

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

MANGUS COAL COMPANY, INC.,
A West Virginia Corporation,
JESSE A. JENNINGS,
Individually, and as a minority shareholder
of Mangus Coal Company, Inc.,
FRANKLIN M. JENNINGS,
Individually, and as a minority shareholder
of Mangus Coal Company, Inc.,

Plaintiffs,

v.

Civil Action No. 12-C-63
Presiding Judge Paul T. Farrell
Resolution Judge Russell M. Clawges, Jr.

CHRISTOPHER JENNINGS,
Individually, and as an officer, director, and
majority shareholder of Mangus Coal Company, Inc.
DORRIS JENNINGS,
Individually, and as an officer, director, and
shareholder of Mangus Coal Company, Inc.
DARLENE MURRAY,
Individually, and as an officer, director, and
agent of Mangus Coal Company, Inc.

Defendants.

**ORDER REGARDING OCTOBER 6, 2014 MOTIONS HEARING
AND ORDER TO MEDIATE**

On October 6, 2014, the Court conducted a hearing in the above matter. At the hearing, Plaintiffs appeared by counsel Lisa Hyre, Esq., and Defendants appeared by counsel William C. Brewer, Esq., and J. Tyler Slavey, Esq.

At the hearing, the Court heard argument from counsel for Plaintiffs and Defendants in regards to three (3) motions which are currently pending before the Court. Specifically, the Court heard argument regarding *Defendants' Motion for Summary Judgment*, *Plaintiffs' Motion for Leave to Amend Complaint Pursuant to Rule 15 of the West Virginia Rules of Civil Procedure*, and *Plaintiffs' Motion to Compel Discovery*.

ORDER REGARDING OCTOBER 6, 2014 HEARING

At the hearing, Defendants argued that discovery is complete, that there are no genuine issues of material fact, and that Defendants are entitled to summary judgment against Plaintiffs regarding all Plaintiffs' claims against Defendants.

In response, Plaintiffs argued that summary judgment should not be granted because discovery is not complete. The Plaintiffs further argued that the statute of limitations does not apply to this case because the Plaintiffs are seeking to rescind a deed and, as such, are seeking only equitable relief. As such, they argue that the doctrine of laches applies and that the Company and/or the individual shareholders were unaware that the Mangus Coal Company had not received the full consideration as set forth on the face of the deed until they obtained the closing documents in February of 2011.

Defendants argued that Plaintiffs have not properly asserted a derivative action and that all purported derivative claims, filed on behalf of Mangus Coal Company, must be dismissed. In response, Plaintiffs confirmed that all of Plaintiffs' claims had been asserted derivatively, and that neither Jesse A. Jennings nor Franklin M. Jennings was asserting any individual claims in this matter.

Accordingly, the Court hereby **ORDERS** that the Plaintiffs, Jesse A. Jennings and Franklin M. Jennings, are dismissed, in their individual capacity from this suit, and all claims that were asserted by Plaintiffs, Jesse A. Jennings and Franklin M. Jennings, in their individual capacity, against Defendants, are hereby dismissed. The style of the case shall be modified to reflect these dismissals.

Defendants also argued that Plaintiffs failed to assert any valid breach of contract claims against Defendants. Defendants argued that Plaintiffs have failed to set forth any facts which indicate that Defendants, individually, breached the Mediation Memorandum of Agreement ("Mediation Agreement") or the Declaration of Assumption and Indemnity, which are the two (2) contracts at issue in this case. More specifically, Defendants argued that none of the Defendants are parties to the Declaration of Assumption and Indemnity, and, as such, none of the Defendants can be sued for breaching said Declaration.

In response, Plaintiffs argued that each of the Defendants has breached their fiduciary duties as officers of the Company when they failed to protect the company from permit blocks and forfeitures, which resulted in the Company being prohibited from mining coal. The breach of contract claim was brought by the Company against the Defendants for their failure to protect the finances of the company.

Regarding the Mediation Agreement, Defendants argued that none of Plaintiffs' alleged "breaches" of said Mediation Agreement are based upon terms actually contained in the agreement. Plaintiffs were unable to cite facts which support any claim that Defendants, individually, breached the Mediation Agreement or the Declaration of

Assumption and Indemnity. As such, Plaintiffs agreed to withdraw their claims for breach of contract. Accordingly, the Court hereby **ORDERS** that the Plaintiffs' breach of contract claims against the Defendants are hereby dismissed. However, the Plaintiff's claims for breach of fiduciary duty remain.

Defendants also argued that Plaintiffs' claim that Defendants breached the implied duty of good faith and fair dealing must be dismissed, as no such independent cause of action exists in the State of West Virginia.

In response, Plaintiffs argued that breach of the implied duty of good faith and fair dealing is a valid cause of action in the State of West Virginia. They further argue that the Defendants owed Mangus Coal Company and the minority shareholders a fiduciary duty and inherent in the fiduciary responsibilities are the implied duties of good faith and fair dealing and that a violation of the fiduciary relationship may result from oppressive conduct which is conduct that departs from the standards of good faith and fair dealing.

The Court hereby finds that no stand-alone cause of action for breach of the implied duty of good faith and fair dealing exists in the State of West Virginia. As such, the Court hereby **ORDERS** Plaintiffs' claims for breach of the implied duty of good faith and fair dealing are hereby dismissed.

Defendants further argued that any claims for breach of fiduciary duties and conversion are clearly barred by the applicable two (2) year statute of limitations. In response, Plaintiffs argued that Plaintiffs' claims are derivative in nature and that they

are continuing in nature as the Defendants continue to conceal information. Therefore, Plaintiffs argue that these claims are not subject to any statute of limitations.

The Court held in abeyance its ruling on whether Plaintiffs' claims for breach of fiduciary duties and conversion are barred by the statute of limitations.

Defendants further argued that Plaintiffs' purported claims for civil conspiracy must be dismissed because civil conspiracy is not a stand-alone cause of action and that, under West Virginia law, civil conspiracy imposes liability on persons who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s). Because Plaintiffs have alleged that Defendants actually committed torts, Plaintiffs' civil conspiracy claims must be dismissed. Defendants also argued that any potential civil conspiracy claims would be barred by the applicable two (2) year statute of limitations.

In response, Plaintiffs argued that the Defendants had conspired to commit fraud against the Company and minority shareholders, that they conspired to conceal evidence, and that they conspired to fraudulently convey Company property to the Defendant Christopher Jennings and/or Jennings Excavating. Accordingly, Plaintiffs argue that this action seeks equitable relief and is not subject to the statute of limitations.

The Court held in abeyance its ruling on whether Plaintiffs' claims for civil conspiracy should be dismissed.

Defendants further argued that Plaintiffs failed to allege any facts which support Plaintiffs' claim of unjust enrichment. In response, Plaintiffs argued that they had

alleged facts sufficient to support a claim of unjust enrichment. However, Plaintiffs conceded that any potential claims for unjust enrichment would solely exist against Defendant Christopher Jennings. Accordingly, the Court hereby **ORDERS** that any unjust enrichment claims asserted against Defendants Dorris Jennings and Darlene Murray are hereby dismissed. The Court held in abeyance its ruling on whether Plaintiffs' claims against Defendant Christopher Jennings for unjust enrichment should be dismissed.

At the hearing, Plaintiffs confirmed that their sole claim against Defendant Darlene Murray was for civil conspiracy. Accordingly, the Court hereby **ORDERS** that any claims, other than civil conspiracy, which the Plaintiffs have asserted against Defendant Darlene Murray are hereby dismissed.

Plaintiffs also argued that the Court should grant Plaintiffs' Motion for Leave to Amend Complaint Pursuant to Rule 15 of the West Virginia Rules of Civil Procedure and permit Plaintiffs to add Jennings Excavating, Inc., as a party to this matter. In response, Defendants argued that Plaintiffs should not be permitted to amend their Complaint for a second time, at this late juncture, after the close of discovery.

Plaintiffs also argued that the Court should grant Plaintiffs' Motion to Compel Discovery and should order the Defendants to produce records possessed by Jennings Excavating, Inc., a non-party. In response, Defendants argued that Jennings Excavating, Inc., is not a party to this matter, and was not served with any proper request for documents or information pursuant to West Virginia law and therefore has no duty to produce records or information in this matter.

The Court held in abeyance any further rulings regarding *Defendants' Motion for Summary Judgment*. Likewise the Court held in abeyance its rulings on *Plaintiffs' Motion for Leave to Amend Complaint Pursuant to Rule 15 of the West Virginia Rules of Civil Procedure*, and *Plaintiffs' Motion to Compel Discovery*.

MEDIATION ORDER

Upon consideration of the parties' ability to resolve a number of the pending claims through argument and negotiation during the October 6, 2014 Motions Hearing, this Court has determined that mediation would be beneficial and prudent. Accordingly, the Court **ORDERS** that the parties engage in mediation.

Mediation shall be conducted by the Honorable Russell M. Clawges, Jr. as Resolution Judge and shall be scheduled and concluded within ninety (90) days of entry of this Order, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The parties shall contact the Resolution Judge for the purpose of scheduling.

The Circuit Clerk is directed to send a certified copy of this Order to the following counsel of record upon its entry:

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The Honorable Russell M. Clawges, Jr.
Resolution Judge
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Suite 2100
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S/D 3/25/15
WCB
ECR
Honorable R.M. Clawges
Business Ct. Divis

Entered this 20 day of March, 2015.



Presiding Judge Paul T. Farrell

Entered: MARCH 25, 2015

Betsy Castle, Clerk

by: Lisa Lushman, Deputy

A TRUE COPY:

ATTEST: S/BETSY CASTLE
CLERK OF THE CIRCUIT COURT

By: Lisa Lushman Deputy