

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

FILED

2014 APR 11 PM 12:14

KEITH W. ATKINSON,

Plaintiff,

v.

Case No.: 12-C-2133

GENERAL GLASS COMPANY, INC.,
a West Virginia business corporation; and
CYNTHIA D. SMITH,

Defendants.

**PARTIES' AGREED ORDER TO DISMISS COMPLAINT COUNTS ONE, THREE
AND FOUR AND DEFENDANTS' COUNTERCLAIM AND FINAL ORDER
GRANTING SUMMARY JUDGMENT ON COUNT 2 OF THE COMPLAINT**

Plaintiff, Keith W. Atkinson ("Mr. Atkinson"), by counsel, Michael J. Schessler and Bowles Rice LLP, and General Glass Company, Inc., ("General Glass") and Cynthia D. Smith ("Mrs. Smith"), by counsel, Fred Holroyd and Holroyd & Yost, hereby jointly move the Court to dismiss certain counts of Plaintiff's Complaint, namely, Count 1 - Breach of Shareholder Agreement, Count 3 - Promissory Estoppel and Count 4 - Spoliation of Evidence, against the defendants, and to dismiss General Glass' and Mrs. Smith's counterclaim for tortious interference with business relations, and any other tort claim which General Glass or Mrs. Smith perceive they may have, such as defamation, arising out of this dispute, against Mr. Atkinson, based on Mr. Atkinson's agreement to withdraw and voluntarily dismiss those above referenced remaining Counts of his Complaint, in and as consideration for, Defendants' agreement to dismiss and withdraw their counterclaims against Mr. Atkinson. As part of this Order, the Parties further stipulate that Mr. Atkinson remains a shareholder in General Glass, with all rights of a shareholder -- statutory or otherwise -- and that nothing in this Order or dismissal of all remaining claims shall affect Mr. Atkinson's status as shareholder, or any obligations and rights

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of shareholders under the West Virginia law, the bylaws of General Glass, and/or pursuant to the Shareholder Agreement, dated March 8, 1978.

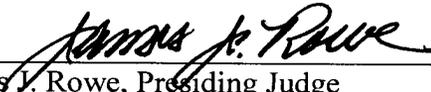
By this motion the parties further inform the Court that their settlement and agreement to dismiss certain claims shall have no effect upon the summary judgment granted in favor of Mr. Atkinson by Order entered on October 28, 2013, as to Count 2 – Breach of March 2010 Agreement, set out in Mr. Atkinson’s Complaint, which shall remain in effect, and that any payments ordered by the Court, thereby, as remain unpaid, shall continue to accrue as damages awarded thereunder. The Parties further jointly agree that the Summary Judgment Order, including its Conclusions of Law and Findings of Fact, and payments ordered, and damages awarded thereunder, as entered, on October 28, 2013, shall be incorporated into this Order by reference, and deemed a final order pursuant to Rule 54(c) of the West Virginia Rules of Civil Procedure, subject to appeal, as of, and upon the date of entry of this final order.

Wherefore, the Court, perceiving no objection, hereby ORDERS that Counts One, Three and Four of the Plaintiff, Keith W. Atkinson’s Complaint, and all Counterclaims of General Glass and Cynthia D. Smith, including claims of defamation, if any, are hereby dismissed, with prejudice, with each party bearing their own costs and attorneys’ fees, and that future proceedings, including the Trial, set for April 8, 2014, are hereby cancelled and stricken from the docket of this Court, except as may be necessary for an appeal.

The Court further ORDERS that the Summary Judgment Order, including its Conclusions of Law and Findings of Fact, previously entered, on October 28, 2013, shall be incorporated into this Order, by reference, and shall be a final adjudication of the merits of the claims raised by Count Two of the Complaint, pursuant to Rule 54(c) of the West Virginia Rules of Civil Procedure, subject to appeal, upon entry of this final order. The Court notes the

exceptions and objections of the Defendants to the grant of summary judgment, and order entered thereon, Orders that those objections and exceptions are expressly reserved.

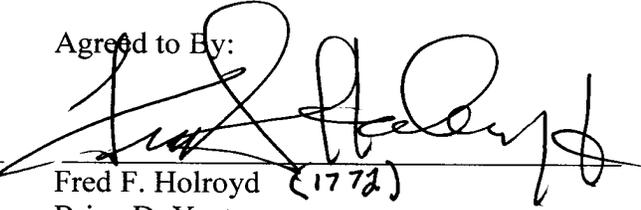
So Ordered and Entered, this 4th day of April, 2014


James J. Rowe, Presiding Judge
Business Court Division

Prepared by:


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Cynthia D. Smith

Date: 4/11/2014
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Circuit Clerk