

**IN THE CIRCUIT COURT OF PRESTON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

DOMENICK MARRARA, JR., individually and
as co-Trustee of the SANDRA JEAN MARRARA TRUST,
SANDRA JEAN MARRARA,
as co-Trustee of the SANDRA JEAN MARRARA TRUST, and
SANDRA JEAN MARRARA TRUST,

Plaintiffs,

v.

Civil Action No. 13-C-198
Presiding Judge Russell M. Clawges, Jr.
Resolution Judge Christopher C. Wilkes

ROCCO S. MARRARA, JR., individually and
as Trustee of the MARY JANE MARRARA IRREVOCABLE TRUST, and
as Trustee of the ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST,
MARY JANE MARRARA IRREVOCABLE TRUST,
ROCCO S. MARRARA, SR. CREDIT SHELTER TRUST,
FIREBIRD CO.,
D & R DISTRIBUTORS, INC., and
PURE LAND, CO.,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

On June 2, 2014, the Court held a hearing, which had been noticed, on Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction (hereinafter at times referred to as "Plaintiff's Motion"). At the June 2nd hearing, Plaintiffs appeared by counsel, William C. Brewer, Esquire, and J. Tyler Slavey, Esquire. Defendant Rocco S. Marrara Jr., appeared in person, and all Defendants also appeared by counsel, William J. Leon, Esquire.

After reviewing the Court file, including Plaintiffs' Motion and Defendants' Response thereto, and hearing the arguments of counsel, the Court hereby **ORDERS**

that Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is **GRANTED**. In support of this ruling, the Court makes the following findings and conclusions:

- 1) On or about April 15, 2014, Plaintiffs filed a Motion in the above-referenced matter seeking appointment of a custodian to manage all affairs of the Corporate Defendants, and preserve the *status quo*, while this litigation was pending.
- 2) A hearing on said Motion was set for May 16, 2014.
- 3) On or about May 7, 2014, the Defendants filed a Motion to Continue said May 16 hearing based on the unavailability of Vicky Helsley, who is not a named Defendant in this matter, but who is an indirect or direct shareholder in the Corporate Defendants, and whom the Defendants contend was an "interested person" entitled to notice of said hearing pursuant to W.Va. Code 31D-14-1432(a).
- 4) On or about May 12, 2014, Plaintiffs filed a response to said Motion contending that Ms. Helsley was entitled only to "notice" of said hearing, that she had notice of said hearing, and that she was not entitled to be present at said hearing.
- 5) At the May 16, 2014 hearing, the Court found that, as a direct or indirect shareholder in the Corporate Defendants, Ms. Helsley was an "interested" party, and that she was entitled to notice and to be present at the hearing on Plaintiffs' Motion to Appoint a Custodian.
- 6) Accordingly, the Court re-scheduled the hearing on Plaintiff's Motion to appoint a custodian for June 13, 2014, so that all interested persons could be present.

7) On or about May 23, 2014, Plaintiffs received notice that both Defendant Firebird Co., and Defendant Pure Land Co. were scheduling annual and special meetings of shareholders on June 3, 2014. Said notices were attached to Plaintiff's Motion as **Exhibit 1**.

8) Said notices indicate that the purpose of the meetings was purportedly to elect new corporate officers, to consider the terms of sale of assets of the Corporate Defendants, and to consider and approve offers to purchase assets of the Corporate Defendants.

9) By letter sent via email on May 28, 2014, Plaintiff informed the Corporate Defendants that both Plaintiff's trustee and Plaintiff's counsel would not be available to attend said June 3, 2014 meetings and requested that the Corporate Defendants reschedule said meetings. Said letter was attached to Plaintiff's Motion as **Exhibit 2**.

10) Additionally, by letter sent via email and facsimile on May 28, 2014, Plaintiff's counsel informed the Corporate Defendants' counsel that both Plaintiff's trustee and Plaintiff's counsel would not be available to attend said June 3, 2014 meetings, and requested that the Corporate Defendants reschedule said meetings. Said letter was attached to Plaintiff's Motion as **Exhibit 3**.

11) The parties were unable to agree on a date to reschedule said meetings. See **Exhibits 4 and 5** attached to Plaintiff's Motion.

12) Defendants assert that Plaintiff is only entitled to receive notice of said meetings and that Plaintiff does not have a right to be present at said meetings.

13) Plaintiff asserts that, as a shareholder of the Corporate Defendants,

Plaintiff has a right to be present at corporate meetings.

14) Previously in this case, this Court has ruled, in an extremely similar situation involving Ms. Helsley, that "notice" includes the right to be present.

15) Plaintiff has a right to be present at any shareholder meeting of the Corporate Defendants.

16) The Court finds that Plaintiff will suffer irreparable harm if said meetings are permitted to occur on June 3rd.

17) Defendants will not be harmed by a postponement of the June 3rd meetings. Accordingly, for good cause shown, the Court finds that Plaintiff is not required to post a bond.

18) Accordingly, the Court hereby **ORDERS** that Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is **GRANTED**. The Court further **ORDERS** that Defendants are enjoined from scheduling or holding any shareholders, directors, or other company meetings until further Order of this Court. The Court further **ORDERS** that the status quo must be maintained for Firebird Company and Pure Land Company, until further Order of this Court. The Court further **ORDERS** that the Court will entertain further argument regarding its rulings contained herein on the same date and time as the hearing on Plaintiff's Motion to appoint a Custodian. The Court notes that the hearing on Plaintiff's Motion to appoint a Custodian is currently scheduled to occur on June 19, 2014, at 9:00 a.m. However, should said June 19th hearing be continued, then the Court will entertain further

argument regarding its rulings contained herein at a later date, whenever the hearing on Plaintiff's Motion to appoint a Custodian occurs.

The Clerk of the Court is directed to send copies of the Order to the following counsel of record and to the Business Court Division:

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J. Tyler Slavey, Esq.
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3-Copies
S/D 10-27-14
WJL
WCB
BUSINESS CT.

Business Court Division
Berkeley County Judicial Center
380 W. South Street
Martinsburg, WV 25401
Attn: Carol A. Miller

ENTER: October 22, 2014

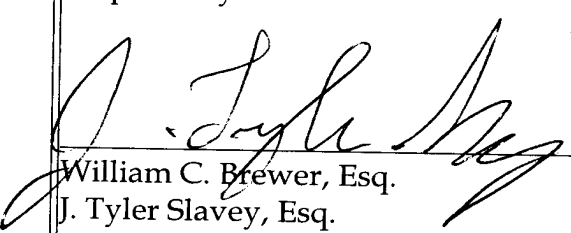

PRESIDING JUDGE RUSSELL M. CLAWGES, JR.

Entered: October 27, 2014

Patsy Castle, Clerk

by: Lisa Levenshman, Deputy

Prepared by:


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