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GORALSKI, INC.,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: BERGEN COUNTY
Plaintiff,	:	
	:	DOCKET NO.: BER-L-89-01
Vs.	:	
	:	Civil Action
BETSY ROSS MANUFACTURING CO.,	:	
DIANE PALUGHI, et al.,	:	
	:	STATEMENT OF MATERIAL FACTS
Defendants.	:	IN SUPPORT OF DEFENDANT'S
	:	MOTION FOR SUMMARY JUDGMENT

Defendant, Diane Palughi (“Ms. Palughi”), by and through her attorneys, LoFaro & Reiser, L.L.P., hereby submits the following Statement of Material Facts in support of her motion for Summary Judgment Dismissing Plaintiff’s Amended Complaint in its entirety:

1. Defendant, Betsy Ross Manufacturing, Inc. (“Betsy Ross”) was a New Jersey Corporation formed in 1973 by the late Michael Palughi, Sr. (*See* Certificate of Incorporation annexed as Exhibit 1 to Certification of Diane Palughi dated February 11, 2002).

2. Betsy Ross was engaged in the manufacture of flags and banners, and operated from industrial/commercial premises commonly known as 85-99 Hazel Street, Paterson, New Jersey (the “Paterson Property”). (Certification of Diane Palughi dated February 11, 2002, at ¶¶ 2-3).

3. Betsy Ross never owned the Paterson Property, but rather was a tenant of the former owner, 85-99 Hazel Street Associates. (*See* Affidavit of Diane Palughi dated August 9, 2000, at ¶ 2, a true copy of which is annexed as Exhibit 9 to Certification of Diane Palughi dated February 11, 2002).

4. Mr. Palughi died in 1998. At the time of his death, the late Mr. Palughi was the sole shareholder and officer of Betsy Ross. He held these titles for almost twenty-six (26) years. (Certification of Diane Palughi dated February 11, 2002, at ¶ 2).

5. Until his death, Mr. Palughi was responsible for running the day-to-day operations of Betsy Ross. (*Id.*, at ¶¶ 2, 4).

6. At no time did Ms. Palughi ever serve as a shareholder, director or officer of her husband's company. (*Id.*, at ¶ 2).

7. Upon Mr. Palughi's death, Ms. Palughi found herself in the position of trying to salvage her deceased husband's business. Until his death, she took no part in the operations of Betsy Ross. It was her late husband's company and he took care of everything. (*Id.*, at ¶ 2; Affidavit of Diane Palughi dated August 9, 2000, at ¶ 4, a true copy of which is annexed as Exhibit 8 to Certification of Diane Palughi dated February 11, 2002).

8. Plaintiff, Goralski, Inc. ("Goralski"), was a vender of Betsy Ross. (*Id.*, at ¶¶ 6-7).

9. Betsy Ross had an account payable to plaintiff at the time of Mr. Palughi's death. When Ms. Palughi became General Manager of Betsy Ross, she continued the relationship with plaintiff and made payments to plaintiff on account. (*Id.*, at ¶ 6).

10. Ms. Palughi never personally guaranteed plaintiff's debt with Betsy Ross, nor did she ever order any goods from plaintiff in her individual capacity. All of Ms. Palughi's dealings with plaintiff were in good faith and done under the corporate veil of Betsy Ross. (*Id.*, at ¶ 7).

11. Ms. Palughi is the administrator of her late husband's estate, which is being administered in the Surrogate's Court of the County of Nassau, New York. (*See* Letters of Administration annexed as Exhibit 2 to Certification of Diane Palughi dated February 11, 2002).

12. Mr. Palughi's estate is insolvent. (Certification of Diane Palughi dated February 11, 2002, at ¶ 4).

13. After her husband's death, Ms. Palughi assumed the position of General Manager of Betsy Ross and involved herself in the company's day-to-day operations. Ms. Palughi unfortunately discovered that her husband had left his business in financial shambles. The business owed substantial taxes to the Internal Revenue Service and the State of New Jersey, and owed thousands of dollars to its vendors and suppliers. (*Id.*, at ¶13).

14. During the time that Ms. Palughi served as General Manager of Betsy Ross, it served as her only source of income. (Affidavit of Diane Palughi dated August 9, 2000, at ¶ 13, a complete copy of which is annexed as Exhibit 9 to Certification of Diane Palughi dated February 11, 2002).

15. Other than trying to save Betsy Ross over the few years of her serving as its General Manager, Ms. Palughi never maintained any meaningful employment. (Affidavit of Diane Palughi dated August 9, 2000, at ¶ 13).

16. Fourteen (14) federal tax liens were filed against Betsy Ross during the years 1990 through 1996 totaling in excess of \$160,000.00. Also, between the years 1989 to 1998 the State of New Jersey filed tax liens in excess of \$60,000.000. All of these tax liens were incurred while Mr. Palughi was alive and running Betsy Ross. (Certification of Diane Palughi dated February 11, 2002, at ¶ 11).

17. Ever since Ms. Palughi became General Manager of Betsy Ross the taxing authorities continually hounded her for payment of back taxes, and on many instances levied the company's checking account. In addition, in several instances the State of New Jersey, which was a customer of Betsy Ross, partially offset Betsy Ross' State tax liabilities by deducting the amounts of substantial invoices due on its purchase orders with Betsy Ross. To prevent the taxing authorities from forcibly seizing the business, through negotiations and

monthly payments Ms. Palughi substantially reduced Betsy Ross' tax obligations to the IRS and State of New Jersey to \$95,000.00 and \$39,000.00, respectively. (*Id.*).

18. Although Ms. Palughi had no prior experience in the flag business, because of her efforts Betsy Ross was able to continue employing 35 people, most of whom had been with the company for over twenty (20) years. (Affidavit of Diane Palughi dated August 9, 2000, at ¶ 4, a true copy of which is annexed as Exhibit 8 to Certification of Diane Palughi dated February 11, 2002).

19. During the time that Ms. Palughi acted as General Manager of Betsy Ross, she personally loaned the company about \$165,000.00 in an attempt to keep the business afloat. Ms. Palughi borrowed these funds from a close family friend. In addition, Ms. Palughi also deferred taking a salary for a period of twelve (12) weeks in a further effort to keep the company afloat. (Certification of Diane Palughi dated February 11, 2002, at ¶ 14).

20. Despite her substantial cash infusion and deferment of salary over a 3-month period, Ms. Palughi was unable to continue the business for a variety of reasons; most notably, the deliveries of poor quality merchandise from a supplier, and substantial back taxes and unpaid vendor bills that the late Mr. Palughi failed to pay while he operated Betsy Ross. (*Id.*, at ¶¶ 10-14).

21. In addition, the mortgagee of the building that Betsy Ross conducted its operations filed foreclosure proceedings against the owner of the Paterson Property. After final judgment was entered on January 5, 2000, the foreclosing plaintiff commenced proceedings to evict Betsy Ross from the Paterson Property. (*Id.*, at ¶ 10).

22. In addition, several vendors of Betsy Ross filed suit to recover substantial debts incurred by Betsy Ross when the late Mr. Palughi was operating the company. One of the creditors, Westmark Corp., sued to collect an alleged debt exceeding \$158,000.00. (*Id.*, at ¶ 12).

23. Also, Betsy Ross also suffered a significant financial setback during Ms. Palughi's term as General Manager when material provided by one of its suppliers over a three (3) month period proved to be defective. This caused several long-time customers of Betsy Ross to demand replacement of their goods with new material and printing, which put a tremendous financial strain on the company. Additionally, thereafter at least one (1) of these substantial customers stopped all print orders while other customers curtailed their print orders. (*Id.*, at ¶ 13).

24. Because her late husband left the business in such poor financial condition and in view of the pending Foreclosure Action, it became unfeasible for Ms. Palughi to continue Betsy Ross's operations. Beginning in late 1999 and continuing through 2000, Ms. Palughi made extensive efforts to sell the business to other flag manufacturing companies in the Northeast. (*Id.*, at ¶ 14).

25. On June 13, 2000, Ms. Palughi signed a letter of intent to sell all of Betsy Ross' assets to another flag manufacturer, New England Flag & Banner ("New England Flag") for the sum of \$250,000.00. The potential transaction with New England Flag was contingent on a due diligence period to allow for inspection of Betsy Ross' business operations, its financial condition and books and records. (*Id.*, at ¶ 15).

26. On July 19, 2000, Ms. Palughi exchanged correspondence with the principal of New England Flag concerning his request for certain financial and other information. In Ms. Palughi's correspondence of July 19, 2000, she informed New England Flag that time was of the essence because the building was up for sale and the new owner was not willing to discuss a lease arrangement with Betsy Ross. (*Id.*, at ¶ 17).

27. While the transaction with New England Flag was in the due diligence period, on July 31, 2000, the Chancery Division in Passaic County entered a Writ of Possession ("Writ") against Betsy Ross in the underlying foreclosure matter captioned, *The Money Store*

Investment Corporation vs. 85-99 Hazel Street Associates, Docket No.: F-4066-99 (the “Foreclosure Action”), and directing the Passaic County Sheriff to deliver possession of the Paterson Property to the foreclosing plaintiff. (See Exhibit 7 to Certification of Diane Palughi dated February 11, 2002).

28. On July 31, 2000, the Passaic County Sheriff served Betsy Ross with the Writ accompanied by an Eviction Notice scheduling a lockout date for August 11, 2000. (*Id.*).

29. Prior to receiving the Eviction Notice from the Passaic County Sheriff, in the months of May and June 2000 Ms. Palughi had numerous discussions with representatives of the servicing agent for the foreclosing mortgagee in regard to leasing the Paterson Property. Unfortunately, those negotiations were unfruitful. (Affidavit of Diane Palughi dated August 9, 2000, at ¶¶ 5-8).

30. In the context of the Foreclosure Action, on August 9, 2000 Betsy Ross filed an Order to Show Cause to Stay Eviction. Counsel for the foreclosing plaintiff contested the relief sought. The matter came before the Honorable Susan L. Reisner, J.S.C. Betsy Ross presented Judge Reisner with evidence that it had entered into a letter of intent with New England Flag on June 13, 2000 providing for the sale of all or substantially all of its assets for \$250,000.00, and that its attorneys were holding a \$10,000.00 deposit in escrow. (See Certification of Diane Palughi dated August 9, 2000, a true copy of which is annexed as Exhibit 9 to Certification of Diane Palughi dated February 11, 2002).

31. Judge Reisner conducted an initial hearing on August 10, 2000, and Her Honor granted Betsy Ross a 60-day extension of the lockout subject to certain terms and conditions, including the payment of use and occupancy rent to the landlord in the amount of \$6,875.00 per month. An Order Staying Eviction on Terms was entered on August 11, 2000, postponing the lockout to October 11, 2000 at 11:00 a.m. (See Exhibit 10 to Certification of Diane Palughi dated February 11, 2002).

32. On or about August 17, 2000, representatives of New England Flag informed Ms. Palughi of their decision to terminate the transaction. Ms. Palughi attempted to resurrect the deal by substantially lowering the purchase price from \$250,000.00 to \$100,000.00, however the principal of New England Flag explained that he changed his mind and was no longer interested in pursuing the deal. Accordingly, Betsy Ross instructed its attorneys to return their \$10,000.00 deposit monies. (Affidavit of Diane Palughi dated September 27, 2000, at ¶ 6; Certification of Diane Palughi dated February 11, 2002, at ¶ 20).

33. Immediately after the deal with New England Flag fell apart, Ms. Palughi actively attempted to find another purchaser for Betsy Ross. Two (2) other companies expressed some interest in purchasing the assets of Betsy Ross; namely, Flag Zone based out of Pennsylvania, and National Flag Banner & Display Co., Inc. (“National Flag”) based out of Manhattan. (Certification of Diane Palughi dated February 11, 2002, at ¶¶ 20-21).

34. On September 19, 2000, Ms. Palughi received a letter from the Chief Executive Office of Flag Zone. The letter indicated that Flag Zone’s representatives would visit Betsy Ross’ facility on February 28, 2000 to determine whether or not they were interested in purchasing Betsy Ross’ assets. (See Exhibit 12 to Certification of Diane Palughi dated February 11, 2002).

35. On September 27, 2000 Betsy Ross filed a second Order to Show Cause in the Foreclosure Action seeking an additional 60-day stay of eviction. At that time, Betsy Ross was still negotiating Flag Zone and co-defendant National Flag. On October 11, 2000, Judge Reisner entered an Order further staying the eviction to November 9, 2000. (See Exhibit 14 to Certification of Diane Palughi dated February 11, 2002).

36. Ultimately, Flag Zone determined that it was not interested in purchasing Betsy Ross’ assets. (Certification of Diane Palughi dated February 11, 2002, at ¶ 24).

37. In the context of the Foreclosure Action, Ms. Palughi informed Judge Reisner that she would become insolvent if she were unable to secure a new employment contract with a prospective purchaser. (Affidavit of Diane Palughi dated September 27, 2000, at ¶ 9, a complete copy of which is annexed as Exhibit 13 to Certification of Diane Palughi dated February 11, 2002).

38. In the context of the Foreclosure Action, Ms. Palughi further informed Judge Reisner that she had personal exposure in excess of \$160,000.00 in debts of Betsy Ross that she agreed to pay in an effort to keep the company running and its workers employed. (*Id.* at ¶ 11).

39. On or about October 31, 2000, Betsy Ross signed a letter of intent with National Flag to sell certain of its assets, excluding cash and accounts receivable, for the sum of \$50,000.00. (*See* Exhibit 15 to Certification of Diane Palughi dated February 11, 2002).

40. In order to secure an orderly transition of Betsy Ross' customer accounts to National Flag and to provide Ms. Palughi with a source of income, the parties agreed that Ms. Palughi would receive a consulting agreement to continue servicing Betsy Ross' clientele. (Certification of Diane Palughi dated February 11, 2002, at ¶ 26).

41. The consulting agreement includes a non-competition clause, and requires Ms. Palughi to work at least two (2) days a month at National Flag's facilities over a period of five (5) years. In consideration for the non-competition clause and part-time servicing of clients, National Flag agreed to pay Ms. Palughi a yearly salary of \$30,000/year for a term of five (5) years. (*See* consulting agreement appended as Exhibit A to Assignee's Petition, which is included within Exhibit C to Affidavit of Stephen B. Ravin, Esq.).

42. On or about November 1, 2000, National Flag delivered a check for \$5,000.00 to counsel for Betsy Ross, representing the 10% deposit in furtherance of the letter of intent.

(See Exhibit B to Certification of Glenn R. Reiser dated November 9, 2000, a true copy of which is annexed as Exhibit 1 to Certification of Glenn R. Reiser dated February 20, 2002).

43. On November 9, 2000, Betsy Ross filed a third Order to Show Cause in the Foreclosure Action seeking a further stay of its eviction from the Paterson Property. In its supporting application, counsel for Betsy Ross provided copies of the letters of intent with National Flag for the purchase of assets and for the consulting agreement with Ms. Palughi. (See Exhibit A to Certification of Glenn R. Reiser dated November 9, 2000).

44. On November 9, 2000, Judge Reisner entered an Order Adjourning Sheriff's Sale until December 15, 2000. This Order specified that the Court would not grant any further stays of eviction. (See Exhibit 17 to Certification of Diane Palughi dated February 11, 2002).

45. On December 4, 2000 and before the court approved the sale of assets to National Flag, Betsy Ross obtained an appraisal of its physical assets from A. Atkins Appraisal Corp. The appraisal valued Betsy Ross' physical assets at a forced sale value of \$15,000.00. (See Exhibit A to Affidavit of Stephen B. Ravin).

46. Betsy Ross tried to consummate the transaction with National Flag in the ordinary course, but significant issues remained for Betsy Ross to be able to transfer good title to National Flag. In particular, since the sale would result in the closing of an industrial establishment, Betsy Ross was required to give notice to and obtain approval from the New Jersey Department of Environmental Protection & Energy. Due to the industrial operations of Betsy Ross and its use of paints and solvents, the sale was subject to the Industrial Site Recovery Act ("ISRA"). (Certification of Diane Palughi dated February 11, 2002, at ¶ 32).

47. On November 17, 2000, Betsy Ross received a letter of engagement from Mellick-Tully and Associates, P.C., an environmental engineering and consulting firm, to assist Betsy Ross in complying with ISRA. (See Exhibit 18 to Certification of Diane Palughi dated February 11, 2002).

48. Betsy Ross ultimately retained the environmental firm of Mellick-Tully and Associates. (*Id.*, at ¶ 28).

49. On December 15, 2000, Betsy Ross ceased conducting its business operations. (Certification of Diane Palughi dated February 11, 2002, at ¶ 32).

50. By correspondence dated December 19, 2000 counsel for Betsy Ross notified the New Jersey Department of Environmental Protection that the company had ceased operations at its manufacturing facility on December 15, 2000. In the same letter, counsel for Betsy Ross submitted a General Information Notice application in accordance with N.J.A.C. 7:26B-3.2. (*See* Exhibit 19 to Certification of Diane Palughi dated February 11, 2002).

51. The existence of substantial federal and state tax liens filed against Betsy Ross also hindered its ability to deliver clear title to the assets to National Flag in the ordinary course. Consequently, any sale in the ordinary course of business was subject to Betsy Ross applying for and obtaining bulk tax sale clearance from the New Jersey Division of Taxation. (*See* Exhibit C to Certification of Glenn R. Reiser dated November 9, 2000, a true copy of which is annexed as Exhibit 1 to Certification of Glenn R. Reiser dated February 20, 2002).

52. With the last court-ordered extension of the lockout due to expire on December 15, 2000, Ms. Palughi had no choice but to put the company into an insolvency proceeding or risk losing any value to the creditors. (Certification of Diane Palughi dated February 11, 2002, at ¶¶ 28-29).

53. In early December 2000, Ms. Palughi attended a meeting at her attorney's office with Stephen B. Ravin, Esq. for the purpose of discussing the possibility of Betsy Ross assigning its assets to him as a fiduciary. During that meeting and in the presence of her attorney Ms. Palughi disclosed to Mr. Ravin, among other things, that Betsy Ross had significant tax debts and owed thousands of dollars to its vendors. Ms. Palughi also informed

Mr. Ravin of the existing offer from National Flag, and that it included the consulting/non-compete agreement. (*Id.*, at ¶ 30).

54. By Deed dated January 11, 2001, Betsy Ross assigned all of its assets to Mr. Ravin in a general assignment for the benefit of creditors. The Passaic County Surrogate's Office recorded the Deed of Assignment on January 12, 2001. (*See* Deed of Assignment annexed as Exhibit B to Affidavit of Stephen B. Ravin).

55. Mr. Ravin is a senior partner of the law firm of Ravin Greenberg, P.C., with offices in Roseland, New Jersey. Mr. Ravin is an experienced practitioner in the area of bankruptcy & insolvency. (Affidavit of Stephen B. Ravin, at ¶ 2).

56. Mr. Ravin's primary function as Betsy Ross' assignee was to preserve the corporation's assets and obtain the highest price for the benefit of the creditors. (*Id.*, at ¶ 8).

57. Upon being designated as Betsy Ross' assignee, Mr. Ravin immediately contacted counsel for the foreclosing mortgagee to discuss an orderly removal of the assets. Mr. Ravin was able to negotiate an agreement that permitted him to continue storing the corporation's physical assets at the premises in exchange for the payment of post-assignment rent and recognition of a landlord's lien to the extent of the assets. In reaching this agreement, Mr. Ravin avoided the owner's forcible removal of the assets and thereby preserved their value pending court approval of the sale to National Flag. (*Id.*).

58. Immediately following his designation as assignee of Betsy Ross, Mr. Ravin had discussions with Kenneth Rosen, Esq. of Lowenstein Sandler, PC, counsel for National Flag, about preparing and executing a definitive asset purchase agreement. Mr. Ravin and Mr. Rosen ultimately agreed on a form of asset purchase agreement, which included a draft of a consulting/non-competition agreement with Ms. Palughi. Mr. Ravin was not concerned about the terms or conditions of the consulting/non-compete agreement because National Flag was paying three (3) times the estimated forced sale value of the assets. (*Id.*, at ¶ 9).

59. On January 18, 2001, Mr. Ravin filed a Petition and Order to Show Cause before Judge Reisner requesting approval of the sale of Betsy Ross' assets to the co defendant, National Flag. (*See* Exhibit C to the Affidavit of Stephen Ravin 2001).

60. Mr. Ravin attached a copy of the consulting/non-compete agreement as an Exhibit to his Petition in support of the Order to Show Cause. (*Id.*, at ¶ 10).

61. On January 19, 2001, Judge Reisner entered Mr. Ravin's Order to Show Cause, subject to higher and better offers, and scheduled a return date for February 9, 2001 at 9:00 a.m. In compliance with said Order to Show Cause, Mr. Ravin caused notice of the proposed sale to be published in the Bergen Record on January 31, 2001. (*See* Exhibit D to Affidavit of Stephen B. Ravin).

62. Mr. Ravin's law firm served notice of the Order to Show Cause upon all creditors, including the plaintiff in this case. (*See* Exhibit E to Affidavit of Stephen B. Ravin).

63. Mr. Ravin also advertised the sale offer in the January 31, 2001 edition of the Bergen Record. (*See* Exhibit F to Affidavit of Stephen B. Ravin).

64. Before Mr. Ravin appeared before Judge Reisner on February 9, 2001, and in an attempt to solicit higher and better offers, he served the Order to Show Cause pleadings on three (3) other flag companies; namely, Valley Forge Flag Co., Annin & Co., and Flag Zone. (*Id.*, at ¶ 13).

65. Counsel for the plaintiff herein (Goralski, Inc.) appeared before Judge Reisner on the February 9, 2001 return date of Mr. Ravin's Order to Show Cause, and voiced his client's objection to both the sale and the consulting/non-compete agreement. (*See* court transcript annexed as Exhibit 2 to Certification of Glenn R. Reiser dated February 20, 2002).

66. Notwithstanding the objections of plaintiff's counsel, Judge Reisner approved the sale and entered an Order Authorizing Sale of Assets the very same day. (*See* Exhibit G to Affidavit of Stephen B. Ravin).

67. At the February 9, 2001 hearing, Judge Reisner also denied plaintiff's request to impose any restraints requiring the withholding of payments that Ms. Palughi would receive under the consulting/non-compete agreement. (*See* court transcript annexed as Exhibit 2 to Certification of Glenn R. Reiser dated February 20, 2002, at p. 13).

68. At the February 9, 2001 hearing, Judge Reisner concluded that there was an absolutely urgent need to go through with the sale of Betsy Ross' assets. (*See* court transcript annexed as Exhibit 2 to Certification of Glenn R. Reiser dated February 20, 2002, at p.11).

69. At the February 9, 2001 hearing, Judge Reisner concluded that the interest of no creditor would be served by not approving this sale. Her Honor further concluded that the sale to National Flag was the only light at the end of the tunnel for Betsy Ross, and that if the assets were not sold they would be lost or sold as scrap because the foreclosing mortgagee had a right to possession of the premises. (*Id.*, at p. 12).

70. As far as Mr. Ravin was concerned, National Flag's offer to purchase Betsy Ross' assets for \$50,000.00 was an arms length transaction negotiated in good faith. (Affidavit of Stephen B. Ravin, at ¶ 14).

71. The sale with National Flag was consummated, and Mr. Ravin received the full \$50,000.00 purchase price. Out of the sale proceeds, Mr. Ravin paid the owner of the building \$15,000.00 in satisfaction of its landlord's lien plus 1½ month's rent at the same rate that Betsy Ross had negotiated in the Foreclosure Action. In addition, Mr. Ravin also paid \$5,500.00 to retain the services of experienced environmental counsel, Riker Danzig, et als., to assist him in complying with ISRA and other applicable environmental laws. (*Id.*, at ¶ 16).

72. Mr. Ravin faithfully carried out his duties as assignee of Betsy Ross, and he continues to do because the estate has not been fully administered. According to Mr. Ravin's records, plaintiff has not filed a proof of claim in the assignment case. Nor has the plaintiff

ever made demand upon him to sue Ms. Palughi concerning her receipt of monies under the consulting/non-compete agreement. (*Id.*, at ¶ 17).

73. Ms. Palughi was 61 years of age when Judge Reisner approved the sale of Betsy Ross' assets to National Flag. (*See* Affidavit of Diane Palughi dated September 27, 2000, at ¶ 11, a true copy of which is annexed as Exhibit 13 to Certification of Diane Palughi dated February 11, 2002).

74. Plaintiff commenced this action by filing its Complaint on January 24, 2001 seeking to recover an alleged debt in the amount of \$14,412.30.

75. Plaintiff filed an Amended Complaint in this action on February 20, 2001, only nine (9) days after the February 9, 2001 hearing conducted by Judge Reisner.

76. In its Amended Complaint, plaintiff alleges that Ms. Palughi committed a fraud upon the creditors of Betsy Ross by selling the assets for less than their fair market value, and by depriving the creditors of additional monies by her entitlement to receive compensation under the consultant/non-compete agreement with National Flag. (Plaintiff's Amended Complaint, Sixth Count, at ¶¶ 2-12).

77. In its Amended Complaint, plaintiff further alleges that the sale transaction to National Flag and consulting/non-compete agreement constitutes an unlawful preference to an individual and serves as a mechanism to transfer assets away from Betsy Ross and to an individual. (Plaintiff's Amended Complaint, Sixth Count, at ¶ 8).

78. Plaintiff makes similar allegations against National Flag in its Amended Complaint. (Plaintiff's Amended Complaint, Sixth and Seventh Counts).

79. In its Amended Complaint, plaintiff also alleges that the transactions between Mr. Ravin and National Flag and the consulting/non-compete agreement between National Flag and Ms. Palughi do not provide for payment of the goodwill of Betsy Ross and accounts

which should be paid to creditors and not an individual officer or employee of the company.

(Plaintiff's Amended Complaint, Sixth Count, at ¶ 12).

Respectfully submitted,

LOFARO & REISER, L.L.P.
Attorneys for Defendant, Diane Palughi

By: _____
Glenn R. Reiser

Dated: February _____, 2002