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C.L. INDUSTRIES, INC., Plaintiff, vs. BAIRES POOL PLASTERING, L.L.C., a New Jersey limited liability company; BAIRES POOL PLASTERING & ASSOCIATES, L.L.C., a New Jersey limited liability company; DAVID EGHELSHI; REMBERTO BAIRES, SR.; REMBERTO BAIRES, JR.; ABC COMPANIES 1-10, and JOHN DOES 1-10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: UNION COUNTY DOCKET NO.: UNN-L-0716-12 Civil Action

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BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, AND FOR THE APPOINTMENT OF A RECEIVER

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On the Brief:
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PRELIMINARY STATEMENT

Plaintiff C.L. Industries, Inc. (hereinafter "CL Industries" or "Plaintiff") is a judgment creditor of the defendant Baires Pool Plastering, L.L.C. ("Baires Pool I"). CL Industries seeks partial summary judgment against the defendant Baires Pool Plastering & Associates, LLC ("Baires Pool II") based on the Third Count of its Complaint declaring this entity to be the successor-in-interest to, or alter-ego of, Baires Pool I for the purpose of holding Baires Pool II liable to satisfy CL Industries' judgment against Baires Pool I in the amount of $52,310.31 plus post-judgment interest. In addition to this Brief, CL Industries submits a Statement of Material Facts, Certification of Melanie Costantino ("Costantino Cert."), and Certification of Glenn R. Reiser ("Reiser Cert.").

Also, CL Industries seeks the appointment of a receiver so that the corporate assets and accounts receivables of the current operating entity Baires Pool II are not further depleted to avoid Plaintiff's judgment, to prevent this defendant and its principals from engaging in any additional fraudulent conveyances, and to aid CL Industries in the execution of its judgment.

No trial date is currently pending, and the discovery period has not expired. The only defendants to appear in the case are Baires Pool II and its member David Eghelshi ("Eghelshi"). Baires Pool I is defunct, and Plaintiff has been unable to serve the other individual defendants. The relief sought by CL Industries by way of this motion is limited to Baires Pool II.

As detailed in the procedural history and factual statement below, as well as the exhibits attached to the Reiser Cert., there is clear and undisputed evidence that these entities are one and the same. For example, both businesses operate from the same address, maintain the same telephone and fax numbers, offer the same services (concrete work), use the same accountant, bank at the same institution, have a common member, and the new entity continued performing work for

customers of the old entity after the old entity's corporate charter was cancelled. See Reiser Cert. and Exhibits C to G thereto. Further, but perhaps most telling, is that the current website of Baires Pool II promotes Baires Pool I as the active company using the same phone number, fax number, and business address. See Reiser Cert. and Exhibits J to L thereto. Also, in prior deposition testimony the former principal of Baires Pool I admitted that he transferred the assets of his former company to the new one. See Constantino Cert., and Exhibit O to Reiser Cert. The undisputed asset transfer is also buttressed by Plaintiff's Request for Admissions which were served in pretrial discovery, but were not answered and thus are deemed admitted. See Reiser Cert. and Exhibits H and I thereto.

PROCEDURAL HISTORY & STATEMENT OF MATERIAL FACTS

On or about February 9, 2010, CL Industries obtained a final judgment against Baires Pool I in the principal amount of $52,310.31, plus interest at 6% *per annum* in a lawsuit captioned, "*C.L. Industries v. Baiers Pool Plastering, LLC"* brought in the Circuit Court of the Fifth Judicial Circuit, Lake County Florida, Case No.: 2009-CA-006563. The underlying complaint referenced unpaid invoices for goods CL Industries had shipped and delivered to Baires Pool Plastering, LLC on or about June to September 2008. See Reiser Cert. at ¶5 referencing Exhibit A, Plaintiff's Complaint at ¶10.

Pursuant to *N.J.S.A. 2A:49A-26*, CL Industries domesticated the Florida Judgment with the Superior Court of New Jersey on May 26, 2011, DJ-152134-11 (the "New Jersey Collection Case"). See Reiser Cert. at ¶5 referencing Exhibit A, Plaintiff's Complaint at ¶13; a copy of judgment is attached as Exhibit A to Plaintiff's Complaint. The Florida court entered judgment against Baires Pool I by granting Plaintiff's motion for summary judgment. See Exhibit A to Plaintiff's Complaint.

Defendant Remberto Baires, Sr. ("Baires, Sr.") originally formed Baires Pool I on December 14, 2005 by filing a Certificate of Formation with the New Jersey Department of the Treasury, Division of

Revenue. "). See Reiser Cert. at ¶7 and Exhibit C attached thereto. The Certificate of Formation of Baires Pool I reflects that its business purpose was "concrete work," the managing members were Baires Sr., and Remberto Baires, Jr. ("Baires Jr."), and the main business address was 713 North Avenue, Plainfield, New Jersey. Id.

On February 4, 2011, prior to CL Industries docketing the Florida Judgment in New Jersey but subsequent to the entry of the Florida Judgment, defendants David Eghelshi, Jr. and Baires Sr. incorporated Baires Pool II by filing a Certificate of Formation with the New Jersey Department of the Treasury, Division of Revenue. See Reiser Cert. at ¶8 and Exhibit D attached thereto. The Certificate of Formation for Baires Pool II provides almost identical information as the Certificate of Formation for Baires Pool I. For example, the business purpose of Baires Pool II is "concrete work," the main business address is 713 North Avenue, Plainfield, New Jersey, and Baires Sr. continues as a managing member of the entity. Id.

In the New Jersey Collection Case, on June 10, 2011 the Honorable William L'E. Wertheimer, J.S.C. entered an order requiring "Remberto Baires, president of defendant Baires Pool Plastering, L.L.C." to appear for a deposition on behalf of Baires Pool I. See Exhibit B to Costantino Cert.[1] After Mr. Baires refused to give his deposition, on September 8, 2011 Plaintiff filed a motion to find him in contempt. Costantino Cert. at ¶7. On October 6, 2011, Judge Wertheimer entered an Order to Show Cause compelling "Remberto Baires" to appear for a deposition at Plaintiff's attorneys' offices on October 21, 2011 or otherwise appear in court on October 31, 2011. See Exhibit C to Costantino Cert.

[1] The June 11, 2011 Order entered by Judge Wertheimer did not specify Baires Sr. or Baires Jr. Since it was Baires Jr. who appeared for the deposition then it must be concluded that he was the President of Baires Pool I.

Just two (2) days later, on October 8, 2011, and unbeknownst to CL Industries at that time, Baires Sr. filed a Certificate of Cancellation for Baires Pool I with the New Jersey Department of the Treasury, Division of Revenue. The Certificate of Cancellation indicated that Baires Sr. was "no longer with this bussenes.[sic]" See Reiser Cert. at ¶9, and Exhibit E attached thereto. On October 18, 2011, the New Jersey Department of Treasury dissolved and cancelled the corporate charter of Baires Pool I. See Exhibit E to Reiser Cert.

On October 31, 2011, counsel for CL Industries deposed Baires Jr. who admitted that Baires Pool I had transferred its assets to Baires Pool II. See Costantino Cert., at ¶13; see further Deposition of Remberto Baires, Jr., October 31, 2011, Tr. 12:19 to Tr. 15:48, annexed as Exhibit O to Reiser Cert. Unbeknownst to CL Industries, on the same day, October 31, 2011, the New Jersey Department of Law and Public Safety, Division of Consumer Affairs issued a home improvement contractor license to Baires Pool II. See Reiser Cert. at ¶11 and Exhibit G attached thereto.

Having secured a new home improvement contract license for Baires Pool II, the defendants allowed the home improvement contractor license for Baires Pool I to expire on December 31, 2011. See Reiser Cert., at ¶10, and Exhibit G attached thereto.

In the course of pretrial discovery in the instant case, Baires Pool II failed to answer CL Industries Request for Admissions. Id. at ¶12, and Exhibit H attached thereto. Notice of the failure to answer was served on counsel for Baires II with a statement that such facts are deemed admitted. See Reiser Cert. at ¶10 and Exhibit I attached thereto. Defense counsel has not disputed same. Accordingly, each and every request for admission, repeated verbatim below, is therefore deemed admitted pursuant to R. 4:22-1:

1. Defendant, Baires Pool Plastering & Associates, LLC occupies the same building previously occupied by Defendant Baires Pool Plastering, LLC, located at 713 North Avenue, Plainfield, New Jersey 07060.

2. Defendant, Baires Pool Plastering & Associates, LLC currently maintains a phone number of (908) 222-2803.

3. Defendant, Baires Pool Plastering & Associates, LLC currently maintains a website at the domain address of www.bairespoolplastering.com.

4. Defendant, Baires Pool Plastering & Associates, LLC currently maintains a fax number of (908) 222-2890.

5. Defendant, Baires Pool Plastering & Associates, LLC lists the e-mail of rmezacares@yahoo.com on its website, www.bairespoolplastering.com.

6. Defendant, Baires Pool Plastering & Associates, LLC lists the e-mail of rembertojr2hotmail.com on its website, www.bairespoolplastering.com.

7. Defendants, David Eghelshi, Remberto Baires, Sr., and Remberto Baires, Jr. are each members of Baires Pool Plastering & Associates, LLC.

8. Defendants, David Eghelshi, Remberto Baires, Sr., and Remberto Baires, Jr., are currently employed by Baires Pool Plastering & Associates, LLC.

9. Defendants, David Eghelshi, Remberto Baires, Sr., and Remberto Baires, Jr., draw a salary or receive wages from Baires Pool Plastering & Associates, LLC.

10. Defendant, David Eghelshi, along with Remberto Baires, Sr. and Remberto Baires, Jr., discussed and agreed to cancel the corporate charter of Baires Pool Plastering, LLC on October 18, 2011.

11. All equipment, inventory, vehicles, customer accounts, customer contracts, accounts receivable and other assets belonging to Baires Pool Plastering, LLC were transferred to Baires Pool Plastering & Associates, LLC.

12. No written agreement or contract exists between Baires Pool Plastering, LLC and Baires Pool Plastering & Associates, LLC that pertains to the sale or acquisition of assets between the two companies.

13. Defendants Remberto Baires, Sr. and Rembert Baires, Jr. were also members of Baires Pool Plastering, LLC.

14. Defendant, David Eghelshi, was previously employed by Baires Pool Plastering, LLC.

15. Defendant, Baires Pool Plastering & Associates, LLC, uses the same accountant previously employed/retained by Baires Pool Plastering, LLC.

16. Defendant, Baires Pool Plastering & Associates, LLC, maintains a bank account(s) at the same institution that Baires Pool Plastering, LLC previously maintained its bank account(s).

17. Defendants, David Eghelshi, Remberto Baires, Sr., and Remberto Baires, Jr. did not make any capital contribution to fund the incorporation and start-up of Baires Pool Plastering & Associates, LLC.

18. After Baires Pool Plastering, LLC cancelled its corporate charter on October 18, 2011, Defendant, Baires Pool Plastering & Associates, LLC performed work on behalf of customers who originally had contracted with Baires Pool Plastering, LLC.

19. After Baires Pool Plastering, LLC cancelled its corporate charter on October 18, 2011, Defendant, Baires Pool Plastering & Associates, LLC. Invoiced and received payment from customers who originally had contracted with Baires Pool Plastering, LLC.

See Reiser Cert., Exhibit H and I.

As further proof of Baires Pool I's insolvency, an online search performed on the New Jersey Courts Public Access website confirms at least four pending collection actions naming the company as a defendant. Judgment was entered against Baires Pool I in two of these actions. See Exhibit N to Reiser Cert.

LEGAL ARGUMENT

I. PLAINTIFF IS ENTITLED TO PARTIAL SUMMARY JUDGMENT DECLARING THAT BAIRES POOL PLASTERING & ASSOCIATES, LLC, IS THE SUCCESSOR IN INTEREST TO AND/OR ALTER EGO OF BAIRES POOL PLASTERING, LLC, AND THUS LIABLE TO SATISFY PLAINTIFF'S JUDGMENT AGAINST BAIRES POOL PLASTERING, LLC.

N.J. Court Rule 4:46-2(c) provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." The standards to be applied by the courts of New Jersey in applying Rule 4:46-2 and in reviewing motions for summary judgment have also been enunciated by the New Jersey Supreme Court in its opinion in Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 666 A.2d 146 (1995). According to the Brill decision, "a court should deny a summary judgment motion only where the party opposing the motion has come forward with evidence that creates a "genuine issue as to any material fact challenged. That means a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." (Emphasis of the Court). Brill, 142 N.J. at 529.

Under this standard, the determination of whether there actually exists a "genuine issue" of material fact which would preclude summary judgment requires the judge to consider whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 540. When the evidence "is so one-sided that one party must prevail as a matter of law," the court should not hesitate to grant summary judgment. Id. at 536, citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). If the non-moving party's

evidence is a mere scintilla or is not "significantly probative," the court may grant summary judgment for the movant. Id. at 249-50.

The Court in Brill recognized that while a judge ruling on a summary judgment motion should not deprive a deserving litigant from trial, "it is just as important that the court not allow harassment of an equally deserving suitor for immediate relief by a long and worthless trial." Brill, 142 N.J. at 540-541. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Id. at 541. Courts are encouraged "not to refrain from granting summary judgment when the proper circumstances present themselves." Id.

N.J. Court Rule 4:46-2(c) further expounds on what is a genuine issue of material fact, stating "[a]n issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Ibid.

Generally, a business entity is deemed a successor in interest (and therefore liable for the obligations of its predecessor if: 1) it expressly or impliedly assumes such liability; 2) the two corporations were merged into one; 3) the successor corporation is a mere continuation of its predecessor; or 4) the transaction was fraudulently executed to escape such obligations. Diaz v. South Bend Lathe, Inc., 707 F.Supp. 97, 99 (E.D.N.Y.1989) (internal citations omitted). When a corporate entity is a mere instrument of a parent corporation so dominated that it has no separate existence and the subsidiary is used to perpetuate "a fraud or injustice, or otherwise to circumvent the law," then the corporate veil may be pierced. State, Dep't of Envtl. Protection v. Ventron Corp., 94 N.J. 473, 500-501 (1983); accord Melikian v. Corradetti, 791 F.2d 274 (3rd Cir. 1986).

Ordinarily, "where one company sells or otherwise transfers all of its assets to another company, the transferee of those assets is not ordinarily liable for the debts of the transferor company, including those arising out of the transferor's tortious conduct." Ramirez v. Amsted ndustries, Inc., 86 N.J. 332, 340 (1981) (citations omitted). However, there are notable exceptions that will render the transferee liable for the debtors of the transferor where: (1) the purchasing corporation expressly or impliedly agrees to assume such debts and liabilities; (2) the transaction amounts to a consolidation or merger of the seller and purchaser; (3) the purchasing corporation is merely a continuation of the selling corporation; or (4) the transaction is entered into fraudulently in order to escape responsibility for such debts and liabilities. Ibid. (Emphasis added).[2]

In the case at bar, the overwhelming evidence unequivocally demonstrates that Baires Pool II is the alter ego of, or successor-in-interest to, Baires Pool I. In point of fact, Baires Jr.'s deposition testimony confirms on or about December 13, 2010, which was after Plaintiff obtained its Florida Judgment, Baires Pool I transferred all of its remaining assets valued at approximately $80,000 to Baires Pool II. To wit:

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[2] A fifth exception has been adopted in products liability cases where the successor corporation undertakes to manufacture essentially the same products as the predecessor. Id. at 347-48.

> "In determining whether a particular transaction amounts to a de facto consolidation or mere continuation, most courts consider four factors: (i) continuity of management, personnel, physical location, assets, and general business operations; (ii) a cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible; (iii) assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the predecessor; and (iv) continuity of ownership/shareholders.")(internal citations omitted);

Glynwed, Inc. v. Plastimatic, Inc., 869 F. Supp. 265, 275-276 (D.N.J. 1994)(internal citations omitted).

Q. Where did the assets go- - if it's out of business now?
A. Well everything was – was sold. Everything was like – like it doesn't exist – you know - - it was sold to somebody else.
Q. Like who?
A. Well the -- the -– the new person that owns Baires & Associates.
Q. Who's the person who owns Baires & Associates, your dad?
A. David Eghelshi. Eghelshi.

* * *

Q. So all the – and how much was there in assets that were sold to the other company?
A. I – I don't know.
Q. So you don't know how much assets were sold from your former company to this other company?
A. No. I was not involved in that transaction.
Q. How were you not involved? Wasn't it your – wasn't Baires Pool Plastering your company?
A. My father was the main person in charge of all that.
Q. So what types of assets were sold?
A. Well there – I mean – obviously I guess the trucks.
Q. For how much?
A. I wouldn't know how much maam.
Q. And what other assets?
A. Like uh - I guess the trucks, and van.

* * *

Q. You don't know the approximate value of the stuff that was sold?
A. Um. I mean, if you want I can give a rough figure. But I don't know exactly – I mean are you're looking for exact numbers?
Q. Approximate. Give me approximate for now. How much?
A. I mean approximately - - um – looking at about like $80,000.
Q. And when did this sale take place?
A. Uh this sale uh – took place uh I believe in two – last year maam.
Q. 2010?
A. Yes.

* * *

Q. And so it was sold to – you're saying to Baires Pool Plastering & Associates, 713 North Avenue in Plainfield, New Jersey?
A. Yes.

* * *

Q. Ok. And when was the check? When was the actual transfer? When was the check made out – what day?

* * *

Q. December what 2010?
A. On the 13th.

Deposition of Remberto Baires, Jr., October 31, 2011, Tr. 12:28 to Tr. 14:11, and Tr. 23:3-22, annexed as Exhibit O to Reiser Cert. (Emphasis added).[3]

However, the evidence of such successor liability does not end with Baires Jr.'s verbal admission of transferring assets. It is further demonstrated by the following undisputed facts:

1) Similarity of the names between the entities;

2) The continuation of the exact type of business "concrete work";

3) Conducting its business at the same commercial address;

4) Using the same website currently promoting Baires Pool I;

5) Maintaining the same phone number as Baires Pool I;

6) Continuity of management - Baires Sr. was a member of Baires Pool I, and is also a member of Baires Pool II; and

7) The various admissions established by Plaintiff's Requests for Admissions such as the transfer of the former company's assets and equipment, use of the same accountant, Eghelshi's former employment with Baires Pool I, use of the same bank account at the same banking institution, performing work on behalf of customers of Baires Pool I

[3] At the conclusion of his deposition, Baires Jr. was asked to produce a copy of the $80,000 check that purportedly was paid to purchase the assets of Baires Pool I as well as a list of the suppliers he claimed the money was paid in order to satisfy debts of Baires Pool I. Needless to say this information was never provided.

after cancellation of its corporate charter, the absence of a written contract between the 2 entities establishing that value was received by the former entity in exchange for transferring its assets to the new entity, and that none of the named defendants made a capital contribution to fund the start-up of Baires Pool II.

These undisputed facts plainly demonstrate that the members of Baires Pool II fraudulently formed the entity for the sole intent of evading CL Industries' judgment against Baires Pool I. All steps taken, from the formation of the second entity, to the dissolution of the prior entity and cancellation of its New Jersey home improvement contractors' license, when viewed in the context of CL Industries' judgment and pursuit of supplementary deposition proceeding demonstrate that Baires Pool II was created to enable Baires Pool I to avoid payment of CL Industries' judgment.

Accordingly, due to the absence of any genuine issues of material fact CL Industries is entitled to partial summary judgment on Third Count of the Complaint declaring that Baires Pool II is the alter-ego or successor-in-interest to Baires Pool I, and thus liable for the full amount of CL Industries' judgment in the principal amount of $52,310.31 plus post-judgment interest.

II. PLAINTIFF IS ENTITLED TO THE APPOINTMENT OF A RECEIVER BECAUSE THE BUSINESS OF THE SUCCESSOR-IN-INTEREST / ALTER EGO CORPORATION IS BEING CONDUCTED IN A MANNER GREATLY PREJUDICIAL TO THE INTERESTS OF PLAINTIFF AND OTHER CREDITORS, AND TO AID PLAINTIFF IN THE EXECUTION OF ITS JUDGMENT.

Pursuant *to* N.J.S.A. 14A:14-2(a), "a creditor whose claim is for a sum certain", such as CL Industries, has standing to bring a receivership action in the Superior Court of New Jersey. Id. The statute provides creditors with the following grounds to seek appointment of a receiver:

(a) the corporation is insolvent;
(b) the corporation has suspended its ordinary business for lack of funds;
(c) the business of the corporation is being conducted at a great loss and greatly prejudicial to the interests of its creditors or shareholders.

N.J.S.A. 14A:14-2(2).

In addition, N.J.S.A. 2A:17-66 also authorizes the Superior Court to appoint a receiver to aid in the execution on behalf of a judgment creditor. This statute states, in pertinent part, that:

> In aid of execution, the superior court may, on application of either the judgment creditor or the defendant and in its discretion, order the appointment of a receiver of the property and things in action belonging or due to or held in trust for the judgment debtor as aforesaid, at the time of the recovery of the judgment or at any time thereafter. *Ibid.*

In addition to statutory receiverships, the Court also has the inherent power to appoint a custodial receiver. In Roach v. Margulies, 42 N.J. Super. 243 (App.Div.1956), the court discussed custodial receiverships as a device for courts of equity, which should look to them only as a last resort. As the Appellate Division in Roach explained:

> It is well recognized that a court of equity has inherent power in a proper case to appoint a receiver for a corporation on the ground of gross or fraudulent mismanagement by corporate officers or gross abuse of trust or general dereliction of duty. And solvency of the corporation is not a bar to such action. However, such drastic action is avoided where possible, and if the relief necessary can be accomplished by some less onerous expedient.

Id. at 245 (citations omitted).

The power of a custodial receiver, like that of a statutory receiver, subject of course to the court's discretion, is great. It can include the power to sell assets of the company under the court's supervision and, if necessary, the company itself. In re Valley Road Sewerage Co., 295 N.J .Super. 278, 292-293 (App. Div.1996), aff'd, 154 N.J. 224, 239-241 (1998). Indeed, when a corporate defendant's business cannot be conducted with safety to the public and its creditors, the court should intervene and appoint a receiver. Tachna v. Pressed Steel Car Co., 112 N.J. Eq. 411 (E. & A. 1932).

It is undisputed that the defendants engaged in a fraudulent conveyance of approximately $80,000 of assets of Baires Pool I for the sole purpose of avoiding CL Industries' judgment debt. All of the actions taken by the defendants are indicative that Baires Pool II does not have the necessary funds to pay its obligations as they are due, and that the business is likely insolvent or being operated in the same detrimental manner as was its predecessor. In addition, CL Industries was not the only creditor harmed by the actions of the defendants. In the past five years, several other collection actions were filed against Baires Pool I. See Reiser Cert. at ¶17 and exhibit N attached thereto. It appears that Baires Pool I failed to file an Answer to all of these lawsuits, and instead attempted to escape payment on any liability through the formation of Baires Pool II.

The Court should exercise its discretion and appoint a receiver over Baires Pool II to preserve the company's assets from further waste, fraudulent conveyance, or fraudulent mismanagement by its members. The brash actions taken by the individually named defendant Baires Sr. to transfer the assets from one entity to a subsequent alter-ego entity for the purpose of avoiding payment of CL Industries' judgment, while continuing to use those assets to operate the same line of business at the exact same location with the same name, telephone number and website clearly justifies the appointment of either a statutory or custodial receiver over Baires Pool II. Assuming the Court grants partial summary judgment holding that Baires Pool II is the successor of Baires Pool I, then at a minimum a receiver should be appointed to aid Plaintiff in the execution of its judgment pursuant to N.J.S.A. 2A:17-66.

CONCLUSION

For the foregoing reasons and authorities, Court should grant Plaintiff's motion for partial summary judgment on the Third Count of the Complaint declaring that Baires Pool II is the alter-ego

of, or successor-in-interest to, Baires Pool I and thus enter judgment against Baires Pool II in the principal amount of $52,310.31 plus post-judgment interest.

Furthermore, the Court should appoint a receiver to take control over Baires Pool II's business operations as the same is necessary to protect CL Industries and possibly other creditors from continued irreparable harm and prejudice.

Respectfully submitted,

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Attorneys for Plaintiff

By:_____
Glenn R. Reiser

Dated: July 16, 2012