

**IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL DISTRICT  
DUPAGE COUNTY, WHEATON, ILLINOIS – LAW DIVISION**

SHELTON BROTHERS, INC, )  
)  
)  
Plaintiff, )  
)  
v. )  
)  
RNSS, LLC, f/k/a RIVER NORTH )  
SALES & SERVICE, LLC, )  
)  
Defendants. )

Chris Kachiroubas  
e-filed in the 18th Judicial Circuit Court  
DuPage County  
ENVELOPE: 8525642  
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Case No. 2014 L 557

**RIVER NORTH SALES & SERVICE, LLC’S  
FOURTH AMENDED COUNTERCLAIM AGAINST SHELTON BROTHERS, INC.**

River North Sales & Service, LLC (“River North”), by its attorneys, the Christopoulos Law Group, LLC, alleges as its Fourth Amended Counterclaim against Counter-Defendant, Shelton Brothers, Inc. (“Shelton Brothers”) as follows:

**THE PARTIES**

1. At all times relevant herein, RNSS, LLC, formerly known as, River North Sales & Service, LLC (“River North”) was a limited liability company organized under the laws of the State of Delaware, which maintained a principal office in the City of Chicago, County of Cook and State of Illinois.
2. River North was the holder of valid distributor and importing distributor licenses issued by the Illinois Liquor Control Commission (the “ILCC”) up to and including through December 31, 2013.
3. Pursuant to the authority granted to it by said licenses, River North engaged in the business of warehousing and wholesaling beer products to duly licensed retail liquor licensees in the State of Illinois.

4. Shelton Brothers (“Shelton Brothers”) is incorporated under the laws of the Commonwealth of Massachusetts.

5. Shelton Brothers owns or controls the trademarks, brands, and or names of many beer products and is the holder of a Non-Resident Dealer’s license (“NRD”) issued by the ILCC.

6. Pursuant to the authority granted to it under its NRD License, Shelton Brothers engages in the business of, among other things, importing beer products into the State of Illinois for sale to beer distributors such as Windy City Distribution Company (“Windy City”) and River North.

### **THE AGREEMENT**

7. In late 2011, Shelton Brothers and River North were introduced to one another and began discussing the possibility of Shelton Brothers assigning some of its beer brands to River North for distribution in the Chicagoland area.

8. At that time, Shelton Brothers’ brands were already exclusively assigned to Windy City for distribution in the Chicagoland area.

9. In early 2012, as River North and Shelton Brothers continued their discussions, River North notified Shelton Brothers that pursuant to the Illinois Beer Industry Fair Dealing Act, 815 ILCS 720 *et seq.*, (“BIFDA”) and well as pursuant to custom and practice, that Shelton Brothers would need to pay Windy City fair market value for Windy City’s brand and distribution rights if it intended to transfer the rights to River North (“Fair Market Value”).

10. Shelton Brothers refused to permit River North to pay Windy City Fair Market Value and told River North it did not want anyone to pay Windy City because Shelton Brothers did not believe in the concept of “...paying money to people who do a lousy job – and don’t really care for, or about our products – on principle. (Franchise laws are anti-competitive, allowing

established distributors to keep new, efficient, or hungry ones outs, and leaving those same distributors, who have no natural competitors, to charge prices as high as they care too, which hurts small brewers. And the whole scheme is based on a now completely erroneous fiction – that suppliers have all this power over their distributors, or ‘franchisees’).”

11. Mr. Daniel Shelton of Shelton Brothers also informed River North that, “it didn’t take me long to find a nice loophole in Illinois law. Windy City might try, but ultimately they’re not going to be able to hold us for cash if we want to move many, or all, of our brands over to you, if we’re going to go that route.”

12. Mr. Shelton was describing the provision in BIFDA which permits beer suppliers to terminate a distributor for “cause” if the distributor fails to “pay any account when due and upon demand by the brewer for such payment, in accordance with agreed payment terms.” 815 ILCS 720(3)(3)(A).

13. River North reiterated its desire to pay Windy City and stated that if Shelton Brothers would not agree to pay Windy City, River North would only agree to distribute Shelton Brothers’ representative brands pursuant to a written contract which included an indemnification clause applicable to expected litigation with Windy City.

14. On May 31, 2012, Shelton Brothers and River North entered into a written agreement whereby Shelton Brothers agreed to indemnify River North from the expected litigation with Windy City and whereby Shelton Brothers appointed River North as its exclusive distributor for its entire portfolio of alcoholic beverage products in a specified area of Illinois. (Attached and incorporated into this Counterclaim as Exhibit A is a duly executed and accurate copy of the Distributor Appointment and Indemnification Agreement between Shelton Brothers and River North (the “Agreement”).

15. The indemnification agreement is in Section 4 of the Agreement and provides:

Shelton Brothers shall defend, indemnify, and hold River North harmless from and against any and all losses, damages, settlements, judgments and liability including but not limited to reasonable attorney's fees, costs and expenses, that River North may incur as a result of third party claims by any other distributors claiming distribution rights to the Product, and any claims by any third parties against River North relating to Shelton Brothers entering into this Agreement, making sales to River North or otherwise related to the relationship between Shelton Brothers and River North created by this Agreement or otherwise (including any tort action). In the event that River is named in any action for which Shelton Brothers is obligated to indemnify, River North shall have the right to select its own counsel to defend any action (subject to indemnification of such reasonable attorneys' fees as set forth above) and Shelton Brothers shall have the right to select its own counsel but at its own expense.

16. Section 9 of the Agreement also provides that the Agreement is the entire agreement between the parties and shall supersede all other agreements and shall not be modified unless in writing. Specifically, Section 9 provides:

This Agreement constitutes the entire Agreement between the parties, supersedes and terminates all prior oral and written agreements and understandings between the parties and is the specific Agreement between the parties. This Agreement is not incorporated into and made a part of any other agreement and shall be changed or modified only by subsequent written amendment executed by authorized representatives of the parties.

17. However, in violation of Section 5(9) of BIFDA, Shelton Brothers signed the Agreement with the intention that BIFDA would not govern the Agreement.

18. In violation of Section 5, 6, *et al.*, of BIFDA, Shelton Brothers also signed the Agreement with the intention of not conferring River North with "distribution rights," which, among other things, could be sold to another distributor.

19. On or about June 6, 2012, Shelton Brothers terminated Windy City as its distributor.

#### **CLAIM FOR INDEMNIFICATION**

20. On July 6, 2012, Windy City filed a complaint against Shelton Brothers and River North under case number 2012 L 774, before the Circuit Court of Dupage County, Illinois.

21. In addition to several declaratory counts against Shelton Brothers, Windy City's complaint also contained two counts against River North, which included: tortious interference with Windy City's business relationship with Shelton Brothers and tortious interference with Windy City's oral contract with Shelton Brothers (the "Tortious Interference Claims").

22. Windy City also filed a Second Amended Complaint, which still maintained the Tortious Interference Claims against River North. (A copy of the pending Windy City Complaint is attached as Exhibit B).

23. In August of 2012, Shelton Brothers' principal Dan Shelton acknowledged to River North that the Tortious Interference Claims were within the scope of the Agreement's Indemnification clause and that River North would not need to send further notice to enforce its indemnification rights.

24. On or about November 14, 2013, River North tendered for payment to Shelton Brothers its legal fees, which had accrued to date, in the amount of \$24,726.48. (A copy of the correspondence seeking payment is attached and incorporated as Exhibit C.)

25. Shelton Brothers failed to pay the amounts River North sought in its correspondence dated November 14, 2013.

26. On March 3, 2014, River North duly served Shelton Brothers with its Notice of Claim and Demand for Payment ("Demand for Indemnification"). (The Demand for Indemnification is attached and incorporated as Exhibit D.)

27. On March 17, 2014, Shelton Brothers, through its counsel Larry Stein, denied the claim and detailed the only basis of Shelton Brothers' denial. Mr. Stein wrote to River North in relevant part:

The basis for Shelton Brothers' denial of the claim, refusal to pay the amount demanded, and renunciation of an obligation to indemnify River North is that River

North materially breached the Agreement on or about December 31, 2013, when it ceased performing on its extant obligation to distribute Shelton Brothers' products to retailers in the Chicago metropolitan area. By materially breaching the Agreement on or about December 31, 2013, by ceasing to distribute Shelton Brothers' products to retailers in the Chicago metropolitan area, River North cannot now take advantage of the parts of the Agreement that benefit it, succeed in enforcing its terms against Shelton Brothers, nor recover damages from Shelton Brothers for an alleged breach of the Agreement.

(Mr. Stein's March 17, 2014, correspondence is attached hereto as Exhibit E).

28. On or about December 2015, River North settled its lawsuit with Windy City. Prior to memorializing the eventual oral settlement with Windy City, River North notified Shelton Brothers of the proposal. Shelton Brothers notified River North that it had an obligation to accept the settlement terms pursuant to its "obligations to mitigate damages."

29. On or about December 2015, Shelton Brothers also notified River North that "if River North does not settle and ultimately prevails on its indemnification claims against Shelton Brothers, River North's recovery will be limited to fees incurred in defense of such claims at the time of its opportunity to settle, plus [the confidential settlement amount]..." thereby admitting and accepting its obligation to indemnify River North.

30. River North relied upon Shelton Brothers' notice regarding its purported obligations and limits to its indemnification claim for purposes of executing the written settlement agreement with Windy City.

31. Notwithstanding, Shelton Brothers refused to pay the settlement directly to Windy City or reimburse River North the costs of settlement.

32. As a result of Windy City's lawsuit, River North also incurred significant legal fees related to the defense of the Tortious Interference Claims, totaling \$92,552.68 in addition to the confidential settlement amount which was payable to River North from Shelton Brothers pursuant to § 4 of the Agreement.

## SALE OF RIVER NORTH

33. On or about October 31, 2013, River North entered into an agreement with RN Acquisition, LLC (“RN Acquisition”), pursuant to which River North agreed to sell substantially all of its assets to RN Acquisition, including all of its brand distribution rights as provided by BIFDA. See generally 815 ILCS 720-1, *et seq.*

34. In the case of a sale of a the stock or assets of a beer distributor in Illinois, BIFDA provides in Section 3 in relevant part that:

3. Termination and Notice of Cancellation.

(1) Except as provided in subsection (3) of this Section, no brewer or beer wholesaler may cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification to the affected party in accordance with subsection (2).

(2) The notification required under subsection (1) shall be in writing and sent to the affected party by certified mail not less than 90 days before the date on which the agreement will be cancelled, not renewed, or otherwise terminated. The notification shall contain (a) a statement of intention to cancel, failure to renew, or otherwise terminate an agreement, (b) a complete statement of reasons therefore, including all data and documentation necessary to fully apprise the wholesaler of the reasons for the action, and (c) the date on which the action shall take effect.

(3) A brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification for any of the following reasons:

(F) Any attempted transfer of business assets of the wholesaler, voting stock of the wholesaler, voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any entity without obtaining the prior consent or approval as provided for under Section 6 unless the brewer neither approves, consents to, nor objects to the transfer within 60 days after receiving all requested information from the wholesaler regarding the proposed purchase, in which event the brewer shall be deemed to have consented to the proposed transaction.

35. River North had not previously received from Shelton Brothers a notice pursuant to subsection (2) nor had Shelton Brothers sought to terminate or cancel under any other applicable provision of BIFDA or the Distribution Agreement.

36. The Agreement did not identify any type of “reasonable standards” a purchaser of River North’s distribution rights must meet or otherwise restrict River North’s ability to sell its distribution rights.

37. Consequently, the Agreement defers to BIFDA regarding assignments, which provides in relevant part under Section 6 that:

Transfer of business assets or stock.

(1) No brewer shall unreasonably withhold or delay its approval of any assignment, sale or transfer of the stock of a wholesaler or all or any portion of a wholesaler's assets, wholesaler's voting stock, the voting stock of any parent corporation, or the beneficial ownership or control of any other entity owning or controlling wholesaler, including the wholesaler's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards.

38. Section 3(3)(F) of BIFDA requires, among other things, that the distributor provide its suppliers 60 days’ notice of its intent to sell its distribution rights.

39. On or about October 31, 2013, River North duly notified Shelton Brothers of the impending sale and sought its consent in compliance with BIFDA to sell substantially all of its assets and its rights under the Distribution Agreement to RN Acquisition (the “Consent”). (A copy of the Consent is attached and incorporated as Exhibit F.)

40. The Notice of Transfer stated that RN Acquisition was a subsidiary of funds managed by BDT Capital Partners, LLC, a private investment firm which indirectly owns and operates various businesses including CITY Beverage, LLC, a Chicago beer wholesaler. (*See Ex. F*).

41. The Notice of Transfer also stated, in part, that RN Acquisition intended to retain River North’s key sales and marketing team and that the principals of River North, Yusef Jackson

and Phil Birnbaum, intended to remain as consultants to assist in continuing the efforts to grow the Shelton brands under the direction and supervision of Mr. J.R. Hand. (*See* Ex. F).

42. The Notice of Transfer provided information regarding the standards of RN Acquisition and its managing supervisor, Mr. J.R. Hand.

43. Under Sections 3(3)(F), 6 and 7 of BIFDA, and the Industry custom and practice, within 60 days of the sale notice, the supplier shall complete its due diligence, if any, about the purchasing distributor to determine whether it meets reasonable standards.

44. Accordingly, a supplier has an obligation to conduct due diligence if it intends to object, in good faith, to the standards of the purchasing distributor.

45. On December 30, 2013, Shelton Brothers sent River North a letter withholding its consent to the assigning of the Distribution Agreement, but made no objection to River North selling substantially all of its other assets to RN Acquisition. (A copy of Shelton Brothers' correspondence dated December 30, 2013 is attached and incorporated as Exhibit G.)

46. In violation of Section 6 of BIFDA, Shelton Brothers' December 30, 2013, written objection was not based on the reasonable standards and qualifications of RN Acquisition.

47. In its written objection dated December 30, 2013, Shelton Brothers stated in most relevant part:

Given that the ownership of our "distribution rights" in the Chicago area, and even the question of whether any such rights exist, are core issues in litigation to which Shelton Brothers and River North are both parties, Shelton Brothers cannot consent to the proposed transfer of any such "rights" from River North to the Hand Family Companies, as described in River North's letter to us dated October 31, 2013.

48. One of Shelton Brothers' suppliers, Jolly Pumpkin which represented approximately 25% of Shelton Brothers' sales to River North consented (and / or authorized Shelton Brothers) to the transfer its distribution rights to RN Acquisition.

49. After issuing its December 30, 2013, letter withholding consent, Shelton Brothers preceded to sell Jolly Pumpkin's brands to RN Acquisition and obtain revenue from the sale of Jolly Pumpkin's brands to RN Acquisition. Accordingly, Shelton Brothers partially consented to the Notice of Transfer and waived any claim that RN Acquisition did not meet reasonable standards or that its withholding of consent complied with Section 6(1) of BIFDA.

50. The vast majority of River North's other suppliers, including Anheuser Busch and several independent craft brands, consented to the proposed sale to RN Acquisition.

51. Except for Shelton Brothers, all of the suppliers who elected to not transfer to RN Acquisition paid or found another wholesaler to pay River North fair market value for the right to assign their distribution rights to a different distributor.

52. On or about December 31, 2013, River North closed its transaction to sell its business to RN Acquisition and ceased operating as a beer distributor.

53. River North did not assign its right to distribute Shelton Brothers' products, except for Jolly Pumpkin brands, to RN Acquisition.

54. After the sale, Shelton Brothers stated that it would permit RN Acquisition to distribute all of its brands, but only if RN Acquisition agreed to a temporary relationship not bound by BIFDA. Shelton Brothers also expressed concern about assigning RN Acquisition with indemnification rights as the Distribution Agreement provided.

55. Shelton Brothers' proposal was rejected and was illegal as BIFDA cannot be waived.

56. Despite subsequent demands, Shelton Brothers refused to withdraw its objection.

57. Shelton Brothers also failed, pursuant to the custom and practice of the Industry, to identify a different distributor to distribute its brands and purchase the brands rights from River North.

58. Shelton Brothers' failure to buy River North's distribution rights (or find another distributor to pay for the rights) effectively terminated River North's distribution rights in violation of BIFDA and the Distribution Agreement.

59. BIFDA does not permit a supplier to terminate a distributor because it sold its business.

60. On or about May 28, 2014, Shelton Brothers terminated and refused to renew River North's distribution rights pursuant to written notice.

61. On or about June 1, 2014, Shelton Brothers appointed MSV Distribution to distribute its brands, except for Jolly Pumpkin, in the Chicagoland area.

62. MSV Distribution continued to distribute Shelton Brothers' brands through on or around September 2019 and through the goodwill River North created in the marketplace.

**COUNT I – SHELTON BROTHERS TERMINATED THE DISTRIBUTION  
AGREEMENT IN VIOLATION OF BIFDA  
(Repled Only For Purposes of Appeal)**

63. River North realleges and incorporates by reference the allegations set forth in paragraphs 1 through 62 herein.

64. As defined under BIFDA, Shelton Brothers is a "brewer" and River North is a "wholesaler." *See* 815 ILCS 720/1.1 (4) and (3), respectively.

65. BIFDA governs all relations between brewers and their Illinois wholesalers and is deemed a part of every "agreement" between brewers and wholesalers. *See e.g.*, 815 ILCS 720/2(B).

66. BIFDA provides under Section 2(B):

This Act shall be incorporated into and shall be deemed a part of every agreement between brewers and wholesalers and shall govern all relations between brewers and their wholesalers to the full extent consistent with the constitutions and laws of this State and the United States and any provision of this Act shall supersede any conflicting provision of the agreement.

67. BIFDA provides that no brewer shall “present an agreement to a wholesaler that *attempts* to waive compliance with any provision of this Act. A wholesaler entering into an agreement containing provisions in conflict with this Act shall not be deemed to waive compliance with any provision of this Act.” 815 ILCS 720/5(9)(omitting).

68. As defined under BIFDA, the Agreement is an “agreement” because it is a “...contract, agreement, arrangement, operating standards, or amendments to a contract.....pursuant to which a wholesaler has been granted the right to purchase, resell, and distribute as a wholesaler....any brand or brands of beer offered by a brewer.” *See* 815 ILCS 720/1.1 (2).

69. BIFDA, by virtue of the parties’ Agreement, conferred River North with vested exclusive distribution rights to Shelton Brothers’ products in a defined area of Illinois.

70. BIFDA does not condition the vesting of a wholesaler’s exclusive distribution rights with the requirement to pay for the rights.

71. The Agreement did not condition the vesting of River North’s distribution rights with the requirement to pay for the rights.

72. Consistent with Section 5 of BIFDA, the Agreement also conferred River North exclusive distribution rights to Shelton Brothers’ products in the Illinois counties of: Cook, Lake, Will, Dupage and Kendall.

73. Section 5 of BIFDA provides that:

no brewer, who pursuant to an agreement with a wholesaler...has designated a sales territory for which the wholesaler is exclusively responsible or in which the wholesaler is required to concentrate its efforts, shall enter into an agreement with any other wholesaler for the purpose of establishing an additional wholesaler for the brewer's brand, brands, or brand extension in the territory.

74. Shelton Brothers and River North contracted for exclusive distribution rights consistent with BIFDA.

75. BIFDA provides that its purpose is to, in pertinent part, assure that the beer distributor "is free to manage its business enterprise..." without undue restriction from the brewers it represents. 815 ILCS 720/2; *et seq* (emphasis added).

76. Sections 6 and 3(3)F of BIFDA permit wholesalers, upon notice, to sell and/or assign their "distribution rights" to other entities. Section 6 of BIFDA prohibits brewers from "unreasonably withholding" or delaying consent to such transactions.

77. The legislature enacted BIFDA with the understanding that wholesalers are not expected to stay in business forever and may be in a position to sell their businesses.

78. BIFDA enables wholesalers, to sell their businesses, including their distribution rights for fair market value.

79. In the case of termination, Section 3(1) of BIFDA provides that no brewer may cancel, fail to renew, or otherwise terminate an agreement unless the brewer or wholesaler furnishes prior notification...and pursuant to Section 4 of BIFDA provide the wholesaler with ninety (90) days to cure the basis of termination.

80. Section 3(3) of BIFDA provides that a brewer may cancel, fail to renew, or otherwise terminate an agreement without furnishing any prior notification for certain defined reasons described in Sections 3(3)(A through G) of BIFDA.

81. Section 3(3)(F) of BIFDA provides that a brewer may terminate an agreement without furnishing prior notification if:

Any attempted transfer of business assets of the wholesaler, voting stock of the wholesaler, voting stock of the wholesaler, voting stock of any parent corporation of the wholesaler, or any change in the beneficial ownership or control of any entity without obtaining the prior consent or approval as provided for under Section 6 unless the brewer neither approves, consents to, nor objects to the transfer within 60 days after receiving all requested information from the wholesaler regarding the proposed purchase, in which event the brewer shall be deemed to have consented to the proposed transaction.

82. If a brewer terminates, fails to renew or cancels an agreement in violation of BIFDA, Section 7 of BIFDA provides:

Subject to the right of any party to an agreement to pursue any remedy provided in Section 9, any brewer that cancels, terminates or fails to renew any agreement...shall pay the wholesaler with which it has an agreement pursuant to this Act reasonable compensation for the fair market value of the wholesaler's business with relation to the affected brand or brands...

83. BIFDA also provides that in any "action under subsection (1) [of Section 9 / judicial remedies] the court may grant such relief as the court determines is necessary or appropriate considering the purposes of this Act." 815 ILCS 720/9.

84. Prior to October 30, 2013, Shelton Brothers did not send River North notice of default of the Agreement.

85. River North also did not fail to timely pay any Shelton Brothers accounts due and upon demand.

86. On October 30, 2013, River North duly served Shelton Brothers with the Notice of the Transfer.

87. The Notice of Transfer sought Shelton Brothers' consent to River North's sale and "transfer of substantially all of River North's assets to [Lakeshore Beverage] and River North's assignment of all of its rights and obligations under the Agreement to [Lakeshore Beverage].

88. On December 30, 2013, Shelton Brothers sent River North Shelton Brothers' Objection.

89. Shelton Brothers' Objection limited Shelton Brothers' objection only to the transfer of River North's rights and obligations under the Agreement and did not identify an objection to River North's sale and transfer of substantially all of River North's other assets.

90. Section 3(3)(F) provides that the failure to timely object to a proposed transaction shall constitute a deemed consent to that transaction.

91. On December 31, 2013, River North closed the transaction to sell substantially all of its assets to RN Acquisition and ceased operating as a distributor.

92. River North did not sell or transfer the majority its distribution rights to Shelton Brothers' brands because of Shelton Brothers' Objection. River North did transfer approximately 25% of Shelton Brothers' portfolio to RN Acquisition pursuant to the consent of Shelton Brothers' supplier, Jolly Pumpkin, which obtained Shelton Brothers' consent to permit River North to transfer its brands to RN Acquisition.

93. River North's sale of its assets to RN Acquisition complied with Section 3(3)(F) of BIFDA as Shelton Brothers consented (by failing to object upon due notice) to the sale of assets that River North did transfer.

94. It is customary in the Industry and pursuant to BIFDA for a brewer who chooses to object to a distributor's assignment of its distribution rights to identify an alternative distributor to

purchase the distribution rights for fair market value. Alternatively the brewer may purchase the distribution rights.

95. Shelton Brothers did not identify another distributor to purchase the distribution rights which River North did not assign. Shelton Brothers also did not purchase the remaining distribution rights from River North.

96. BIFDA provides that no brewer shall: “coerce or attempt to coerce a transferring wholesaler to sign a renewal agreement, replacement agreement, or an amendment to an agreement by threatening to refuse to approve or delay issuing an approval for the sale or transfer of a wholesaler’s business. (815 ILCS 720/5(15)).

97. In the months of March and April 2014, Shelton Brothers engaged Windy City about the possibility of Shelton Brothers reappointing Windy City to distribute all of its brands in the Chicagoland area (except for Jolly Pumpkin).

98. Shelton Brothers insisted that Windy City agree to expressly waive BIFDA as part of any new relationship or contract between the parties.

99. Shelton Brothers did not reach a new agreement with Windy City.

100. Shelton Brothers never withdrew Shelton Brothers’ Objection or identified a possible alternative buyer of River North’s distribution rights.

101. In April of 2014, Shelton Brothers initiated this lawsuit against River North and alleged that River North breached the Agreement by selling its business and ceasing to operate.

102. Shelton Brothers’ breach of contract claim alleged that River North began distributing Shelton Brothers’ brands pursuant to the terms of the Agreement on or around May 31, 2013, (sic) and that River North eventually provided Shelton Brothers with notice of its intent

to sell its business. Shelton Brothers' alleged that on December 31, 2013, River North sold its business and ceased operating and therefore, breached the terms of the Agreement.

103. Shelton Brothers did not allege in its complaint that there was any other basis to terminate River North and the Agreement; and indeed, no basis to terminate existed.

104. Notwithstanding not having grounds to terminate River North, on or about May 28, 2014, Shelton Brothers sent River North an emailing stating in pertinent part:

As you are aware, we [Shelton Brothers] believe that Shelton Brothers' agreement with River North is terminated with the sale of all of River North's assets and cessation of business as a beer distributor in the Chicago area. In the event that a court should somehow determine otherwise, however, I am hereby giving you and Yusef, as principals of River North, notice (sic) intent not to renew the agreement as a of May 30<sup>th</sup>, as the agreement allows us to do.

(Ex. H, the Termination Email)(emphasis added).

105. The Termination Email was not served by means designated in the Agreement or BIFDA.

106. Section 3 of BIFDA provides that the brewer's failure to renew a distribution agreement is tantamount to termination and may only occur on the same grounds that a brewer may terminate.

107. The Termination Email terminated the Distribution Agreement in violation of Sections 3, 4, 5 and 6 of BIFDA and in bad faith.

108. Alternatively, Shelton Brothers terminated the Distribution Agreement and River North's exclusive distribution rights on December 30, 2014, in bad faith and while River North was still operating, because Shelton Brothers' Objection took the position that River North did not have exclusive distribution rights.

109. In violation of Sections 3, 4, and 5 of BIFDA, including the exclusivity provisions of the Distribution Agreement and BIFDA, on or about June 1, 2014, Shelton Brothers appointed MSV Distribution as the new distributor of Shelton Brothers' brands in River North's exclusive territory, except for Jolly Pumpkin's products which RN Acquisition continues to distribute.

110. MSV Distribution nor Shelton Brothers paid River North for the exclusive distribution rights.

111. In June of 2014, RN Acquisition learned that Shelton Brothers started selling more than just Jolly Pumpkin's brands in the Chicago area and told Shelton Brothers, in an email dated June 12, 2014, that it could have handled distribution of the added brands. Shelton Brothers responded by stating in an email, dated June 15, 2014, among other things, that it did not use RN Acquisition to distribute the full portion of its portfolio because it preferred to do so "...on an expressly time-limited basis with no strings attached."

112. On December 23, 2014, this Court dismissed Shelton Brothers' breach of contract claim with prejudice and ruled that River North was permitted to sell its business.

113. Consequently, River North did not breach the Agreement or violate BIFDA by selling substantially all of its assets to RN Acquisition and ceasing to operate.

114. Shelton Brothers' termination and appointment of MSV Distribution violated BIFDA and the Agreement, as neither permitted Shelton Brothers to terminate the Agreement or violate River North's exclusive distribution rights based upon River North's sale of its business and cessation of operations.

115. Section 6 of BIFDA also did not permit Shelton Brothers' to terminate the Agreement as the distributor's mere proposal to assign its distribution rights, regardless of the standards of the proposed assignee, does not provide a basis to terminate.

116. Shelton Brothers has not modified or changed the basis of its termination from its original complaint and Termination Email.

117. Any change to the basis of Shelton Brothers' termination would not be in good faith or permitted under Illinois law.

118. Shelton Brothers' termination and all above described conduct was not performed in good faith because it was part of a scheme to deprive River North of the fair market value of its distribution rights. River North hereby incorporates all allegations of bad faith contained in all other Counts of the Complaint into this paragraph 115.

119. Shelton Brothers' scheme consisted of unlawfully withholding consent to River North's full assignment of its distribution rights such that the proposed buying entity, RN Acquisition, could not buy the rights and continue distributing Shelton Brothers' products. In furtherance of its scheme, Shelton Brothers did not identify an alternative distributor to buy the distribution rights. Shelton Brothers used River North's sale and cessation of operations as an unlawful basis to terminate River North and deprive River North of fair market value.

120. Accordingly, this Court should award River North fair market value, plus punitive damages, attorney's fees and costs, as a result of Shelton Brothers' unlawful and bad faith termination of the Agreement.

121. Alternatively, to effectuate the purpose of BIFDA, which among other things, is to ensure a distributor receives fair market value for its exclusive distribution rights upon the sale of its business, the Court should award River North the fair market value of its distribution rights pursuant to Section 9(4) of BIFDA.

WHEREFORE, River North Sales & Service, LLC, requests this Honorable Court to enter judgment in its favor and against Shelton Brothers, Inc., ordering that Shelton Brothers pay River

North in addition to reasonable compensation for the fair market value of River North's business which was attributable to the brands it distributed for Shelton Brothers, including but not limited to any goodwill, its reasonable attorney's fees, costs and a penalty which collectively exceeds \$50,000.

**COUNT II – SHELTON BROTHERS' WITHHOLDING OF CONSENT**  
**UNLAWFULLY TERMINATED THE DISTRIBUTION AGREEMENT**  
**(Repled Only For Purposes of Appeal)**

122. River North realleges and incorporates by reference the allegations set forth in paragraphs 1 through 121 herein.

123. Section 6(1) of BIFDA provides:

No brewer shall unreasonably withhold or delay its approval of any assignment, sale or transfer of the stock of a wholesaler's voting stock, the voting stock of any other entity owning or controlling wholesaler, including the wholesaler's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards...

124. A brewer who withholds consent pursuant to Section 6 of BIFDA is not permitted to terminate the distributor based on its withholding of consent or otherwise use Section 6 to terminate the distributor's distribution rights and ability to sell its distribution rights to an alternative buyer, including a buyer of the brewer's choosing, for fair market value.

125. A brewer who withholds consent pursuant to Section 6 of BIFDA is not permitted to transfer the distribution rights to its brands to another distributor without paying the selling distributor fair market value.

126. On December 30, 2013, Shelton Brothers issued Shelton Brothers' Objection.

127. Shelton Brothers' Objection did not concern the standards of River North's proposed buyer and took the principle position that River North did not have distribution rights it could sell.

128. On or around December 31, 2013, River North sold the substantially all of its other assets and not its distribution rights to Shelton Brothers' brands (except for Jolly Pumpkin's brands) to RN Acquisition.

129. As a result of the sale, River North ceased operating as a beer distributor.

130. Shelton Brothers failed to identify an alternative distributor such that River North could sell its distribution rights for fair market value.

131. Shelton Brothers did not permit River North to sell its distribution rights to any other person or entity for fair market value.

132. In April of 2014, Shelton Brothers initiated this lawsuit and alleged that River North breached the Agreement by selling its business and ceasing to operate.

133. On or around June 1, 2014, Shelton Brothers appointed a new distributor, MSV Distribution, to distribute its brands in the Chicagoland area.

134. Shelton Brothers appointed MSV Distribution without paying River North fair market value for the distribution rights or having MSV Distribution pay River North for the rights.

135. By filing this lawsuit and issuing the Termination Email a month later, Shelton Brothers confirmed the intent of its decision to withhold consent was to terminate River North in bad faith and in violation of BIFDA and to deprive River North of the right to sell its distribution rights for fair market value.

WHEREFORE, River North Sales & Service, LLC, requests this Honorable Court to enter judgment in its favor and against Shelton Brothers, Inc., ordering that Shelton Brothers pay River North in addition to reasonable compensation for the fair market value of River North's business which was attributable to the brands it distributed for Shelton Brothers, including but not limited

to any goodwill, its reasonable attorney's fees, costs and a penalty which collectively exceeds \$50,000.

**COUNT III – SHELTON BROTHERS' FAILURE TO CONSENT TO RIVER NORTH'S  
SALE VIOLATED BIFDA AND THE AGREEMENT**

136. River North realleges and incorporates by reference the allegations set forth in paragraphs 1 through 135 herein.

137. The Agreement did not include an "anti-assignment" provision or restrict the ability of River North to assign the Agreement, including River North's distribution rights, to another beer distributor.

138. Accordingly, BIFDA's provision regarding assignments govern Shelton Brothers' Objection. 815 ILCS 720/2(B); /6(1), *et al.*

139. Section 3(3)(F) provides that the wholesaler shall provide its brewers with sixty (60) days' notice of a sale/assignment.

140. Section 6(1) of BIFDA provides:

No brewer shall unreasonably withhold or delay its approval of any assignment, sale or transfer of the stock of a wholesaler's voting stock, the voting stock of any other entity owning or controlling wholesaler, including the wholesaler's rights and obligations under the terms of an agreement whenever the person or persons to be substituted meet reasonable standards...

*See* 815 ILCS 720/6 (1).

141. Section 1.1(11) of BIFDA defines "reasonable standards and qualifications," which minimally offers guidance as to the legislature's intent in defining "reasonable standards" in Section 6(1) as those standards the supplier applied to similarly situated wholesalers during a period of 24 months before the proposed change in ownership.

142. It is unreasonable under BIFDA and the custom and practices of the Industry to object to a proposed buyer who meets reasonable standards.

143. Any objection to a proposed assignment which is pretextual and not based on the standards of the buyer is arbitrary and unreasonable under BIFDA and the custom and practices of the Industry.

144. Any objection to a proposed assignment which is made after the brewer permits 25% of its portfolio to be assigned to the proposed buyer is unreasonable under BIFDA and the customs and practices of the Industry

145. Any objection to a proposed assignment which is not based on reasonable standards defined in an agreement is arbitrary and unreasonable under BIFDA and the custom and practices of the Industry.

146. It is unreasonable under BIFDA to create standards which a purchasing distributor must meet after receiving notice of the distributor's intent to assign its distribution rights.

147. Consequently, the Agreement permitted River North to assign its distribution rights to RN Acquisition and any objection to sale was unlawful, unless River North agreed to accept from Shelton Brothers or a third party fair market value for the distributing rights.

148. Alternatively, the Industry customarily defines "reasonable standards" to include the following criteria:

- a. the ownership structure is willing and able to provide the financial capital necessary to achieve the supplier's reasonable business goals;
- b. the management has demonstrated a track record of performance distributing beer in the Industry;
- c. the distributor is sufficiently staffed and capable of executing sales at retail;
- d. the distributor compensates its sales representatives with sufficient wage incentives;
- e. the distributor's facilities and equipment provide adequate warehouse storage for the supplier's products including refrigeration storage, IT capabilities, and software; or
- f. it is otherwise qualified.

149. Under the Industry's customs and practices (and in some states under the express terms of equivalent "beer franchise laws"), a proposed distributor is otherwise qualified if it meets the qualifications and standards of any of the brewer's similarly situated distributors from the preceding twenty-four month period.

150. Pursuant to § 8 of the Agreement, Shelton Brothers was obligated to serve River North by specific means: "all notices, demands, statements, waivers, approvals or other communications required or permitted to be given hereunder...in writing."

151. Pursuant § 8 of the Agreement and BIFDA, Shelton Brothers could only object to River North's Notice of Transfer in writing and within 60 days of River North serving the Notice of Transfer. Shelton Brothers was required to timely identify the entire basis of its objection in writing.

152. The failure to not timely detail the entire basis of an objection in writing is unreasonable under BIFDA, represents bad faith, and constitutes a waiver of any further objections to the assignment or to the "reasonable standards" of the purchasing distributor.

153. On October 31, 2013, River North duly served Shelton Brothers with the Notice of Transfer.

154. In the sixty days after Shelton Brothers received the Notice of Transfer, Shelton Brothers refused to communicate directly with RN Acquisition and did not conduct due diligence as the Industry would customarily define to determine whether RN Acquisition met "reasonable standards."

155. Shelton Brothers did not have prior experience working with the ownership or management of RN Acquisition.

156. However, Shelton Brothers deemed RN Acquisition as a reasonable substitute and permitted River North to assign approximately 25% of Shelton Brothers' portfolio to RN Acquisition, which included the Jolly Pumpkin brands.

157. Shelton Brothers' consent to the assignment of approximately 25% of its portfolio waived any possible lawful objection to the Notice of Transfer.

158. As of December 30, 2013, RN Acquisition met the non-defined reasonable standards of the Agreement.

159. RN Acquisition also met or exceeded the Industry's customarily applied reasonable standards because, among other things:

- a. RN Acquisition was well funded by the highly regarded private equity firm, BDT Capital, which was committed to investing necessary resources;
- b. RN Acquisition was operated and owned by the well-established Hand Family Companies, which among other things, had a significant track record of successfully distributing beer, including craft beer in numerous markets;
- c. RN Acquisition maintained River North's key personnel, which along with RN Acquisition's already existing personnel and management, had a track record of success distributing beer, including craft beer in the Chicagoland area ;
- d. RN Acquisition also acquired City Beverage, another Chicago wholesaler with an excellent reputation and merged that business with River North's business to create Lakeshore Beverage
- e. RN Acquisition's organization and capital enabled it to more regularly serve retail accounts and serve far more accounts than River North, its employees were compensated consistent with Industry customs and standards, were knowledgeable, well-trained, enthusiastic and focused on all brands in its portfolio;
- f. RN Acquisition's scope of equipment and facilities enabled it to efficiently distribute Shelton Brothers' products in a large area of Illinois

160. RN Acquisition also met or exceeded the standards Shelton Brothers applied, if any, to River North and its other similarly situated distributors, because, among other things:

- a. Shelton Brothers did not have a policy of imposing any type of measurable standard or qualification upon the distributors it appointed.
- b. In the two years preceding the Notice of Transfer, Shelton Brothers used a wide variety of distributors which met varying types of "standards" and

- “qualifications” and sizes. Shelton Brothers also used so-called “large Bud-houses.”
- c. In the two years preceding the Notice of Transfer and in the subsequent months thereafter, Shelton Brothers also appointed distributors, including MSV Distribution which did not meet any type of measurable standard or qualification as they had no significant capital or experience.
  - d. RN Acquisition exceeded the standards of MSV Distribution and Shelton Brothers’ other similar situated wholesalers, including River North.

161. Notwithstanding, on December 30, 2013, Shelton Brothers sent River North

Shelton Brothers’ Objection, which stated in relevant part:

Given that the ownership of our “distribution rights” in the Chicago area, and even the question of whether any such rights exist, are core issues in litigation to which Shelton Brothers and River North are both parties, Shelton Brothers cannot consent to the proposed transfer of any such “rights” from River North to the Hand Family Companies, as described in River North’s letter to us dated October 31, 2013.

(Ex. G)

162. Shelton Brothers’ Objection violated BIFDA because the Agreement did not limit the standards a proposed purchaser of the distribution rights must meet.

163. Shelton Brothers’ Objection also violated BIFDA because RN Acquisition met or exceeded the customarily applied reasonable standards of the Industry, and the standards, if any, of Shelton Brothers’ similarly situated distributors from the preceding twenty-four month period, including River North.

164. Consequently, Shelton Brothers’ Objection was categorically unreasonable, pretextual and not based on a lawful basis.

165. As a result of Shelton Brothers unlawful and/or unreasonable withholding of consent to the Notice of Transfer, Section 7 of BIFDA provides that River North shall be awarded reasonable compensation for fair market value of its business which was attributable to the brands it distributed for Shelton Brothers.

166. BIFDA provides that the fair market value shall include goodwill.

167. Section 9(5) of BIFDA also provides that in addition to fair market value of the brands, that River North shall “be entitled to (i) actual damages, (ii) all court or arbitration costs, and (iii) attorneys’ fees at the court’s discretion.”

**Shelton Brothers’ Objection(s) Were Unreasonable And In Bad Faith**

168. Section 9 of BIFDA provides that

if there is a finding by an arbitrator or a court in a proceeding under this Section [9] or under subsection (1.5) or (2) of Section 7 that a party has not acted in good faith, an appropriate penalty shall be assessed by the arbitrator or court against that party and, in addition, that party shall also be ordered to pay all court or arbitration costs and reasonable legal fees incurred by the other party in the proceeding.

169. BIFDA defines “good faith” as “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade as defined and interpreted under Section 2-103 of the Uniform Commercial Code.”

170. Shelton Brothers’ decision to object to the Notice of Transfer and not pay River North fair market value for the distribution rights was made in bad faith for the following reasons, among others:

- a. Shelton Brothers withheld consent to the Notice of Transfer because RN Acquisition would not agree to illegally waive BIFDA or to distribute Shelton Brothers’ brands only on a “temporary” and illegal agreement not subject to BIFDA “strings”;
- b. Shelton Brothers withheld consent to the Notice of Transfer and did not identify an alternative buyer as the industry customarily does because it intended to appoint a distributor which would agree to illegally waive BIFDA (or alternatively not have the means to enforce BIFDA) such that Shelton Brothers could deprive River North of the fair market value of its distribution rights and then illegally control, including but not limited to, the prices its new distributor used to sell Shelton Brothers’ products.;
- c. Shelton Brothers refused to permit River North to assign its distribution rights back to Windy City for fair market value because Windy City would not agree to a new distribution agreement which included a clause attempting to waive BIFDA;

- d. Shelton Brothers did not agree to meet with RN Acquisition and J.R. Hand or care to confirm whether RN Acquisition was capable of performing the functions necessary to distribute Shelton Brothers' representative brands in Chicagoland area or otherwise consider the proposed transfer to RN Acquisition in good faith;
- e. Shelton Brothers' Objection did not refer to the standards of RN Acquisition or include any of Shelton Brothers' newly stated objections to the assignment, and therefore, did not provide River North with a truthful basis for the objection or an opportunity to cure the objections.
- f. Shelton Brothers forced River North into litigation and withheld its purported reasons for objecting to the Notice of Transfer until two years after it withheld its consent to the Notice of Transfer;
- g. Shelton Brothers admits it signed the Agreement with the intent that BIFDA would not apply nor would confer River North with distribution rights as the law provides;
- h. Shelton Brothers objected to the assignment because it believed it had successfully disavowed BIFDA from the Distribution Agreement;
- i. Shelton Brothers attempted to require River North to purchase the distribution rights from Shelton Brothers such that Shelton Brothers could purchase the rights back at the same price and thereby terminate Shelton Brothers without cause and in violation of BIFDA;

171. Upon information and belief, in May or June of 2014, Shelton Brothers began selling its representative beer brands in the Chicagoland area, besides Jolly Pumpkin, to an underfunded and inexperienced beer distributor known as MSV Distribution.

172. In May or June of 2014, Shelton Brothers signed an agreement with MSV Distribution (or minimally sent an agreement to MSV) which illegally provided that the contract shall be governed by the laws of the Commonwealth of Massachusetts and not BIFDA.

173. Upon information and belief, Shelton Brothers appointed MSV Distribution because its owner did not have experience in the Industry or any knowledge about the Illinois Liquor Control Act or BIFDA. MSV Distribution also did not have the resources to enforce BIFDA against Shelton Brothers.

174. Upon information and belief, Shelton Brothers selected the undercapitalized and inexperienced MSV Distribution (and not RN Acquisition) such that it could unduly control its distributor in contravention to Illinois' "three tier" regulatory scheme and BIFDA. MSV Distribution is entirely beholden to Shelton Brothers and must sell Shelton Brothers' products at the margins that Shelton Brothers' demands – creating ultimately a large windfall for Shelton Brothers.

175. Upon information and belief, Shelton Brothers' relationship with MSV violates BIFDA and the Illinois Liquor Control Act as Shelton Brothers unduly controls the operation of MSV Distribution's business. As a result of Shelton Brothers' control, MSV Distribution is not free to acquire distribution rights from other suppliers or set its own retail prices in violation of BIFDA.

176. Shelton Brothers failed to file registration statements with the Illinois Liquor Control Commission appointing MSV Distribution as its distributor in the Chicagoland area. The Illinois Liquor Control Act requires suppliers to file registration statements such that there is no confusion in the market place about the territories in which distributors are permitted to sell product.

177. Upon information and belief, Shelton Brothers did not file registration statements for MSV Distribution because it believes the act of filing registration statements subjects the relationship to BIFDA.

178. Shelton Brothers permitted its Illinois Non Resident Dealer's license to expire in 2016 and therefore, has been illegally selling product to Illinois wholesalers after its liquor license expired.

179. Shelton Brothers subsequently formed a new wholesale business known as Longbow in Massachusetts and used that entity to enter into an illegal agreement with MSV Distribution (an agreement which was terminable at-will and sought to illegally disavow BIFDA).

180. Shelton Brothers used Longbow to sell beer to MSV Distribution and thus, used Longbow, in bad faith, to try to circumvent BIFDA and Illinois law.

181. As a result of these allegations of bad faith, including Shelton Brothers continued conduct of attempting to circumvent BIFDA and Illinois law, this Court must find that Shelton Brothers violated BIFDA in bad faith and thus, award a penalty (punitive damages) to River North.

WHEREFORE, River North Sales & Service, LLC, requests this Honorable Court to enter judgment in its favor and against Shelton Brothers, Inc., ordering that Shelton Brothers pay River North in addition to reasonable compensation for the fair market value of River North's business which was attributable to the brands it distributed for Shelton Brothers, including but not limited to any goodwill, its reasonable attorney's fees, costs and a penalty which collectively exceeds \$50,000.

**COUNT IV - SHELTON BROTHERS' VIOLATED SECTION 5(8) OF BIFDA**  
**(Repled Only For Purposes of Appeal)**

182. River North realleges and incorporates by reference the allegations set forth in paragraphs 1 through 181 herein.

183. Section 5(8) of BIFDA provides that no brewer shall:

Refuse to approve or require a wholesaler to terminate a manager or successor manager without good cause. A brewer has good cause only if the person designated as manager or successor manager by the wholesaler fails to meet reasonable standards and qualifications.

184. Section 1(11) of BIFDA defines "reasonable standards and qualifications" as:

those criteria applied by the brewer to similarly situated wholesalers during a period of 24 months before the proposed change in manager or successor manager of the wholesaler's business.

185. The Notice of Transfer provided that River North was transferring substantially of its assets to BDT Capital Partners and under the new management of Mr. J.R. Hand of the Hand Family Companies. River North's key personnel would work under Mr. Hand's supervision.

186. At the time of the Notice of Transfer, Mr. Hand was the President and CEO of the Hand Family Companies, which held ownership interests in several distributors including an exclusively craft beer distributor in Nashville, Tennessee. The Hand Family Companies have been widely successful distributing beer since the 1950s and brands similar to Shelton Brothers' brands for over a decade. The Hand Family Companies also successfully operated several so-called "Bud Houses" in Tennessee and Kentucky.

187. In the two years preceding the Notice of Transfer, Shelton Brothers used a wide variety of distributors across the country, including several "Bud Houses"<sup>1</sup> including most notably River North and the Sheehan Family distributors in Illinois, Wisconsin, Massachusetts, New York, and New Jersey. Shelton Brothers still uses the Sheehan Family distributors currently in Wisconsin.

188. At the time of the Notice of Transfer and in the months after, Shelton Brothers did not apply a criteria to the managers of the distribution companies it used.

189. Accordingly, Mr. Hand met the "reasonable standards and qualifications" Shelton Brothers applied to its other similarly situated distributors and the "reasonable standards and qualifications" the Industry customarily applies to distributors and their management.

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<sup>1</sup> "Bud Houses" are generally referred to in the Industry as distributors which primarily sell Anheuser Busch products as opposed to other beer brands.

190. Shelton Brothers also did not timely object to Mr. Hand's standards and qualifications.

191. Shelton Brothers violated Section 5(8) of BIFDA by failing to approve the proposed change in management of River North's distribution rights..

192. In relevant part, Section 9(1) of BIFDA provides that:

if a brewer or wholesaler who is a party to an agreement pursuant to this Act fails to comply with this Act or otherwise engages in conduct prohibited under this Act, the affected party may maintain a civil suit in court if the cause of action directly relates to or stems from the relationship of the individual parties under the agreement.

193. Section 9(4) of BIFDA provides that: "in any action under subsection (1) the court may grant such relief as the court determines is necessary or appropriate considering the purpose of this Act.

194. Appropriate or necessary relief includes, but is not limited to, an award of the fair market value of River North's distribution rights, which could not be assigned to RN Acquisition because, in part, of Shelton Brothers' objection to the change in management.

WHEREFORE, River North Sales & Service, LLC, requests this Honorable Court to enter judgment in its favor and against Shelton Brothers, Inc., ordering that Shelton Brothers pay River North reasonable compensation for the fair market value of River North's business which was attributable to the brands it distributed for Shelton Brothers, including but not limited to any goodwill, attorney's fees, costs and penalties in the form of punitive damages, which in total far exceeds \$50,000

**COUNT V – DECLARATORY JUDGMENT**  
**Shelton Brothers’ waived its objection to River North’s Assignment, Sale of its**  
**Business and proposed change in management**  
**(Repled Only For Purposes of Appeal)**

195. River North realleges and incorporates by reference the allegations set forth in paragraphs 1 through 194 herein.

196. Pursuant to BIFDA, Shelton Brothers had sixty days after receiving the Notice of Transfer to object for “cause” such that it did not have to pay River North fair market value for its distribution rights.

197. Waiver arises from an affirmative act, is consensual, and consists of an intentional relinquishment of a known right.

198. A waiver may be either expressed or implied, from acts, words, conduct, or knowledge of the party waiving its rights.

199. Within sixty days of receiving the Notice of Transfer, Shelton Brothers’ did not provide River North with any other objection than as provided in Shelton Brothers’ Objection.

200. After receiving the Notice of Transfer, River North assigned a portion of its distribution rights to Shelton Brothers’ brands to RN Acquisition and to the management of Mr. J.R. Hand.

201. The portion of the distribution rights that River North assigned to RN Acquisition and the management of Mr. Hand included the rights to Jolly Pumpkin’s brands (the “Partial Assignment”).

202. Shelton Brothers was aware that River North conveyed the Partial Assignment to RN Acquisition and its new management.

203. Shelton Brothers did not object to the Partial Assignment.

204. The Agreement included the entire portfolio of Shelton Brothers Brands.

205. Neither the Agreement nor BIFDA permit a partial assignment of brands.

206. Shelton Brothers transacted and continues to transact directly with RN Acquisition and the management of Mr. Hand

207. For at least two and half years after the Partial Assignment, Shelton Brothers retained the benefit of the transaction, such that Shelton Brothers sold Jolly Pumpkin's brands to RN Acquisition for distribution in the Chicagoland area.

208. Currently and at least four years after the Partial Assignment, RN Acquisition still distributes Jolly Pumpkin's brands and transacts directly with Shelton Brothers.

209. As a result of Shelton Brothers' express or alternatively its implied consent to the Partial Assignment, an actual controversy exists between RN Acquisition and River North regarding the consequences of the Partial Assignment and whether Shelton Brothers' consent to the Partial Assignment waived Shelton Brothers' right, if any, to object to the Notice of Transfer in compliance with BIFDA and the Agreement.

WHEREFORE, River North Sales & Service, LLC, seeks this Court to declare that Shelton Brothers waived any right to assert a reasonable objection in compliance with BIFDA to River North's proposed assignment of its distribution rights and such other and further relief as this Court may deem just and proper.

**COUNT VI – BREACH OF THE AGREEMENT'S INDEMNIFICATION  
CLAUSE**

210. River North realleges and incorporates by reference the allegations set forth in paragraphs 1 through 209 herein.

211. The Agreement provides that Shelton Brothers shall reimburse River North for its reasonable attorneys' fees it incurs as a result of any third party claims pursued against River North

related to any third party's claim to the distribution rights, or the Agreement, or Shelton Brothers' relationship with River North, or otherwise, including any tort action.

212. In August of 2012, Mr. Shelton admitted to Phil Birnbaum of River North that Shelton Brothers was obligated to indemnify River North from the allegations contained in Windy City's newly filed lawsuit against River North and Shelton Brothers.

213. In November of 2013, River North demanded that Shelton Brothers pay it \$24,725.48 as compensation for the attorneys' fees it has incurred through October 31, 2013 in defending the Tortious Inference Claims. (*See Ex. C*).

214. On March 3, 2014, River North sent an additional demand to Shelton Brothers for payment of Shelton Brothers' attorney's fees and an additional notice of River North's indemnification claim. (*See Ex. D*).

215. On March 17, 2014, through its counsel, Shelton Brothers denied River North's indemnification demand based on the allegation that River North breached the Agreement by selling its assets.

216. BIFDA permitted River North to sell its assets and River North did not breach the Agreement by selling its assets.

217. River North provided Shelton Brothers with several additional notices of River North's attorney's fees as they accrued from the Tortious Interference Claims.

218. On or about December of 2015, River North settled its lawsuit with Windy City. Prior to accepting the settlement terms, River North notified Shelton Brothers of the proposal and prior to River North memorializing an oral settlement with Windy City, Shelton Brothers notified River North that it had an obligation to accept the settlement terms pursuant to its "obligations to mitigate damages."

219. Shelton Brothers also notified River North that “if River North does not settle and ultimately prevails on its indemnification claims against Shelton Brothers, River North’s recovery will be limited to fees incurred in defense of such claims at the time of its opportunity to settle, plus [the confidential settlement amount]...”

220. River North relied upon Shelton Brothers’ notice and admission regarding its purported obligations and limits to its indemnification claim for purposes of executing the written settlement agreement with Windy City.

221. River North demanded that Shelton Brothers pay the settlement<sup>2</sup> to Windy City, but Shelton Brothers refused.

222. River North also demanded again that Shelton Brothers pay all of the attorney’s fees and costs it accrued from the lawsuit with Windy City and the Tortious Interference Claims, which totaled \$92,552.68. Shelton Brothers refused to make payment.

223. Shelton Brothers breached the Agreement by failing to pay River North for its attorneys’ fees and costs incurred as a result of defending itself against the Tortious Interference Claims and for failing to reimburse River North for the costs of its settlement with Windy City.

WHEREFORE, River North Sales & Service, LLC, requests this Honorable Court to enter judgment in its favor and against Shelton Brothers, Inc., in the amount of \$92,552.68 plus the confidential settlement amount with Windy City, plus interest and costs and for any other relief this Court deems just and proper.

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<sup>2</sup> The settlement amount is confidential except River North was permitted to confidentially disclose the settlement amount to Shelton Brothers, which River North did.

Respectfully submitted,

**River North Sales & Service, LLC**

By: /s/ Kevin O. Gerow  
One of its attorneys

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**IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL DISTRICT  
DUPAGE COUNTY, WHEATON, ILLINOIS – LAW DIVISION**

SHELTON BROTHERS, INC.,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2014 L 557
	)	
RIVER NORTH SALES & SERVICE, LLC.,	)	
	)	
Defendants.	)	

**Affidavit Pursuant to Illinois Supreme Court Rule 222(b)**

Pursuant to Supreme Court Rule 222 (B), counsel for the above-named plaintiff certifies that the plaintiff seeks money damages in excess of Fifty Thousand dollars (\$50,000).

By:

/s/ Kevin O. Gerow  
Attorney for River North Sales & Service