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Attorneys for Plaintiff John Murray

JOHN MURRAY  
186 Lee Avenue  
Hicksville, New York 11801

Plaintiff,

v.

CRYSTEX COMPOSITES LLC  
125 Clifton Boulevard  
Clifton, New Jersey 07011

Defendants.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No:

COMPLAINT

JOHN MURRAY (“Murray”), for his Complaint in this action against Defendant,  
Crystex Composites LLC (“Crystex”), alleges as follows:

JURISDICTION AND VENUE

1. Murray is a resident of the State of New York, with his address at 186 Lee Ave, Hicksville, NY 11801.
2. Defendant Crystex is a New Jersey Limited Liability Company, with its principal place of business at 125 Clifton Boulevard, Clifton, New Jersey. Crystex is in the business of manufacturing moldable ceramic products.
3. This action concerns the ownership of certain real estate and business assets currently located at the principal place of business of Crystex.

4. Pursuant to 28 USC 1332, this court has subject matter jurisdiction over this declaratory judgment and damages action because Murray is diverse from Crystex, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
5. Venue is proper pursuant to 28 USC 1391, as the defendant's principal place of business is located within this District.

#### FACTUAL ALLEGATIONS

6. This suit seeks to determine the past and current ownership of certain real property and personal property that once belonged to Spaulding Composites Co., Inc. ("Spaulding") through its Mykroy/Mycalex ("Mykroy") division, and the attendant rights thereto.
7. Prior to early 2001, Murray had held the positions of Director of Accounting for Western Union, Controller for the Shortline Bus Systems, Supervisor of Corporate Accounting for Olin Corp and CFO for American BioMedica Corp. He was also a Certified Public Accountant.
8. In early 2001, Murray began working for Spaulding as a consultant. As such, he studied Mykroy in great detail during his consultancy. At the time Murray worked as a consultant to it, Spaulding was a bankrupt company, operating under Chapter 11 of the Bankruptcy Code. The Chapter 11 matter was venued in the Bankruptcy Court for the District of New Hampshire.
9. As a result of Murray's studies as consultant, he concluded that it was the intention of Spaulding's management to run Mykroy in such a way as to render it worthless, while taking available cash out of the operation. He further concluded

that Spaulding's acting CEO was managing Mykroy in a way that would damage Mykroy's profitability and value.

10. As a result of his conclusions, Murray wrote to Spaulding's Creditors' Committee to inform it that Mykroy was a profitable entity and that it could be profitably run without interference from Spaulding.
11. When nothing came of Murray's letter to the Spaulding Creditor Committee, Murray became interested in purchasing Mykroy in the bankruptcy proceeding.
12. For three years, Murray devoted substantial time, resources, and expense to:
  - (a) Analyzing the value of Mykroy as an acquisition;
  - (b) Attempting to interest investors;
  - (c) Retaining legal counsel and attending at least nine meetings with counsel on this acquisition;
  - (d) Negotiating with the creditors in the Spaulding bankruptcy over a purchase price and terms;
  - (e) Traveling from New Jersey to the Bankruptcy Court in New Hampshire on several occasions, to observe the proceedings and to attempt to acquire Mykroy; and
  - (f) Obtaining financing necessary to make the purchase through CIT, which involved at least 4 meetings with CIT executives.
13. Pursuant to the October 15, 2003 Order of the Honorable J. Michael Deasy, Judge of the United States Bankruptcy Court for the District of New Hampshire, all property and business assets of Mykroy that were awarded to "John F. Murray or his nominee." (Exhibit A).

14. Prior to the award of Mykroy's assets to Murray, Murray had concluded that Mykroy was poorly managed, and that with improved management the company would be an excellent acquisition.
15. Prior to the award of Mykroy's assets to Murray, Murray had concluded that Mykroy was an abused orphan division of Spaulding, which had refused to recognize the accomplishments of its orphan division. Murray had observed that the Spaulding management had publicly humiliated Mykroy's operating manager, George Flores ("Flores"), by, among other ways, not acknowledging the accomplishments of Flores or the employees at Mykroy, who were doing an excellent job in Murray's opinion.
16. Prior to the award of Mykroy's assets to Murray, Murray had made offers to Spaulding's creditors for the purchase of Mykroy in his own name, took full responsibility for such offers, and was personally liable for any bids he made during the bankruptcy.
17. As part of the financing to be used to pay Spaulding's creditors for the award, Murray obtained a loan from CIT, Spaulding's primary creditor. The CIT loan was collateralized by the Mykroy property and business assets that were to be awarded to Murray. Murray provided additional collateral to CIT in the form of Murray's personal guarantee and Murray's common stock in American Biomedica Corporation ("ABMC") worth approx. \$150,000. The CIT loan was also collateralized by the ABMC stock of Murray's friend, Larry Milby.
18. Murray directed CIT to liquidate his ABMC stock first in the event that it were necessary to liquidate the stock collateral, so that Milby's stock would be

protected. No other parties were involved in the negotiations or the transaction with CIT for this loan.

19. Pursuant to Judge Deasy's Order, Spaulding and Murray executed a "Contract for Sale of Business" in which all business assets of Mykroy were transferred to "John F. Murray or his corporate nominee." (Exhibit B) No "corporate nominee" was identified, nor did any exist.
20. Also pursuant to Judge Deasy's Order, Spaulding and Murray executed a "Contract for the Sale of Real Estate" (Exhibit B) in which the real estate upon which Mykroy's facilities were located in Clifton, New Jersey, were transferred to "John F. Murray or his corporate Nominee." No "corporate nominee" was identified, nor did any exist. A "Rider" to the "Contract for the Sale of Real Estate" identified the transferee as "John F. Murray, Buyer." (Exhibit C) Murray was awarded the Mykroy assets by Judge Deasy as a result of various activities and investments Murray made alone, as described above.
21. On October 14, 2003, Crystex was formed and its Certificate of Formation was filed with the Secretary of State of New Jersey.
22. Murray entered into an agreement with Flores and certain other investors, providing that in return for a substantial ownership interest in Crystex, Murray would permit Crystex to utilize the real estate and business assets Murray was awarded.
23. On October 26, 2003, a deed was prepared by Crystex's counsel, not at the direction of Murray, which purported to transfer the real property from Spaulding directly to Crystex. (Exhibit D)

24. In spite of this agreement, Murray never received any ownership interest in Crystex or any other consideration for any purported transfer of business assets or real property to Crystex. The fact that Murray never received any ownership interest in Crystex was found judicially by the Superior Court of New Jersey, Law Division and affirmed by the Superior Court of New Jersey, Appellate Division. The Superior Court did not reach the issue of who owned the business assets and real property awarded to Murray, in light of its finding that Murray never received any ownership interest in Crystex.
25. On April 8, 2008, Murray demanded in writing the return of his real and personal property from Crystex, as well as back and front rent for the use thereof. Crystex, through its counsel, has represented in writing that Crystex contends that Murray holds no interest in the real or personal property at issue and is entitled to no rent or other compensation.
26. As a result of the foregoing, there is a current and ripe controversy over the ownership and attendant rights to the real and personal property at issue, which has a value of several million dollars.

**COUNT ONE**

(DECLARATORY JUDGMENT ESTABLISHING THAT MURRAY IS THE  
LEGAL OWNER OF THE REAL ESTATE AND PERSONAL PROPERTY  
AWARDED TO HIM BY THE BANKRUPTCY COURT FOR THE DISTRICT  
OF NEW HAMPSHIRE)

27. Murray realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

28. Murray brings this action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, as to the relevant rights, liabilities, and obligations of Murray and Crystex with respect to the real property and personal property that was awarded to Murray by the Bankruptcy Court for the District of New Hampshire.
29. Upon information and belief, Crystex is currently, and has been continuously since no later than October 15, 2003, in possession of all real and personal property awarded to Murray by the Bankruptcy Court for the District of New Hampshire.
30. Such possession by Crystex is unlawful and should be immediately returned to Murray.

WHEREFORE, Murray demands judgment in his favor and against Crystex declaring:

- (1) That since the date of the Order of Judge Deasy, October 15, 2003, Murray has continuously been the owner of the real and personal property subject to that order;
- (2) That all rights, title, and possession shall be returned to Murray immediately;
- (3) That rent and other compensation shall be awarded to Murray for the period of time that Crystex possessed and used the real and personal property at issue;
- (4) Disgorgement of all profits and rents obtained by Crystex as a result of its possession and use of the real and personal property at issue; and
- (5) Such other further relief as the Court may find equitable and proper, including but not limited to costs and attorneys' fees.

**COUNT TWO**

(UNJUST ENRICHMENT)

31. Murray realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.
32. The unlawful possession and use of the real estate and personal property at issue has unjustly enriched Crystex at the expense of Murray.

WHEREFORE, Murray demands judgment in his favor and against Crystex declaring:

- (1) That since the date of the Order of Judge Deasy, October 15, 2003, Murray has continuously been the owner of the real and personal property subject to that order;
- (2) That all rights, title, and possession shall be returned to Murray immediately;
- (3) That rent and other compensation shall be awarded to Murray for the period of time that Crystex possessed and used the real and personal property at issue;
- (4) Disgorgement of all profits and rents obtained by Crystex as a result of its possession and use of the real and personal property at issue; and
- (5) Such other further relief as the Court may find equitable and proper, including but not limited to costs and attorneys' fees.

**COUNT THREE**

(MISAPPROPRIATION)

33. Murray realleges and incorporates by reference the allegations set forth in the preceding paragraphs as if fully stated herein.

34. The unlawful acquisition, possession, and use of the real estate and personal property at issue were the result of misappropriation by Crystex at the expense of Murray.

WHEREFORE, Murray demands judgment in his favor and against Crystex declaring:

- (1) That since the date of the Order of Judge Deasy, October 15, 2003, Murray has continuously been the owner of the real and personal property subject to that order;
- (2) That all rights, title, and possession shall be returned to Murray immediately;
- (3) That rent and other compensation shall be awarded to Murray for the period of time that Crystex possessed and used the real and personal property at issue;
- (4) Disgorgement of all profits and rents obtained by Crystex as a result of its possession and use of the real and personal property at issue;
- (5) Compensatory damages, prejudgment interest, costs; and
- (6) Such other further relief as the Court may find equitable and proper.

COLLIER & BASIL, P.C.  
Attorneys for Plaintiffs

By /s/ Robert J. Basil  
ROBERT J. BASIL  
A Director of the Firm

Dated: May 27, 2008

CERTIFICATION

Pursuant to Local Civil Rule 11.2, I hereby certify that the matter in controversy is not the subject of any other action or proceeding pending in any other court or in any arbitration or administrative tribunal.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

/s/ Robert J. Basil  
ROBERT J. BASIL

Executed on: May 27, 2008