

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

JOSEPH T. DOBKIN, and LAURIE
DOBKIN McDERMOTT,

Plaintiffs,

v.

DAVID B. SHRIVER,

Defendant.

C.A. No.: 14-C-91-K

The Hon. Mark A. Karl

Jury Trial Demanded

2014 JUN 27 PM 12:57

MOTION TO REFER ACTION TO THE BUSINESS COURT DIVISION

The defendant, David B. Shriver, by and through his counsel, Avrum Levicoff, Esquire and the law firm of Levicoff, Silko & Deemer, P.C., moves in accordance with Rule 29.06 of the West Virginia Trial Court Rules to refer the above-captioned action to the Business Court Division of the Court. The basis for this request is set forth hereinafter.

1. This action involves the management and operation of two closely held business corporations, Action Gaming, Inc. ("Action Gaming") and Cousin's Realty, Inc. ("Cousin's Realty"). Both corporations are West Virginia business corporations, which maintain their offices in Wheeling, Ohio County, West Virginia. Action Gaming has for many years engaged in the business of maintaining several hundred licenses for the operation of video lottery machines, pursuant to the provisions of the West Virginia Limited Video Lottery Act, W.Va. Code 29-22B-101 et seq. Action Gaming is perhaps the most prolific video lottery operating company in West Virginia. Cousin's Realty is in the business of owning or maintaining leasehold interests in real property. Some of the premises owned or leased by Cousin's Realty are sites for the retail operation of video lottery machines subject to licenses owned by Action Gaming.

2. The plaintiffs, Joseph T. Dobkin and Laurie Dobkin McDermott, are minority shareholders of Action Gaming and Cousin's Realty. Since 2008 the plaintiffs have been the beneficial owners of 30% and 10% respectively of the outstanding shares of both corporations; the defendant, David B. Shriver, has owned 60% of the outstanding shares of both corporations. Parenthetically, the plaintiffs are brother and sister; the defendant is their cousin.

3. In brief, the plaintiffs allege that since 2008 Mr. Shriver has engaged in a variety of acts, conduct and practices that are allegedly inimical to the rights and interests of the plaintiffs as minority shareholders. Among other things, the plaintiffs allege that Mr. Shriver "denied the minority shareholders any meaningful voice in the management, direction and operation of the companies; failed to inform the minority shareholders of matters of significant financial and legal consequence to the companies; deprived the minority shareholders of benefits proportionate to their stock ownership interests and percentages; directed benefits to himself that were exorbitant and grossly disproportionate to the shareholders' respective percentages of stockownerships, directed the companies in excessive, wasteful and imprudent expenditures, intended in significant part to deprive the minority shareholders of the benefits of stockownership in proportion to the shareholders' percentages of ownership; and directed Action Gaming to engage in numerous instances of conduct that the West Virginia Lottery Commission considers and would consider to be inconsistent with and repugnant to regulations and laws that pertain to the West Virginia Limited Video Lottery and other pertinent subjects, thereby creating significant legal and financial sanctions and exposure for Action Gaming, as well as damage to the public perception of the company, resulting from media publication of some of the activities that Mr. Shriver led the company into, that resulted in investigation and sanctions by the West Virginia Lottery

Commission.” Complaint ¶15. The plaintiffs contend that the conduct of Mr. Shriver has been designed to oppress, damage and harass them, and that his conduct “constitutes actionable breach of fiduciary duties owed, breach of duties of good faith and fair dealing owed, oppression, illegality and fraud.” Complaint, ¶23.

4. The plaintiffs seek injunctive relief, *inter alia*, in the nature of an order removing Mr. Shriver from his management positions with Action Gaming and Cousin’s Realty; a reduction of his salary; an order implementing “a schedule for reasonable profit distributions to minority shareholders;” an order “requiring an itemized accounting of expenditures by Action Gaming and Cousin’s Realty” (for a five year period from 2010 through 2014), and other forms of injunctive relief. The plaintiffs also seek an order directing Mr. Shriver to purchase the plaintiff’s shares of Action Gaming, or in the alternative, directing the dissolution of Action Gaming. The plaintiffs also seek a substantial award of compensatory damages, and punitive damages.

5. As is apparent from the Complaint, this action represents “Business Litigation” as defined in Rule 29.04(a), T.C.R., in that the claims involve “...matters of significance to the transactions, operations, or governance between business entities...” Rule 29.04(a)(1). In addition, the dispute in this matter “presents commercial...issues” within the meaning of Rule 29.04(a)(2). This action does not involve consumer litigation.

6. The referral of this case to the Business Court Division is consistent with the objectives sought to be achieved by the formation of the Business Court, in that referral would promote the efficient management and resolution of litigation involving commercial issues, and would promote the efficient resolution of this genuinely commercial dispute. In substance, the

claims and disputes involved in this action fit squarely within the embrace of the purposes for the Business Court Division.

WHEREFORE, the defendant requests that this matter be immediately referred to the Business Court Division, and assigned to a judicial officer pursuant to the provisions of Rule 29.07, T.C.R.

Date: June 25, 2014

By: 

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion to Refer Action to the Business Court Division**

was served upon the following individuals via first class, U.S. Mail:

Robert Fitzsimmons, Esquire
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Date: June 25, 2014

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