

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RED RUN MOUNTAIN, INC.,	:	
Plaintiff	:	DOCKET NO. 12-01,259
	:	CIVIL ACTION – LAW
vs.	:	
	:	
EARTH ENERGY CONSULTANTS, LLC;	:	
BRADLEY R. GILL; and SYLVIA B. MASE and	:	
MICHAEL HUGHES, as Executors of the Estate of	:	
Richard D. Mase,	:	
Defendants	:	

OPINION AND ORDER

This matter comes before the Court on two sets of preliminary objections filed by Defendants. The underlying issue in this case is whether various leasing agreements entered into by Plaintiff’s former president, Defendant Richard D. Mase (Mase), are enforceable against either Plaintiff or Mase personally. Essentially, Plaintiff is seeking a determination from the Court as to whether Mase breached any of his fiduciary duties under the corporate bylaws by entering into these agreements without disclosure to the board, and, if so, whether Red Run’s corporate veil can be pierced to hold Mase personally liable.

I. Procedural Background

Plaintiff filed its complaint on June 25, 2012. Defendants Earth Energy Consultants, LLC, and Bradley R. Gill (hereinafter Earth and Gill, respectively) filed preliminary objections on July 20, 2012. They filed four preliminary objections in the form of a demurrer to Plaintiff’s claims: (1) under the Pennsylvania Real Estate Licensing and Registration Act (RELRA)¹; (2) that Mase acted beyond the scope of his corporate authority; (3) that Mase acted without implied and/or apparent authority, and (4) that the 2003 agreement was not supported by consideration.

¹ 63 P.S. §§ 455.101-455.902.

Defendant Mase filed preliminary objections on August 30, 2012.² Defendants Mase filed objections in the form of three demurrers and two objections based on insufficient specificity and failure to join an indispensable party. Their demurrers pertained to Plaintiff's RELRA claim, Mase's alleged lack of authority, and Mase's personal liability for these agreements. Regarding their insufficient specificity claim, Defendants Mase argue that Plaintiff needs to allege facts concerning Red Run's "ordinary course of business" to support its lack of authority claims against Mase. Regarding their failure to join claim, Defendants Mase argue that the State Real Estate Commission is an indispensable party due to Plaintiff's RELRA claim.

II. Discussion

The Court will address Defendants' demurrers first. In deciding a demurrer, the Court must:

resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by a demurrer. In order to sustain a demurrer, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit a recovery. If there is any doubt, it should be resolved by the overruling of the demurrer.

Melon Bank, N.A. v. Fabinyi, 650 A.2d 895, 899 (Pa. Super. Ct. 1994) (citations omitted). With this standard in mind, the Court will address Defendants' objections.

A. RELRA Claim

In this matter, all of the Defendants allege that a demurrer should be granted on Plaintiff's RELRA claim because the RELRA does not afford Plaintiff a private cause of action. The Court agrees.

In *Schwartzwaelder v. Fox*, 895 A.2d 614 (Pa. Super. Ct. 2006), our Superior Court addressed an issue almost identical to the instant matter. In that case, plaintiffs attempted to

² On September 4, 2012, the Court granted Defendant Mase's motion to substitute a party and amend caption; as a result of this Order, Sylvia B. Mase and Michael Hughes, in their capacity as executors of the Estate of Richard D. Mase, were substituted for Richard D. Mase. These Defendants will be referred to as "Defendants Mase."

bring a private cause of action against individual defendants for holding out that their real estate agent was licensed when she in fact was not. *Id.* at 617. In *Schwartzwaelder*, the trial court dismissed plaintiffs' complaint on preliminary objections, based in part on the theory that the RELRA does not afford a private right of action for money damages. *Id.* On appeal, our Superior Court agreed. *Id.* at 620. In its reasoning, the Superior Court provided that the:

RELRA does not contemplate private actions for money damages as an enforcement mechanism, and, consequently, does not create a private cause of action. In point of fact, the statute *prohibits* civil suits by anyone seeking payment of a real estate commission who is not a licensed real estate broker, and specifically empowers the Pennsylvania Real Estate Commission to police related transactions. The [defendants] offer no basis upon which we might purport to expand the reach of this statute, *and given its inclusion of the foregoing enforcement mechanism*, we are aware of none.

Id. at 620-21 (citations omitted) (emphasis added). Therefore, that Court held that the plaintiffs could not recover under the RELRA as a matter of law. *Id.* at 621.

Similarly, in this case, Plaintiff alleges that Defendants Earth/Gill violated the RELRA because they entered into the 2003 consulting agreement and the October 10, 2003 agreement even though they were not licensed real estate brokers. Complaint, ¶¶ 63-71. Even when accepting these facts as true, the Court cannot let Plaintiff's RELRA stand. The applicable statutory sections and case law provide that the RELRA does not afford private rights of action. *See* 63 P.S. §§ 455.302, 455.406; *Schwartzwaelder*, 895 A.2d at 620-21. Therefore, Defendants' objections are SUSTAINED, and Plaintiff's claim under the RELRA is STRICKEN. *See* Complaint, ¶¶ 63-71.

Based upon this ruling, the Court finds Defendants Mase's failure to join an indispensable party objection MOOT.

B. Scope of Authority Claims

Next, Defendants allege that a demurrer should be granted on Plaintiff's claim that Mase exceeded the scope of his corporate authority as President of Red Run when he entered into: the 2003 consulting agreement, the October 10, 2003 agreement, the assignment, and the amended assignment. *See* Complaint, ¶¶ 72-79. Additionally, they request a demurrer on Plaintiff's claim that Mase exceeded the scope of his implied or apparent authority in entering into these four agreements. *See* Complaint, ¶¶ 81-89. The Court agrees, in part, to these objections.

Plaintiff's complaint is formed as a request for declaratory judgment. The Declaratory Judgments Act³ outlines the scope of a declaratory judgment. 42 Pa. C.S. § 7532. *See JARL Investments, L.P. v. Fleck*, 937 A.2d 1113, 1121-1122 (Pa. Super. Ct. 2007). Under the Act, trial courts may apply the declaratory remedy to the interpretation of documents; specifically, the Act provides:

[a]ny person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.

42 Pa. C.S. § 7533. In this instance, the Court believes that Plaintiff is requesting declaratory relief on the basis of the Court's interpretation of its bylaws. However, this necessary document is not yet a part of the record. Plaintiff has attached the agreements entered into by Mase on behalf of Red Run. However, the Court believes that the thrust of Plaintiff's declaratory judgment action hinges on the Court's interpretation of the Red Run bylaws. The Court cannot determine the sufficiency of Plaintiff's authority claims without its bylaws, or at least the sections covering the President's authorities.⁴ Therefore, the Plaintiff shall file an amended

³ 42 Pa. C.S. §§ 7531-7541.

⁴ The Court recognizes that Plaintiff quoted part of the corporate bylaws in its complaint. Complaint, ¶ 72.

complaint attaching the corporate bylaws. With the addition of the bylaws, the Court will adequately be able to address the duties of the president and whether he breached any of his fiduciary duties to his fellow board members and officers. Therefore, the Court SUSTAINS Defendants' objections in part.

Likewise, the Court SUSTAINS the specificity objection of Defendants Mase. The Court believes that the addition of the corporate bylaws to the pleading will glean light onto Red Run's ordinary course of business. However, if in the fact that the bylaws do not address such an issue or in Plaintiff's caution, Plaintiff should allege facts regarding Red Run's ordinary course of business.

C. Lack of Consideration

Defendants Earth/Gill object to Plaintiff's claim that the four agreements are unenforceable due to lack of consideration. Defendants argue that this claim, in and of itself, fails to state a cause of action. The Court agrees.

In its complaint, Plaintiff alleges that the 2003 consulting agreement, the October 10, 2003 agreement, the assignment, and the amended assignment are not supported by consideration. Plaintiff argues that it procured the 2005 lease without Defendant Earth's assistance, and, based upon this acquisition, the 2003 consulting agreement and the October 10, 2003 agreement lacked consideration. Additionally, Plaintiff argues that it had no agreement with Defendant Gill, and, therefore, the assignment and amended assignment fail for lack of consideration. The Court has a hard time understanding Plaintiff's arguments. The Court believes that Plaintiff is arguing that the four agreements are invalid based upon the acquisition of the 2005 lease and because Mase did not have the authority to bind Plaintiff to these agreements. The Court believes that these issues are more appropriate in Plaintiff's breach of

duty claims. In any event, this section of the Complaint fails to state a claim upon which relief may be granted. Therefore, Defendants' objections are SUSTAINED, and Plaintiff's claim is STRICKEN. *See* Complaint, ¶¶ 90-96.

D. Mase's Personal Liability

Defendants Mase's final objection is to Plaintiff's last claim: that Mase should be held personally liable for the four agreements at issue. Complaint, ¶¶ 97-99. Defendants allege that Mase cannot be held personally liable based upon Red Run's corporate structure. The Court agrees, in part, with Defendants' argument.

One of the protections behind incorporation is the assurance of limited liability. *Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 987 (Del. Ch. 1987).⁵ However, this limited liability protection is not absolute; in some instances, equity may impose the corporate liability onto individuals in control of the corporation. *Id.* Normally, equity extends this liability to corporate members in instances where one uses the corporate form to perpetuate a fraud. *Id.* Additionally, courts have disregarded the limited liability protection when those members in control "have ignored the 'corporateness' of the corporation and have themselves treated it as their 'instrumentality.'" *Id.* In these instances, the courts will pierce the corporate veil to hold corporate officers liable for corporate liabilities. *Id.*

Additionally, in this instance, Red Run's certificate of incorporation generally shields directors from personal liability. Complaint, Exhibit A. The seventh article of its certificate states:

SEVENTH. No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law, (i) for *breach of the director's duty of loyalty* to the Corporation or its

⁵ The parties have agreed that, pursuant to 15 Pa. C.S. § 4145(a), Delaware law applies to Plaintiff's claims because Red Run is incorporated in the State of Delaware. *See* Complaint, Exhibit A.

stockholders, (ii) for acts or omissions not in *good faith* or which involve intentional misconduct or a knowing violation of the law, (iii) pursuant to Section 174 of the Delaware General Corporate Law or (iv) from any transaction from which the director derived an improper personal benefit....

Id. (emphasis added). This provision is identical to the applicable Delaware corporate law. *See* 8 Del. C. § 102(b)(7). *See also Arnold v. Society for Savings Bancorp., Inc.*, 650 A.2d 1270 (Del. 1994) (interpreting the Section 102(b)(7) protection). With these principles in mind, the Court turns to Defendants' objections.

The Court agrees with Defendants Mase that Plaintiff has not appropriately pleaded a claim to hold Mase personally liable for Red Run's liabilities. The applicable articles of incorporation provide claims under which Plaintiff may plead a personal liability of the President; these claims are not appropriately plead in Plaintiff's complaint. Therefore, the Court SUSTAINS Defendants' objection, in part. The Court GRANTS Plaintiff an opportunity to re-plead this claim.

The Court enters the following Order.

ORDER

AND NOW, this 29th day of October, 2012, following oral argument on Defendants' preliminary objections, it is hereby ORDERED and DIRECTED as follows:

1. Defendants' objections pursuant to Plaintiff's RELRA claim are SUSTAINED. The RELRA claim is STRICKEN.
2. Defendants' objection for failure to join an indispensable party is MOOT.
3. Defendants' objections to the claims pertaining to Mase's authority are SUSTAINED in part. Plaintiff shall file an amended complaint within twenty (20) days, attaching the corporate bylaws. Plaintiff shall re-plead its scope of authority claims to address any

breaches of duties committed by Mase. The Court RESERVES its right to rule on Defendants' objections after the filing of this amended complaint.

4. Defendants' specificity objection is SUSTAINED. Plaintiff shall file an amended complaint specifically stating the ordinary business practices of Red Run.
5. Defendants' objection to Mase's personal liability claim is SUSTAINED in part. Plaintiff shall re-plead this claim in his amended complaint, with reference to the certificate of incorporation's seventh article.

Any further preliminary objections filed will be heard on briefs only. Due to the fact that Delaware law applies to Plaintiff's corporate claims, any Delaware cases cited by the parties in their pleadings and briefs shall be attached as exhibits thereto.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

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