

70. Defendants, and in particular AEC III, were in a close and confidential relationship with Plaintiff, being family members and joint shareholders in a closely held family corporation.

71. Defendants have benefited by their inequitable conduct.

72. Defendants have been benefited and unjustly enriched by their acquisition of money and property at the expense of Plaintiff.

### **V. FRAUD**

Plaintiff reasserts the information in paragraphs 1 – 72 above as if fully set forth herein.

73. Defendants, in obtaining corporate funds, made misstatements of fact to Plaintiff, including, but not limited to: misstating the authority for obtaining loans from Farm Credit; misstating the amounts taken, which greatly exceeded those approved; concealing the true purposes and uses of the funds taken; and using a facsimile signature of AEC, Jr. to obtain funds.

74. Defendants made these statements knowing that they had no intention of doing what they said and intending that Plaintiff would rely on their misrepresentations.

75. Defendants were in a confidential relationship with Plaintiff.

76. In reliance on Defendants' misrepresentations, Plaintiff, as Treasurer, approved access to corporate assets and accounts by Defendants.
77. Defendants knew or should have known that Plaintiff would rely on their misrepresentations or concealments.
78. Plaintiff's reliance on the misrepresentations of Defendants was justified.
79. Defendants' representations and acts were intentional or made with reckless disregard for the truth or falsehood of the statements that they made to Plaintiff.
80. Plaintiff has been damaged by Defendants' misrepresentations.

#### **VI. CONVERSION**

Plaintiff reasserts the information in paragraphs 1 – 80 above as if fully set forth herein.

81. Plaintiff had an ownership interest in the loan amounts, stock portfolio funds, and other corporate assets referred to above.
82. Plaintiff has made demand upon Defendants for return of the loan principal and interest, stock portfolio funds, and other wasted corporate assets, and Defendants have refused same.
83. Defendants have converted and wrongfully retained possession of the loan amounts, stock portfolio funds, and other corporate assets referred to above and have refused to repay same.

#### **VII. PUNITIVE DAMAGES**

Plaintiff reasserts the information in paragraphs 1 – 83 above as if fully set forth herein.

84. The individual Defendants, or some of them, have acted with actual malice toward Plaintiff.
85. The actions of Defendants are so outrageous that malice can be implied.
86. Plaintiff is entitled to punitive damages.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Court enter judgment in her favor against each Defendant and award damages, including punitive damages, order the purchase of Plaintiff's shares in the corporations for fair value by Defendants, or in the alternative, (a) order the corporations named herein dissolved with an equitable division of the



proceeds of a liquidation; (b) order the corporations named herein sold with an equitable division of the proceeds; or (c) order an equitable accounting of the affairs of the parties and order the repayment to the corporations and/or Plaintiff of any sums wrongfully obtained by Defendants; and whatever other relief this Court deems just and equitable under the circumstances.

Dated at Augusta, Maine this 13<sup>th</sup> day of October, 2016.



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