

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

OPINION

This Opinion is provided in support of this Court’s Order entered December 1, 2015 granting summary judgment in favor of Defendants Sylvia B. Mase and Michael Hughes, as Executors of the Estate of Richard D. Mase (“Estate”). Plaintiff, Red Run Mountain, Inc. (Red Run) contends that Richard Mase, now deceased, lacked authority to execute the five agreements that are the subject of the case.¹ Red Run further contends that Mase breached his duties of loyalty and good faith. The Court concluded that there are no material issues of fact in dispute for a jury to decide. The Court concluded that, as a matter of law, the record evidence establishes that Mase had the authority to execute the five agreements that are the subject of this case and that no competent evidence exists in support of Red Run’s contention that Mase breached his duties of loyalty and good faith to Red Run.

Factual Background

The Court incorporates by reference the factual background set forth in its Opinion and Order dated June 18, 2015, granting Defendant Earth Energy Consultants, LLC and Bradley R. Gill’s motion for summary judgment, as if set forth fully here.

¹ The five agreements are: the 2003 Consulting Agreement, the October 2003 Agreement and the 2005 Assignment, and the March 2009 Amendment and the May 2009 amendment, because Red Run contends such transactions were unusual and extraordinary and therefore beyond Mase’s scope of authority. *See, Memorandum of Law of Plaintiff, Red Run Mountain, Inc., In Support of Answer to Summary Judgment Motion of Defendants, Sylvia Mase and Michael Hughes as Executors of the Estate of Richard D. Mase, Deceased* (Plaintiff’s Brief) at 24.

Legal Standards

Summary Judgment

Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. 2011). A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)).

Authority

According to Delaware Law, in general, a president of a corporation possesses the inherent and actual authority to “perform all acts of an ordinary nature which by usage or necessity are incidents to his office and by virtue of his office he may enter into a contract and bind his corporation in matters arising from and concerning the usual course of the corporation's business.”² *Joseph Greenspon's Sons Iron & Steel Co. v. Pecos Valley Gas Co.*, 34 Del 567, 156 A. 350, 352 (Del. Super. Ct. 1931). Where corporate By-Laws confer authority on the president “to take "general and active control of [the corporation's] business and affairs," then the president “commands the power to "do anything the corporation could do in the general scope and

² By Order dated October 29, 2013, the Court held that the law of Delaware applies to the claims against the Estate.

operation of its business.”” Joseph Greenspon's Sons, *supra*, 156 A. at 352. (citations omitted). For powers beyond ordinary business, the authority must be specifically conferred or implied from course of conduct. *Id.*

Breach of duty of care

8 Del. C. § 102(b)(7) permits the certificate of incorporation to provide exculpatory provisions for its directors as follows.

[T]he certificate of incorporation may also contain any or all of the following matters:
* * *

A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provision shall not eliminate or limit the liability of a director: (i) For any breach of the director’s duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (iii) under § 174 of this title; or (iv) for any transaction from which the director derived an improper personal benefit.

For a director to have breached the duty of care by receiving a personal benefit from a transaction not received by the shareholders generally, the benefit must be “material.” Cede & Co. v. Technicolor, 634 A.2d 345, 361 (Del. 1993). Generally a benefit is not material “unless sufficient to create a reasonable probability *** that the independence of judgment of a “reasonable person” in the director’s position would be affected[.]” *Id.* Generally the benefit must rise to the level of self-dealing. Cede, *supra*, 634 A.2d at 363.

Discussion:

Based upon the competent evidence of record, the Court concluded that Richard Mase was authorized to execute the five documents at issue in this case under Delaware law.³ In addition, no competent evidence exists to support the claim that Mase breached his duties of loyalty or good faith.

³ By Order dated October 29, 2013, the Court held that the law of Delaware applies to the claims against the Estate.

Authority to Execute the Documents

Mase possessed an inherent actual authority by virtue of his position as President of Red Run and under Red Run's By-laws to conduct the "general and active management" of Red Run. *See*, Article V, Section 4 of By-Laws; Joseph Greenspon's Sons, *supra*. Further, Mase possessed the "general power and duties of supervision and management usually vested in the office of President of the corporation." *Id.* As such, Mase possessed the inherent authority to take any action usual and necessary to carry out the ordinary business of Red Run. *Id.* *See, also*, Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120 (3d Cir. N.J. 1998). Mase was therefore authorized to execute the contracts at issue in this case because each of the 5 contracts fell within actions necessary to carry out the ordinary business of Red Run. Moreover, the course of conduct of the corporation conferred implied authority to execute each of the contracts at issue.

Each of the 5 contracts at issue each fell within actions necessary to carry out the ordinary business of Red Run as follows. Since its inception, the ordinary business of Red Run involved entering contracts to provide recreation to shareholders and maximize profit from Red Run's property consisting of 2,873.60 acres in McIntyre Township, Lycoming County. Such contracts included timber management, leasing water rights, wind turbines, vegetable sludge, and oil and gas leases. *See, also*, Plaintiff's Brief at 32. The five agreements that are the subject of the case involved Mase securing oil and gas leases for Red Run's property by consulting professional services aimed at maximizing profit by attracting companies and presenting the property as a geological play. As such, the agreements were within the ordinary business transactions that Mase was authorized by the By-Laws and as President to perform and consistent with other contracts to maximize profits from Red Run's property.

Red Run further contends that, even if the consulting agreements were within the ordinary course of business, Mase lacked authority to enter the 2005 assignment to Gill (and the 2009 amendments) because they were unusual and extraordinary for transferring an asset of the corporation (3.125 % ORRI, reduced to 2%) without board approval and for allegedly conferring a personal benefit upon Mase not shared by other shareholders. This Court disagrees. The course of dealing of Red Run included Mase transferring corporate assets to third parties without board approval. For example, Mase transferred 87.5% of the oil and gas royalties to East Resources Inc. by executing the 2005 ERI Lease without board approval.

Further, Red Run's conjecture that Mase engaged in self-dealing or litigation avoidance is not supported by competent evidence and is too speculative. To support this theory, Red Run relies upon evidence that Red Run withdrew from evidence and did not intend to reference or introduce into evidence in its case-in-chief.⁴ It is undisputed that Red Run was contractually liable for the 3.125 % ORRI. By executing the assignment, Mase satisfied the contractual obligation owed by Red Run. No competent evidence establishes that Mase executed the Assignment for another purpose, such as to avoid litigation; it has not been established that Mase was exposed to a reasonable risk of potential liability, or that Mase believed he was exposed to potential liability. Furthermore, executing the Assignment did not avoid litigation, as Red Run instituted the instant litigation. Finally, Mase shared the tangible and non-speculative financial obligation of the 2005 Assignment as 1/3 shareholder of Red Run (1/3 of 2% ORRR should drilling ever occur).

⁴ See, *Plaintiff's Answer to Omnibus Motion in Limine of Defendants' Sylvia Mase and Michael Hughes as Executors of the Estate of Richard D. Mase Regarding Exhibits Proffered by Plaintiff Pursuant to the Orders of Court Dated June 2, 2015 and August 4, 2015*, ¶¶ 24. The evidence in question was a handwritten document of Pifer's recollection of a conversation with Mase.

Even if unusual or extraordinary, the course of dealing of Red Run provided Mase with express authority by implication to seek out and execute potential revenue producing contracts with respect to Red Run's property without board approval. Delaware Law recognizes that an officer's powers "are enlarged beyond those powers which are inherent in his office" from the board's "consent and acquiescence in permitting the officer to assume the direction and control of the business of the company." Joseph Greenspon's Sons, *supra*, 156 A. at 352. Such was the case with Red Run. Red Run allowed Mase to manage the affairs of Red Run with little oversight from the board for about 20 years. Mase acted consistently with the longstanding practice of Red Run when he executed the assignments without board approval to satisfy the obligations of Red Run.⁵

Breach of the Duty of Good Faith, Loyalty or Due Care

Red Run adduced no competent evidence to establish that Mase breached a duty of good faith, loyalty or due care to Red Run. Article 7 of Red Run's Certificate of Incorporation states the following.

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 stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) pursuant to Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Seventh shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

⁵ Red Run relies on Joseph Greenspon's Sons Iron & Steel Co. v. Pecos Valley Gas Co., *supra*, to support its contention that these questions are for a jury. In Joseph Greenspon's Sons Iron & Steel Co. v. Pecos Valley Gas Co., *supra*, however, there was a **significant dispute of fact** as to whether the President had in the past acted alone in the signing of contracts which were then recognized by the company. Joseph Greenspon's Sons Iron & Steel Co. v. Pecos Valley Gas Co., *supra*, 156 A. at 353. In the present case there are no significant factual disputes between the parties. As such, the Court must apply the law to the undisputed facts.

Specifically, Red Run failed to adduce evidence that Mase engaged in self-dealing or gained a material personal benefit not received by other shareholders by executing the agreements at issue in this case.

BY THE COURT,

December 31, 2015
Date

Richard A. Gray, J.

cc:

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