

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 8:34  
BUSINESS COURT DIVISION

CATHY S. ... CLERK  
KANAWHA COUNTY CIRCUIT COURT

MARTIN N. HOLLEY, As Member of and on Behalf of  
WV LAND SERVICES, LLC,

Plaintiff,

VS.

CASE NO. 13-C-060  
BCD NO. 13-C-060KAN  
JUDGE JAMES H. YOUNG, JR.

LYDIA M. BEIRNE and  
ELK MEADOW ENERGY LLC,

Defendant.

ORDER

This civil action was commenced by Martin Holley ("Holley"), as member and on behalf of West Virginia Land Services, LLC ("WV Land") on January 13, 2013, against Lydia Beirne ("Beirne") and Elk Meadow Energy, LLC ("Elk Meadow"). His complaint sought relief under several separate causes of action, including: conversion, unjust enrichment, breach of fiduciary duty, fraudulent misrepresentation, accounting and right to information, preliminary injunctive relief<sup>1</sup>, and dissolution of WV Land. Holley filed an amended complaint on January 31, 2014, naming an additional party, G2 Appalachia LLC ("G2").

Beirne also asserted counterclaims, similar to the claims brought by Holley, except as to Saga Land Services, LLC, ("Saga Land") and Saga Farms, LLC ("Saga Farms") for accounting and right to information, breach of fiduciary duty, fraudulent misrepresentation, fraud, unjust enrichment, and dissolution.<sup>2</sup>

<sup>1</sup> The Court, in a hearing dated July 3, 2013, denied Plaintiffs' request for preliminary injunction.  
<sup>2</sup> At the final pretrial conference, Beirne voluntarily withdrew her claim under the West Virginia Wage Payment and Collection Act.

Close  
2/13

Through an Order dated May 8, 2014, the Court dissolved WV Land, effective immediately, but deferred issues concerning the parties' claims and how and what assets will be divided. The parties were directed to submit liquidation plans to the Court for consideration.

Through an Order dated June 30, 2014, the Court dismissed all claims made by Holley against G2 based on an agreement reached by the parties.

A bench trial was held in this matter between June 30, 2014 and July 3, 2014 on all remaining claims. The witnesses offering testimony at trial included: Beirne; Greg Barton, Holley; Douglas L. Holley; Patricia N. Hunt; Mark Pendleton, CPA; Edward P. McDonough, CPA; Adam Goldizen; Tyler Villers, Thomas Beirne, John Martin, Kristina Nary Smith; Elissa Holley; Robin Villers; Laura Stover; and Roger Griffith, CPA. Various documentary exhibits were also introduced by the parties and admitted by the Court.

#### **WV Land Services, LLC**

Holley and Beirne were equal members of WV Land, beginning in April 4, 2008. Pls Ex. 2; Tr. at 44. The business of WV Land was limited to the performance of title examination and related work in the oil and gas industry. Tr. at 41-42, 146. Holley and his brother, Douglas Holley, provided the initial start-up capital for WV Land. Tr. at 39, 130. Douglas Holley provided the start-up capital because Holley, his brother, wanted to start a business with Beirne. Tr. at 520. Beirne provided no start-up money for WV Land. Rather, Beirne brought contacts within the oil and gas industry and was expected to facilitate the work. Tr. at 347-48.

Although Holley and Beirne had no written operating agreement, they equally shared profit and losses of WV Land.

Prior to the formation of WV Land by the parties, Martin Holley and his brother, Douglas Holley formed Saga Land which was engaged in similar business activities as WV Land. During

the operation of both land companies, Holley and Beirne were members of other limited liability companies which are material to the claims asserted of each party in this proceeding. The additional entities are: Saga Farms, LLC; Windy Ridge Stables, LLC; Elk Meadow Energy, LLC; Riverbend, LLC; and Ally Land and Energy, LLC. To address the claims of the parties, the Court will summarize each limited liability company and their various claims asserted by the parties.

#### **WV Land Services, LLC**

WV Land was formed in April 2008 by Holley and Beirne with each member sharing profits and losses 50/50. The company was formed to perform title examinations and related work in the oil and gas industry. WV Land operated primarily by contracting with independent contractors to perform title examinations. The company owned real estate in Morgantown, West Virginia and South Carolina, but the real estate was not used for business purposes. The company owned limited office equipment and had no other substantial assets.

Ms. Beirne conducted most of the business related functions of WV Land. Martin Holley alleged in this proceeding that Beirne has violated her fiduciary duties owed unto him leading to the various causes of action.

#### **Saga Land Services, LLC**

Saga Land was formed in 2006 by Martin Holley and Douglas Holley, his brother. The company was engaged in title abstracting work in the oil and gas industry. Douglas Holley's membership in Saga Land ended in mid 2011.

Beirne asserts in her counterclaim that she is a 50/50 member of Saga Land. Holley denies she is a member of Saga Land and he asserts she is not entitled to any share of profits.

### **Elk Meadow Energy, LLC**

Elk Meadow Energy, LLC (“Elk Meadow”) was formed by Beirne on August 20, 2012. Beirne and G2 were equal members sharing profits and losses 50/50. Beirne formed Elk Meadow to perform title abstracting work in the oil and gas industry. Elk Meadow had primarily one customer which had been a previous customer of WV Land.

Holley claims Beirne violated her fiduciary duty to him in forming Elk Meadow to compete with WV Land, therefore, entitling him to a 50/50 share of the profits. Beirne claims Holley disengaged himself from WV Land, therefore, she no longer owed a duty to Holley.

### **RiverBend, LLC**

RiverBend, LLC (“RiverBend”) was formed on December 17, 2012 by Ms. Beirne. The operational work of RiverBend was the same as WV Land. Holley claims Beirne violated her fiduciary duty to him and WV Land. Beirne denies she violated any duty because Holley had disengaged himself from WV Land.

### **Ally Land and Energy, LLC**

Beirne formed Ally Land and Energy, LLC (“Ally”) on April 4, 2013. The work performed by Ally was the same as the business of WV Land and Ally performed work for clients of WV Land.

### **Saga Farms, LLC**

Saga Farms, LLC (“Saga Farms”) is a farming operation organized by Holley in 2006. Saga Farms owns approximately 400 acres of farm land and farming is its only business function. Beirne asserts that assets were directed to Saga Farms from Saga Land, thus creating a claim for her. Holley maintains that the only funds supporting Saga Farms came from Holley’s funds. (Some of Holley’s draws from Saga Land may have been deposited in Saga Farms.)

### **Windy Ridge Stables, LLC**

Windy Ridge Stables, LLC (“Windy Ridge”) Douglas Holley obtained a business license to operate Windy Ridge and Douglas Holley used a draw of \$200,000.00 to purchase the farm. Very shortly after the real estate closing, Windy Ridge was conveyed to Holley by his brother. Beirne claims the draw by Douglas Holley from Saga Land should be attributed to Martin Holley.

### **Conclusions of Law and Findings of Fact:**

The Court will first address the rights, duties and responsibilities of the parties in the above-mentioned legal entities before turning its attention to the various claims for accounting and damages.

### **WV Land**

The parties agree and the facts support that Holley and Beirne are members of the limited liability company each owning equal shares. With regard to WV Land the Court finds each party is entitled to an accounting and the Court will address the issue of the accounting in the assessment of damages.

Additionally, Holley claims Beirne violated her fiduciary duty owed to him and WV Land and that she has converted funds of WV Land by taking withdraws from WV Land in excess of her 50% ownership.

With regard to the issue of conversion, the Court finds that each party is entitled to equal shares of the net profits generated by WV Land. Although the parties did not enter into a written operating agreement, the undisputed testimony of the parties demonstrates to the Court that the parties operated WV Land to share profit and losses 50/50. The clear evidence produced at trial

is that Beirne received a greater than 50/50 distribution of the net profits and the Court will address the issue of the amount of disproportionate distribution in its damage assessment.

Holley asserts a claim that Beirne has violated her fiduciary duty owed unto him and WV Land. Holley's claim of breach of fiduciary duty arises from Beirne's formation of Elk Meadow, RiverBend and Ally.

Beirne formed Elk Meadow at a time when WV Land was conducting business in title examinations for the oil and gas industry. Beirne alleges that she discussed with Holley the need to form Elk Meadow to repair a relationship with Antero Resources, a WV Land client. Holley denies any discussion with Beirne concerning the formation of Elk Meadow.

Beirne negotiated with Greg Burton, a business relationship whereby Mr. Burton would supervise the independent contractors performing the title examinations for Antero. Additionally, Mr. Burton had certain business contacts with Antero Resources that Beirne believed would aid in retaining Antero Resources as an income source.

Elk Meadow was formed with Beirne and G2 (a LLC formed by Mr. Burton) as equal partners. Independent contractors of WV Land performed the title examinations under Mr. Burton's supervision. WV Land received the income from the Antero work; the net profits were distributed to Beirne and G2 (Burton) equally and Beirne provided a 5% share of her distributions of Elk Meadows as a bonus to Ms. Stover, a bookkeeper for WV Land.

Holley claims that Beirne violated her fiduciary duty to both him and WV Land and that she fraudulently converted WV Land profits to her own use. Additionally, Holley takes the position that the amount of directed profit of WV Land is the entire amount received by WV Land from Antero, i.e., no reductions should be made for payments to G2 and Stover.

West Virginia Code §31B-4-409(a) (3) provides that a member of a limited liability company has a fiduciary duty to refrain from competing with the company in the conduct of the company's business before dissolution. The Court finds that Beirne did not violate a fiduciary duty to WV Land or Holley in her dealings with Elk Meadow, but the Court does find that the net profits realized by Elk Meadow were WV Land funds converted to her own use. (Further, the Court finds that the transfer of WV Land funds to Elk Meadow was not fraudulent.)

The testimony of the parties makes it clear to the Court that Beirne was responsible for the daily operations of WV Land and Beirne used her decision making authority to enter into a business relationship with G2 and Burton in an effort to maintain a working relationship with Antero Resources. Beirne's decision to include G2 (Burton) as a member of Elk Meadow was made with regard to the best interest of WV Land and Holley. Beirne believed Holley would "come around" and accept the reality of the business situation with Antero. Beirne had authority to act for WV Land in its dealing with Antero and her decision to include Burton/G2 may not be second guessed by Holley. Beirne made a decision to provide Stover with a bonus and her decision may not be challenged by Holley in this proceeding, therefore, the net proceeds received by Beirne would be funds subject to equal distribution by the parties. Therefore, Holley would be entitled to a one-half share of the proceeds received by Beirne from Elk Meadow, less the 5% paid to Stover.

Beirne formed two limited liability companies that were engaged in performing title examinations in the oil and gas industry. Holley alleges Beirne violated her fiduciary duty to him and WV Land by directly competing with WV Land.

RiverBend was formed December 7, 2012, and Ally was formed April 4, 2013. Each company was in the same business as WV Land and each company had clients that were clients of WV Land. The Court finds both companies were competing with WV Land.

Beirne asserts that she is released of her fiduciary duty to WV Land and Holley because Holley had disengaged himself from the activities of WV Land. The evidence presented does not demonstrate to the Court by a preponderance of the evidence that Holley disengaged himself from the operation of WV Land or Saga Land and even if Holley had disengaged himself from both land companies, Beirne owed a fiduciary duty to WV Land and Holley until WV Land was dissolved, which would include a period of time when WV Land would be winding down its business operations (see West Virginia Code §31B-4-409).

Additionally, Beirne claims she is relieved of her fiduciary duty to Holley and WV Land because it was apparent WV Land would be dissolved. The Court finds that it was not apparent at the time of the operation of RiverBend and Ally that WV Land would be dissolved and even if WV Land was going to be dissolved, a fiduciary duty would still exist as WV Land was winding down.

Therefore, the Court finds Beirne breached her fiduciary duty owed unto WV Land and Holley and finds Holley is entitled to an equal share of the net profits of Ally and RiverBend.

### **Saga Land**

Saga Land was organized May 4, 2006 by Holley and Douglas Holley, his brother, as initial members. Douglas Holley withdrew from the company in mid-2011. At the time of the formation of WV Land, Saga Land was operational and doing title exams in the oil and gas industry.

Beirne contends that Holley agreed that when WV Land and Saga Land produced net profits on an equal basis, the two companies would be merged. Each party would have an equal share in the remaining company. Shortly after WV Land's formation, WV Land's net income equaled or exceeded the net income of Saga Land. Beirne produced evidence at trial in the form of tax returns of Saga Land, K-1's (Federal tax forms) of Saga Land, text messages from Holley, the testimony of Robert Fisher and Elissa Holley, and the distribution of \$300,000.00 from Saga Land to Beirne to support her position.

From 2008-2012, Beirne received Federal Tax Return Form K-1 showing a one-half distributions of profit/losses from Saga Land on which she was assessed Federal and State income tax liability, although she did not receive periodic payments from Saga Land. (She did receive a distribution for one year in the amount of \$300,000.00.) Beirne claims the tax returns demonstrate her one-half ownership of Saga Land.

Robert Fisher, an attorney, representing Holley at the time of the formation of WV Land provided testimony through a deposition. Mr. Fisher lacked personal knowledge of the formation of WV Land, although he had aided in the formation of WV Land. However, his notes of the transaction produced circumstantial evidence to support Beirne's contention that she would become a member of Saga Land once WV Land's income equaled the income of Saga Land.

Elissa Holley testified that she had heard Holley admit that Beirne was an equal member in Saga Land.

Holley disputes Beirne's claims in Saga Land and alleges that the K-1's were provided for tax purposes only and that no filings with the West Virginia Secretary of State's Office or any other legal document exists supporting Beirne's ownership in Saga Land.

The Court finds by a preponderance of the evidence that Beirne was a member of Saga Land. Beirne received tax K-1's setting forth income upon which she paid federal and state income taxes. She received distribution of income in the amount of \$300,000.00 from Saga Land. The testimony of Robert Fisher, although not sufficient enough to establish the defendant's claim on its own, proves circumstantial evidence to support Beirne's claim in Saga Land. Therefore, the Court finds Beirne to be entitled to an accounting of the distribution of Saga Land as a member with equal right to those of Holley.

**Ally and RiverBend:**

Beirne formed Ally and RiverBend at a time when she was a member in WV Land. The business of WV Land, Ally and RiverBend were engaged in the performance of title examinations in the oil and gas industry. Ally and RiverBend performed work for some of the clients that had formerly been clients of WV Land. Ally and RiverBend were in competition with WV Land at times while WV Land was operational or in a process of dissolution.

Beirne owed a fiduciary duty to WV Land and Holley to refrain from competing in the conduct of WV Land's business until dissolution, even during the period that WV Land was "winding down" (West Virginia Code §31B-4-409). Beirne attempt to explain her actions with Ally and RiverBend by claiming Holley had withdrawn from participation in WV Land. The evidence presented at trial does not persuade the Court that Holley's actions showed a withdrawal from his interest in WV Land. Even if Holley had committed actions that would have demonstrated that his actions were detrimental to WV Land, Beirne could not have violated her fiduciary duty to WV Land and Holley. If she viewed Holley's actions in violation to his duty to WV Land and her, she should have sought relief pursuant to West Virginia Code §31B-1-101 et seq.

Therefore, Beirne has violated her fiduciary duty owed unto WV Land and Holley. Her dealings with Ally and RiverBend were in direct competition with WV Land and Holley is entitled to a distribution share in the proceeds of the two companies as if the proceeds had been income to WV Land.

**Saga Farms:**

Saga Farms is a limited liability company organized by Holley and Holley is its only member. The evidence at trial demonstrated that the funds of WV Land were not used to purchase any assets of Saga Farms. At the time, a bookkeeper error placed an asset for Saga Farms on Saga Land records, but the Court finds the entry to create no interest of Saga Farms with Beirne. Therefore, Beirne is not entitled to any accounting or other relief with regard to Saga Farms.

**Windy Ridge Stables:**

In 2009, Douglas Holley obtained a business license to do business as Windy Ridge Stables. In 2011, Douglas Holley wanted to purchase a farm. He testified he negotiated the purchase of a farm for \$250,000.00. The farm was located near his brother's farm. Douglas Holley testified he took a draw from WV Land for Two Hundred Thousand Dollars (\$200,000.00) to purchase the farm and the draw by Douglas Holley is reflected upon WV Land's financial record as a draw by Douglas Holley. Within days of the purchase of the farm, Douglas Holley transferred ownership of the farm to Martin Holley. Also, within days of the real estate transaction, Douglas Holley conveyed his membership in WV Land to Martin Holley.

Beirne contends that the draw from WV Land attributed to Douglas Holley should be attributed as draw to Martin Holley. Beirne cites the fact that in a very short matter of time a \$200,000.00 draw was taken and Martin Holley ended up with ownership of the farm. Although

the time of events surrounding the purchase of the farm by Douglas Holley is unusual, no evidence was presented to demonstrate that Douglas Holley was not entitled to a draw of \$200,000.00. Therefore, the Court finds that the draw taken by Douglas Holley was not in violation of any interest Beirne may have had in WV Land. The Court finds that Beirne is not entitled to any accounting for Douglas Holley's draw of \$200,000.00 and Douglas Holley's draw should not be considered a draw by Martin Holley.

The Court finds that the cause of actions for fraudulent misrepresentation and unjust enrichment brought by each party fails for lack of proof. Each party asserted a claim for unjust enrichment. The Court finds that neither party has been unjustly enriched given the Court's findings herein. Therefore, the Court finds for neither party on the theory of unjust enrichment.

Each party brought an action for fraudulent misrepresentation. Beirne was primarily operating WV Land and Holley was primarily operating Saga Land. Each party has taken positions that were adverse to each other. Holley denied Beirne had any ownership interest in Saga Land; Beirne conducted business in competition with WV Land. An accounting of the various rights and obligations of the parties had been litigated in this proceeding, but the Court cannot find by clear and convincing evidence that either party's actions were fraudulent. Therefore, the parties' causes of action are DISMISSED.

#### **Diminution of Value – WV Land and Saga Land**

Holley asserts a claim against Beirne that her actions caused a diminution of value of WV Land and Saga Land. Holley presented the testimony of Edward McDonough as an expert to prove that Beirne's actions in breaching her fiduciary duties diminished the values of WV Land and Saga Land. Beirne defends this claim by denying she violated her fiduciary duty and

challenging Mr. McDonough's testimony as speculative. Beirne submitted the expert testimony of Roger Griffith.

The Court finds the valuation of Mr. McDonough as speculative. Mr. McDonough's opinions failed to account for the actual facts surrounding this case. Beirne's evidence assumed a stable cash flow into the future which is not supported by the testimony and the role of key personnel was not reviewed. The Court finds the testimony of Roger Griffith more reliable, therefore, Holley's claim for diminution of value is DENIED.

### **Accounting of Distributions**

The parties retained Arnett Foster and Toothman (AFT) to perform a report to attribute income and distributions received by Holley and Beirne from WV Land and Saga Land. Holley views the report to fairly represent his position on distribution, although he contests Beirne's entitlement to Saga Land distributions. Beirne generally agrees with the AFT report, however, she has several areas where she claims adjustments are required. The Court will use the AFT report as a starting point to determine the parties' relative distributions.

The parties agree to the determination made in the AFT report concerning the draws taken by each party from WV Land and Saga Land (WV Land: Beirne \$4,249,038.00; Holley \$1,936,641.00; Saga Land: Beirne \$300,000.00; Holley \$1,239,000.00). Beirne claims adjustments are required to the AFT report. The Court will address each claimed adjustment:

*Windy Ridge Stables:* The Court has rendered its finding concerning Beirne's claim that Douglas Holley's draw of \$200,000.00 should be attributed to Martin Holley. For reasons stated within the opinion, the Court has found that the \$200,000.00 draw from Saga Land was attributable to Douglas Holley.

*Contractor Services:* The summary of findings prepared by AFT contained payments to each party for contractor services. The undisputed evidence demonstrates that at times both Holley and Beirne performed services for clients when they did the actual title examinations. The parties agreed that each of them would be paid for work and the contractor services were not draws but the payment would be treated as payment for services rendered. Therefore, the contractor services should not be attributed to either party as a distribution. However, Beirne contends that Holley took payments of \$40,000.00 in 2012, \$105,000.00 in 2013 as “contractor services” which were in effect “managerial services”. A review of the testimony of Nikki Hunt would indicate that in 2012 and 2013 Holley received payments of \$5,000.00 in some months to which she believed were for management services. The Court finds that “management services” should be treated as draws given the agreement of the parties concerning “contractor services”. Therefore, the “contractor services” contained in the summary of the findings of the AFT report should be deleted as to each party and Holley would be attributed with a draw of \$145,000.00 taken as “management services”.

*Lakeview Resort Membership:* The Court finds the evidence supported Beirne’s contention that the Lakeview Resort membership should not have been attributed to her in the AFT report. The resort fee was expended for independent contractors that reimbursed WV Land.

*Holley Business Expenses Unsupported by Receipts:* Beirne contends that Holley took business expenses in Saga Land that are unsupported by proper documentation in the amount of \$282,807.00. Beirne’s claim is based upon the testimony of Lora Stover, a bookkeeper for WV Land. Ms. Stover’s testimony revealed that she was uncertain that

her review of Saga Land's records was correct and given Ms. Stover's uncertainty, and taking into consideration of the AFT review, the Court finds that the expenses taken by Saga Land should not be attributed to Holley. The Court finds the AFT review of the business expenses to be more reliable.

*Holley Litigation Fees:* The AFT contained expenses of Saga Land that included Holley's litigation expense. The litigation expenses were:

April 17, 2014	Jackson Kelly	\$23,612.97
March 22, 2013	Jackson Kelly	\$13,930.00
September 19, 2013	Jackson Kelly	\$12,597.50
April 8, 2014	Edward McDonough	\$ 8,005.00
Total:		\$58,145.47

The amount of litigation expenses incurred by each party are their own expenses not the expenses of the various entities involved in this litigation, therefore, Holley will be attributed \$58,145.47 as a draw.

*Holley's Liability for Beirne's Tax Liabilities:* Beirne claims that improper deductions were taken on WV Land and Saga Land Federal and State tax returns that could lead to individual tax liability for the parties. The Court finds that as each member in both the limited liability companies each party, unless fraud is involved, is responsible for the content of the tax returns. Beirne was managing WV Land and provided the information for preparation of WV Land returns. Her claims that Holley did provide advice do not support her claim concerning tax penalties and interest. Beirne thought she was a member of Saga Land and she should have reviewed the tax returns. Therefore, Beirne's claim for interest and penalties are DENIED.

*RGB Wealth Management:* Payments were made to a retirement account maintained by WV Land as Plan Sponsor at RGB Wealth Management. Holley contends that the

payments to the retirement accounts were the obligation of the LLC and not the individual members, and the payments to the accounts for either member should not be considered a draw for either party. Beirne's position is that the payments should be considered draws of the parties. The AFT report takes the position that the payments made to the retirement accounts were allocated to the members as draws.

The Court finds that payments to the defined pension plans are for the sole benefits of the members and not for WV Land or Saga Land benefits and the contributions to the plans should be attributed to the respective parties.

#### **Adjustment Post AFT Report**

The Court makes the following findings of distributions to the parties after the AFT report and at the trial:

1. Saga Land draws by Holley since December 2013 - \$230,000.00;
2. Saga Land payment RGB Wealth Management of \$100,000.00 for the benefit of Holley (Defendant's Exhibit #6);
3. Saga Land distributions to Holley \$200,000.00 (Defendant's Exhibit #70);
4. Saga Land general ledger's balance of \$128,751.26 (each party is entitled to a one-half distributive share);
5. Holley had 6 draws of \$10,000.00 each from January 2014 through June 2014 for a total of \$60,000.00; and
6. Beirne had draws as payments to RGB Wealth Management for \$60,000.00 on November 20, 2013 and \$175,000.00 on March 10, 2014 which are draws attributed to Beirne.

Beirne contends that Holley should be attributed \$5,667.26 as double billing of travel expenses. The Court finds the evidence submitted by Beirne does not demonstrate that the expenses were not for a business related matter. The mere fact that a receipt to support the expenses was not available would lead to the conclusion that the payment was not business related. The conclusion of the AFT report that the expenses were business related is adopted by the Court. Therefore, Holley should not be attributed the travel expenses.

**Post Hearing Adjustments**

After trial, the parties exchanged financial records through continued discovery to disclose distributions to the parties post trial. Beirne’s Proposed Findings of Fact and Conclusions of Law contain post trial adjustments which the amounts were not disputed by Holley in his Proposed Finding of Fact and Conclusions of Law. The Court finds Holley should be attributed with the following as distributions from Saga Land:

<u>Date</u>	<u>Check #</u>	<u>Amount</u>	
July 8, 2014	3062	\$ 10,000.00	Draw
July 28, 2014	3091	\$ 10,000.00	Draw
August 25, 2014	3118	\$ 10,000.00	Draw
August 25, 2014	3119	\$ 1,058.50	Sheriff of Mason County
August 25, 2015	3120	\$ 396.94	Sheriff of Mason County
August 26, 2014	3122	\$ 2,037.38	Sheriff of Monongalia County
August 26, 2014		\$ 1,046.23	Sheriff of Monongalia County
August 20, 2014	3105	\$ 15,378.00	Angell Accounting
August 21, 2014	3117	\$ 6,075.00	Angell Accounting
September 15, 2014		\$235,404.00	RGB Wealth Management
Total		\$291,396.05	

**Beirne’s Claim for Tax Liability**

Beirne claims a damage against Holley for potential penalty and interest on unpaid Federal and State Income Taxes. Beirne alleges that Holley violated his fiduciary duty to her and /or committed fraud in filing State and Federal returns for LLCs which they were members.

Beirne claims the penalty and interest which would result from her filing amended returns should be Holley's responsibility. The Court finds that the potential tax liability to be speculative, therefore, the Court rejects her claim for any potential tax liability. Additionally, the Court finds that Holley did not make representation as to any expertise as a tax expert which Beirne could have reasonably relied upon.

### **Punitive Damages and Attorney Fees**

The Court finds that each party had claims over and against each other. Both parties had degrees of fault that have led to the dissolution of the various LLCs; the compensation, damages and accounting conducted herein is adequate to compensate the parties. Therefore, no punitive damages shall be awarded to either party.

Additionally, the Court finds that the conduct of the parties herein do not arise to the conduct that would cause the Court to award attorney fees to either party.

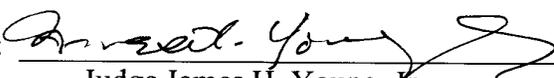
### **Conclusion**

Therefore, according to the accounting between the parties, the Court finds Martin Holley shall have judgment against Lydia M. Beirne in the amount of \$1,101,086.80. The Court further finds that WV Land and Saga Land shall be dissolved and the cost and final distribution of the LLCs may require adjustment of the aforesaid judgment.

All, accordingly, which is **ORDERED** and **DECREED**.

Enter this 10 day of November, 2014.

ORDER  
ENTER:

  
Judge James H. Young, Jr.

**EXHIBIT A – AMENDED SUMMARY OF FINDINGS – AFT REPORT**

<b>Transaction Type</b>	<b>Ms. Beirne</b>	<b>Mr. Holley</b>
WV Land Draws	\$4,249,038	\$1,936,641
WV Land Contractor Services <sup>1</sup>	0	0
WV Land Real Estate Expenses	466,201	196,560
WV Land Checks Payable to Ms. Beirne	6,719	0
WV Land Personal Expenses <sup>2</sup>	19,501	2,716
WV Land Credit Card Expenses	9,086	0
Meals and Entertainment	14,436	14,588
Saga Land Draws	300,000	1,239,300
Saga Land Management Services <sup>1</sup>	0	145,000
Saga Land Travel Expenses	0	98,400
Saga Land Personal Expenses	0	107,342
Vehicle Costs	118,954	106,870
Transactions between WV Land and Saga Land	0	0
Transactions related to Saga Farms, LLC	0	0
Transactions related to Elk Meadow <sup>3</sup>	483,295	0
Transactions related to RiverBend, LLC <sup>4</sup>	54,423	0
Transactions related to Ally	137,726	0
Windy Ridge Stables	0	0
Farris Baker Watts (Holley Defendant's Exhibit #87)	0	40,000
Saga Land monies to Mr. Holley after AFT Report <sup>5</sup>	0	230,000
Martin Holley litigation fees <sup>6</sup>	0	58,145
Additional Adjustment Amounts <sup>7</sup>	235,000	488,751.26
Post-Hearing Adjustments <sup>8</sup>		291,396
<b>TOTAL:</b>	<b>6,056,796</b>	<b>4,955,709.26</b>

<sup>1</sup> Deletion of contractor services from draws for both parties (\$639,788.00 and \$513,762.00) and moving \$145,000 from contractor services to management draws for Martin Holley

<sup>2</sup> Deduction of Lakeview Resort Business Expenses of \$4,999.00 from \$24,500.00 in AFT Report

<sup>3</sup> Elk Meadow – 45% of \$1,017,463.00, or \$483,295.00

<sup>4</sup> RiverBend (\$54,423.00) and Ally net profits (\$137,726.00)

<sup>5</sup> Saga Land distributions post-AFT Report

<sup>6</sup> Litigation fees of \$58,145.47, including Jackson Kelly (\$23,612.97), and E. McDonough (\$34,532.50)

<sup>7</sup> Additional Adjustment Amounts: Holley - \$100,000.00 RGB Wealth Management; Saga Land Distributions \$200,000.00; Saga Land general ledger \$128,751.26; draws January – June 2014 \$60,000.00; Beirne - \$235,000.00 RGB Wealth Management.

<sup>8</sup> Post-Hearing Adjustments