

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

THE RYAN FAMILY, L.L.C., a Nebraska
Limited Liability Company, DR. WAYNE L.
RYAN, TIMOTHY RYAN, STACY RYAN,
CAROL RYAN, and STEVEN RYAN

Plaintiffs,

v.

CONSTANCE RYAN,

Defendant.

and

STRECK, INC.

Intervenor,

v.

THE RYAN FAMILY, L.L.C., a Nebraska
Limited Liability Company.

Case No. CI 15-307

**COMPLAINT IN INTERVENTION AND
COUNTERCLAIM**

Streck, Inc. (“Streck”), by and through its counsel, pursuant to Neb. Rev. Stat. § 25-328 *et seq.* hereby files its complaint in intervention to become a party defendant to this action. In support of its Complaint in Intervention, Streck states:

THE PARTIES

1. Streck is a Nebraska corporation, with its principal place of business located at 7002 S. 109th Street, La Vista, Sarpy County, Nebraska 68128.
2. Plaintiff Dr. Wayne L. Ryan (“Dr. Ryan”) is a resident of Douglas County, Nebraska.
3. Plaintiff Timothy Ryan is a resident of Colorado Springs, Colorado.
4. Plaintiff Stacy Ryan is a resident of Douglas County, Nebraska.

5. Plaintiff Carol Ryan is a resident of Chicago, Illinois.
6. Plaintiff Steven Ryan is a resident of Greenwood Village, Colorado.
7. Defendant Constance Ryan (“Connie Ryan”) is a resident of Douglas County, Nebraska.
8. Nominal Defendant, the Ryan Family, L.L.C. (the “Company”), is a Nebraska limited liability company, with its principal place of business located at 7002 South 109th Street, La Vista, Sarpy County, Nebraska.
9. Streck has an interest in the subject matter of this controversy such that the controversy cannot be fully adjudicated without affecting Streck’s interest. Failure to address Streck’s interest in this controversy would leave the controversy in such a condition that its final determination would be wholly inconsistent with equity and good conscience. Streck is an indispensable party pursuant to Neb. Rev. Stat. § 25-323 and should be joined as a party-defendant in this action.
10. Additionally, Streck has a direct, immediate and concrete legal interest in this controversy which will be directly affected by a judgment in this action. Accordingly, pursuant to Neb. Rev. Stat. § 25-328 *et seq.* and as a matter of the Court’s equitable discretion, Streck seeks to become a party-defendant to this action.
11. This Court has jurisdiction over the subject matter of this action pursuant to Neb. Rev. Stat. §§ 24-302 and 25-21,149 and jurisdiction over Plaintiffs as they have initiated this action in this Court.
12. Venue is proper in this Court because Streck’s principal place of business is in Sarpy County, Nebraska and the actions complained of took place, and are taking place, in Sarpy County, Nebraska, and the effects thereof will, in large part, be felt in Sarpy County, Nebraska.

13. This Court has subject matter jurisdiction over Streck's counterclaims for declaratory relief pursuant to the Uniform Declaratory Judgment Act, Neb. Rev. Stat. § 25-21,149 et seq. because there is an actual controversy between Plaintiffs and Streck over whether Streck has breached the Lease Agreement and the enforceability of the Option included in the Lease Agreement.

14. Venue is proper in Sarpy County, Nebraska pursuant to Neb. Rev. Stat. § 25-403.01(2) because Streck transacts business in Sarpy County, Nebraska and because the events giving rise to this dispute occurred there and will continue to occur there on an ongoing basis.

BACKGROUND

15. On or about April 27, 2015, Plaintiffs filed an Amended Complaint (hereinafter, the "Complaint").

16. The Company's sole property consists of "real property located at 7002 South 109th Street, legal description: Lot 16 Brook Valley Business Park, being a replat of Lots 16, 17, 18B, 21B, 22 & 23, as surveyed, platted and recorded in La Vista, Sarpy County, Nebraska" (hereinafter "Land") (Complaint ¶ 24).

17. Plaintiffs allege that on the Premises, "the Company's predecessor in interest—Ryan Family Partnership, LTD—constructed a steel structure in 1995 (the "Building") (Complaint ¶ 25).

18. On December 15, 1999, Streck entered into a Lease With Purchase Option with the Company's predecessor, as amended by the Lease Amendment dated November 7, 2007 (the "Lease Agreement") by which Streck leased both the Building and the Land (collectively "Premises") from the Company's predecessor.

19. Section 25.01 of the Lease Agreement gives Streck “the exclusive option (the “Option”) to purchase the Premises” from the Company. “The Option shall be exercisable at any time during the sixty (60) day period (the “Option Period”) immediately following . . . (ii) the expiration of the Term [of the Lease Agreement]” (Lease Agreement, §25.01(a)).

20. On or around November 25, 2014, Streck notified the Company that it intended to exercise the Option upon the termination of the Lease Agreement on June 30, 2015.

21. On January 30, 2015, Dr. Ryan wrote a letter to Streck (“Dr. Ryan’s January 30 Letter”) in which he claimed that Connie Ryan had a “serious conflict of interest relating to the Lease [Agreement]” and that he had unilaterally determined he would be the sole “[Company] Manager handling the issues set forth in this letter.”

22. In Dr. Ryan’s January 30 Letter, he noted that Section 14.01 of the Lease Agreement provided that

The occurrence of any one or more of the following events . . . shall constitute a breach of this Lease by [Streck] . . . (e) if within ninety (90) days after the commencement of any proceeding against [Streck] seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed.

23. Dr. Ryan claimed that because the lawsuit which he brought against Streck captioned as *Ryan et al. v. Ryan et al.*, Case No. CI-14-1684 (Dist. Ct. Sarpy Cty.) (“Shareholder Action”), sought the dissolution and sale of Streck and had not been dismissed within 90 days, “[Streck] was in breach of the Lease [Agreement] as set forth in Section 14.01(e).”

24. Dr. Ryan asserted that the Company “may now elect one or more remedies, including termination of the Lease [Agreement], termination of [Streck’s] right to possession of the [P]remises (even without termination of the Lease [Agreement]), acceleration of the rent

through expiration of the original term, reletting of the [P]remises, and other actions under the Lease [Agreement] and under the applicable law.”

25. On February 12, 2015, Streck responded to Dr. Ryan’s January 30 letter (“Streck’s February 12 Letter”) explaining that because Streck had elected to purchase the shares owned by Dr. Ryan’s Trust on January 19, 2015, fewer than ninety days after the Shareholder Action was filed, pursuant to Neb. Rev. Stat. §§ 21-20,163(4) and 21-20,166, any possibility of the dissolution of Streck had been removed and, therefore, Streck was not in breach of the Lease Agreement.

26. In Streck’s February 12 Letter, Streck noted that it did not accept or agree that “Dr. Ryan’s January 30, 2015 letter is a valid exercise of his position as a Manager of [the Company] or that Dr. Ryan is authorized to make demands on behalf of [the Company] without the agreement and participation of the other Manager of [the Company].”

27. Plaintiffs reassert the claims made in Dr. Ryan’s January 30 Letter in their Complaint in the section entitled “**Lawsuit Against Streck Causes Event of Default Under the Lease Agreement.**” (Complaint, p.11).

28. On May 11, 2015, Connie Ryan filed an Answer, Application for Dissolution, and Application for Judicial Supervision of Winding Up (“Answer and Application”). In the Answer and Application, Connie Ryan requests that the Court order the Company be dissolved because it is not reasonably practicable to carry on the Company’s activities.

29. Connie Ryan also notes in the Answer and Application that Streck has indicated its intention to exercise the Option and that “[t]he Company must take certain actions to facilitate the purchase and sale of the Property pursuant to the option terms. However, the Company will

not be able to take such actions because its Managers are deadlocked” (Answer and Application, ¶ 122).

30. Accordingly, Connie Ryan has also requested that this Court supervise the winding up of the Company’s activities to ensure, among other things, that any action required in connection with the sale of the Premises to Streck pursuant to the Option is timely made.

COUNTERCLAIM

COUNT I – DECLARATORY RELIEF REGARDING PLAINTIFFS’ ALLEGATION OF BREACH OF THE LEASE AGREEMENT

(Against Plaintiff The Ryan Family, LLC)

31. Streck hereby re-alleges and readopts all allegations contained in Paragraphs 1 through 30 as if set forth herein.

32. Without naming Streck as a defendant, the Company has alleged in the Complaint that Streck is in breach of the Lease Agreement.

33. The Company has claimed that it has the right to terminate the Lease Agreement, terminate Streck’s right to possess the Premises (even without termination of the Lease Agreement), accelerate the rent through expiration of the original term, relet the Premises, and other actions under the Lease Agreement and under the applicable law.

34. The Company’s assertion in its Complaint that Streck is in breach of the Lease Agreement directly affects Streck’s interest, as it threatens Streck’s rights under the Lease Agreement.

35. As an intervening defendant, Streck respectfully requests that this Court declare that Streck is not in breach of the Lease Agreement because Streck’s January 19, 2015 election to purchase the shares of Streck owned by Dr. Ryan’s Trust precludes any possibility that Streck

will be dissolved as requested by Dr. Ryan and his trust in their complaint in the Shareholder Action.

36. Streck further requests that the Court enter a declaratory judgment recognizing that the Company is estopped from using Dr. Wayne Ryan and Carol Ryan's initiation of an action that triggers a statutory right to purchase the shares owned by Dr. Ryan's Trust as a pretense to claim a breach of the Lease Agreement has occurred when Streck is in compliance with all its obligations under the Lease Agreement.

37. Streck further respectfully requests that this Court declare that the Company may take no action that would restrict or otherwise diminish Streck's rights under the Lease Agreement or otherwise threaten or disturb Streck's right to possess the Premises without the agreement of both co-Managers of the Company.

**COUNT II – DECLARATORY RELIEF REGARDING STRECK'S RIGHT TO
EXERCISE ITS OPTION TO PURCHASE THE PREMISES**

(Against Plaintiff The Ryan Family, LLC)

38. Streck hereby re-alleges and readopts all allegations contained in Paragraphs 1 through 37 as if set forth herein.

39. Pursuant to Section 25.01 of the Lease Agreement, Streck has the exclusive right to exercise the Option within the Option Period. The Option is an independent right of Streck which exists irrespective of whether there has been a default under the Lease Agreement, as has been alleged by Plaintiffs. *See Horne v. Krejci*, No. A-11-360, 2012 WL 1432308 (Neb. App. Apr. 24, 2012).

40. The initial term of the Lease Agreement is scheduled to expire on June 30, 2015. Streck has previously elected not to exercise its right to extend the term of the Lease Agreement

pursuant to its terms, thereby allowing the initial term to expire in order for Streck to exercise the Option within the Option Period pursuant to the notice attached hereto as Exhibit A.

41. The Company has claimed it has the right to terminate the Lease Agreement and take other actions under the Lease Agreement and under the applicable law. Streck believes the Company may oppose its exercise of the Option during the Option Period.

42. Moreover, Connie Ryan has applied for dissolution of the Company due to the deadlock between the co-Managers of the Company and the lack of a mechanism to resolve the deadlock.

43. If the Company is dissolved prior to or during Streck's exercise of the Option and subsequent purchase of the Premises, Streck's right to purchase the Premises pursuant to the terms of the Option is entitled to protection and the Company, or its successor or agent, must fulfill all of its obligations as required by the Option.

44. Streck respectfully requests that the Court declare that Streck's Option is valid and may be exercised within the Option Period.

**COUNT III – PARTICIPATION IN THE DISSOLUTION AND WINDING UP
PROCESS**

(Against Plaintiff The Ryan Family, LLC)

45. Streck hereby re-alleges and readopts all allegations contained in Paragraphs 1 through 44 as if set forth herein.

46. Connie Ryan has applied for dissolution of the Company due to the deadlock between the co-Managers of the Company and the lack of a mechanism to resolve the deadlock. Connie Ryan has also requested that the Court supervise the winding up of the Company's activities to ensure, among other things, that any action required in connection with the sale of the Premises pursuant to the option is timely performed by the Company.

47. The Lease Agreement contains numerous obligations relating to Streck's exercise of the Option which the Company will be forced to meet during the Option Period, including estimating and negotiating a purchase price, proceeding with the appraisal process set forth in the Lease Agreement if the purchase price cannot be agreed upon by Streck and the Company and closing on the sale of the Premises to Streck (including conveying a warranty deed free and clear of all liens, claims and encumbrances and executing such standard owner lien affidavits that may be required by the title company issuing the title commitment) (Lease Agreement, § 25.01). Streck has a strong interest in ensuring that the Company, or its successor or agent, complies with the Company's obligations in the Lease Agreement.

48. Streck has intervened in this action to ensure that its rights under the Lease Agreement are undisturbed and that the Company, or its successor or agent, fulfills all of its obligations under the Lease Agreement, including those obligations regarding Streck's exercise of the Option.

WHEREFORE, Intervenor Streck prays this Court sustain its Complaint in Intervention and issue a declaratory judgment to ensure that the Company, and any successor or agent, complies with its obligations to Streck under the Lease Agreement, to protect Streck's rights and interests in occupying the Premises, and to protect its rights and interests in exercising the Option during the Option Period.

Dated this 19th day of June, 2015.

STRECK, INC., Defendant,

By: /s/ Paul R. Gwilt

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing **COMPLAINT IN INTERVENTION** was sent via electronic email and United States first-class mail, postage prepaid, this 19th day of June, 2015 to the following:

Marnie A. Jensen,
Mark D. Hill,
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Larry E. Welch, Sr.,
Stephen Q. Preston,
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Landmark Center
1299 Farnam St., Ste. 1220
Omaha, NE 68102
Attorneys for Defendant Constance Ryan

By /s/ Paul R. Gwilt

Paul R. Gwilt

July 1, 2015

VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ryan Family, L.L.C. (as successor-in-interest to Ryan Family Partnership, Ltd.)
10923 Emiline Street
Omaha, NE 68138

EXERCISE NOTICE

Re: Lease with Purchase Option, dated as of December 15, 1999, as amended (the “Lease”),
by and between Ryan Family, L.L.C. (successor-in-interest to Ryan Family Partnership,
Ltd.) and Streck, Inc. (f/k/a Streck Laboratories, Inc.) (capitalized terms not expressly
defined in this letter are as defined in the Lease)

Ladies and Gentlemen:

As you are aware, the Term of the Lease expired pursuant to its terms effective June 30, 2015. In that regard, Streck, Inc. (“Streck”) hereby elects to exercise the Option pursuant to Section 25.01(b) of the Lease and this letter constitutes Streck’s Exercise Notice in accordance with the terms thereof. In connection with Streck’s exercise of the Option, please deliver Landlord’s estimate of the Option Price to the undersigned within 30 days after the date of this Exercise Notice pursuant to Section 25(g) of the Lease.

Sincerely,

Streck, Inc.

By: _____

Name: Mike Morgan

Title: Chief Financial Officer

cc: Ryan Family, L.L.C.
606 South 187th Circle
Omaha, NE 68130
Attn: Dr. Wayne L. Ryan, Manager

Ryan Family, L.L.C.
7002 South 109th Street
Omaha, NE 68128
Attn: Ms. Constance Ryan, Manager

EXHIBIT A