

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 5:00
BUSINESS COURT DIVISION

EZRA SCHOOLCRAFT,

Plaintiff,

v.

Civil Action No. 22-C-910

Presiding Judge: Joseph K. Reeder

Resolution Judge: Paul T. Farrell

JEFFREY ISNER and
PBC ENERGY, LLC,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter came before the Court this ____ day of January 2024, upon Plaintiff's Motion for Partial Summary Judgment Against Defendant Jeffrey Isner. The Plaintiff, Ezra Schoolcraft, by counsel, Michael B. Hissam, Esq., and the Defendant, Jeffrey Isner, by counsel, Steven R. Ruby, Esq., have fully briefed the issues. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This cause of action stems from disputes between Plaintiff Ezra Schoolcraft (hereinafter "Plaintiff" or "Schoolcraft") and Defendant Jeffrey Isner (hereinafter "Defendant" or "Isner") concerning a series of oil and gas companies they formed (along with other individuals). See Def's Mem. for Summ. J., p. 1, 2. Relevant to the motion and to this civil action, those companies include Pillar Energy, LLC ("Pillar Energy"), Pillar

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Enterprises, LLC (“Pillar Enterprises”), PBC Energy, LLC (“PBC”), Pillar Fund 1, LLC (“PF1”), Pillar Fund 2, LLC (“PF2”), and Sycamore Midstream, LLC (“Sycamore”)(collectively, “the Companies”).

2. Plaintiff and Defendant each own 50% of PBC and are PBC’s only two employees. *See* Def’s Resp., p. 3; *see also* Pl’s Mem., p. 2. PBC has no operating agreement. *See* Pl’s Mem., p. 2
3. By way of background, in 2009, Plaintiff and Defendant incorporated their first oil and gas company, Pillar Energy. *See* Pl’s Mem., p. 2. Several years into their oil and gas operations, Plaintiff and Defendant formed PBC to acquire Blue Creek Gas Company (“Blue Creek”). *Id.* Plaintiff alleges Blue Creek makes up PBC’s only valuable oil and gas assets. *Id.* at 3.
4. PBC’s acquisition of Blue Creek came by way of an October 31, 2016 Stock Purchase Agreement (the “Blue Creek Agreement”) *See* Pl’s Mem., p. 3; *see also* Pl’s Mem., Exs. A and B. Via that agreement, the owner of Blue Creek seller-financed the \$1.6 million purchase price, and the agreement also imposed certain restrictions/negative covenants on what PBC could do with its finances. *See* Pl’s Mem., p. 3-4. Specifically, PBC could not make any payment to an affiliate of itself or make a distribution to its shareholders of more than \$50,000.00. *Id.* at 4.
5. Also in 2016, Pillar Energy acquired wells from Rubin Resources in a seller-financed transaction. *See* Pl’s Mem., p. 4; *see also* Pl’s Mem., Exs. A, B, and C. Under the agreement for the Rubin Resources transaction, the purchase price was \$4 million and Pillar Energy was to execute a promissory note for debt owed under the seller-financing. *See* Pl’s Mem., p. 4.

6. Relevant to this case are two promissory notes Defendant executed on behalf of Pillar Energy for the aforementioned Rubin Resources transaction: one executed July 7, 2016 (the “July Note”) and one executed October 6, 2016 (the “October Note”). *See* Pl’s Mem., p. 4-5. Under the July Note, Pillar Energy had the ability to defer any payments at its discretion, but was obligated to make a balloon payment of the unpaid amount after 15 years. *Id.* at 5. The October Note did not permit Pillar Energy to defer payments, except where holders of the Note agreed. *Id.* In July 2020, the holders of the October Note sent a letter to Pillar Energy claiming it was in default for failing to make certain payments. *Id.*
7. In an effort to resolve the alleged default, Pillar Energy executed an Amendment to Promissory Note and Agreement (the “Amendment”). *See* Pl’s Mem., p. 5; *see also* Pl’s Mem., Ex. A. As part of that agreement, Pillar Energy had to tender \$200,000.00 and make annual payments; however, Pillar Energy did not have the required \$200,000.00. *See* Pl’s Mem., p. 5-6. To cover this amount, Defendant transferred \$400,000.00 from PBC to Pillar Energy, and returned it months later. *Id.* at 6.
8. On October 20, 2023, Plaintiff filed the instant Plaintiff’s Motion for Partial Summary Judgment Against Defendant Jeffrey Isner, moving this Court to enter summary judgment in his favor as to what he characterizes as the “Complete Claims”: Count II (Breach of Fiduciary Duties Concerning PBC Energy, LLC); Count V (Derivative Claim for Breach of Fiduciary Duties on Behalf of PBC Energy, LLC); and Count XII (Statutory Claim for Dissociation of Jeffrey Isner From PBC Energy, LLC), and in his favor as to what he characterizes as the “Partial Claims” insofar as they relate to PBC Energy: Count VII

(Conversion with respect to PBC); and Count X (Unjust Enrichment with respect to PBC). *See* Pl's Mot., p. 1.

9. On a prior day, Defendant filed Defendant Jeffrey Isner's Response to Plaintiff's Motion for Partial Summary Judgment, arguing that this Court should deny Plaintiff's motion for partial summary judgment. *See* Def's Resp., p. 14.

10. On a prior day, Plaintiff filed his Reply in Support of Plaintiff's Motion for Partial Summary Judgment Against Defendant Jeffrey Isner.

11. The Court finds the issue is now ripe for adjudication.

STANDARD OF LAW

This matter comes before the Court upon a motion for partial summary judgment. Motions for summary judgment are governed by Rule 56, which states that "judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." W. Va. R. Civ. P. 56(c). West Virginia courts do "not favor the use of summary judgment, especially in complex cases, where issues involving motive and intent are present, or where factual development is necessary to clarify application of the law." *Alpine Property Owners Ass'n, Inc. v. Mountaintop Dev. Co.*, 179 W.Va. 12, 17 (1987).

Therefore, "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 3, *Aetna Cas. and Surety Co. v. Fed. Ins. Co. of New York*, 148 W.Va. 160, 171 (1963); Syl. Pt. 1, *Andrick v. Town of Buckhannon*, 187 W.Va. 706, 421 S.E.2d 247 (1992); Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52 (1995). A

motion for summary judgment should be denied “even where there is no dispute to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom.” *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 59 (internal quotations and citations omitted).

However, if the moving party has properly supported their motion for summary judgment with affirmative evidence that there is no genuine issue of material fact, then “the burden of production shifts to the nonmoving party ‘who must either (1) rehabilitate the evidence attacked by the movant, (2) produce additional evidence showing the existence of a genuine issue for trial or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f).’” *Id.* at 60.

CONCLUSIONS OF LAW

Here, Plaintiff seeks summary judgment in his favor as to what he characterizes as the “Complete Claims”: Count II (Breach of Fiduciary Duties Concerning PBC Energy, LLC); Count V (Derivative Claim for Breach of Fiduciary Duties on Behalf of PBC Energy, LLC); and Count XII (Statutory Claim for Dissociation of Jeffrey Isner From PBC Energy, LLC), and in his favor as to what he characterizes as the “Partial Claims” insofar as they relate to PBC Energy: Count VII (Conversion with respect to PBC); and Count X (Unjust Enrichment with respect to PBC). *See* Pl’s Mot., p. 1.

The Court will take the issues up in turn.

I. The “Complete Claims”

a. Count II (Breach of Fiduciary Duties Concerning PBC Energy, LLC)

First, the Court analyzes the request for summary judgment as to Count II. Plaintiff alleges Defendant breached the fiduciary duties he owed to Plaintiff by deriving personal profit and advantage from PBC which he did not permit Plaintiff to share in and by freezing Plaintiff

out of PBC. *See* Pl's Mem., p. 9. Plaintiff avers there is no genuine issue of material fact remaining as to this count, pointing to evidence in the record in the form of Defendant Isner's deposition wherein he admitted that he stopped making allegedly guaranteed payments to Plaintiff from PBC, while making the payments to himself. *Id.* at 10. Plaintiff also argues that Isner acknowledged he makes "PBC decisions" based on what is beneficial to his own personal tax situation, and not the finances of Plaintiff. *Id.*

On the other hand, Defendant argues that under West Virginia Code §31B-4-409(c), the duty of care "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law". W. Va. Code §31B-4-409(c). *See* Def's Resp., p. 3. Further, Defendant avers that he stopped making the aforementioned payments, which have also been referred to as payments made to him as an employee, on the advice of counsel after Plaintiff was no longer active in the company, and that in so doing, his actions were not "grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law". *Id.* at 3-4. Similarly, Defendant contends that deciding against an annual distribution to cover his and Plaintiff's taxes is not "grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law", and in fact, in the history of the company, tax distributions have only occurred in 2017 and 2020. *Id.* at 4. Additionally, Defendant points out that §31B-4-404(c)(6) requires the consent of all members for interim distributions, giving him (and Plaintiff) the right to decide whether to agree to a distribution to cover tax liability for a given year. *Id.* Finally, Defendant argues that his removal of Plaintiff from the company's bank accounts access for a period of time was "grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law", as he took this action upon the advice of legal

counsel and the Companies' advisory board to prevent Plaintiff's ability to "loot" the bank accounts. *Id.* at 5.

Taking into consideration all of the foregoing, the Court cannot conclude no genuine issue of material fact exists. As stated, under West Virginia Code §31B-4-409(c), the duty of care "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law". W. Va. Code §31B-4-409(c). Although acting on the advice of counsel is not an absolute affirmative defense, acting upon the advice of counsel the company advisory board, individuals who are not named in this litigation, is a showing against "grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law". Defendant's position, with record evidence in support, is that Plaintiff declared he wanted out of the Companies, drastically reduced his level of communication and coordination with Defendant, and refused to resume his prior level of participation. See Def's Resp., p. 1. A jury may conclude that under the circumstances, such conduct was reasonable, or certainly not rising to the level of gross negligence. For this reason, the Court concludes that genuine issue of material fact remains regarding Count II. The motion is DENIED as to Count II.

b. Count V (Derivative Claim for Breach of Fiduciary Duties on Behalf of PBC Energy, LLC)

Next, the Court examines Count V. In addition to a claim of breach of fiduciary duty against Plaintiff himself, Plaintiff alleges in Count V that Defendant breached fiduciary duties he owed to PBC. As stated, Plaintiff and Defendant are each 50% owners of PBC. See Def's Resp., p. 3.

Plaintiff argues that Defendant breached said fiduciary duties by transferring money from PBC to Pillar Energy, risking breaching the Blue Creek Agreement, which prohibits payments to PBC's affiliates. *See* Pl's Mem., p. 12; *see also, supra*, ¶¶4-7.

On the other hand, Defendant argues Plaintiff has not produced evidence of harm to PBC, including with regard to the certain loans from PBC to Pillar Energy that were violative of the Stock Purchase Agreement between Pillar Energy, Steve Rubin, and Blue Creek Gas Company. *See* Def's Resp., p. 6-7.

A derivative claim is an action brought on behalf of a company to recover for harm to the company. *Manville Pers. Inj. Settlement Tr. v. Blankenship*, 749 S.E.2d 329, 335 (2013); W. Va. Code §31B-11-1101.

A member of a limited liability company is required by the duty of loyalty to "account to the company and hold as trustee for it any property" and to "refrain from dealing with the company...as or on behalf of a party having an interest adverse to the company." W. Va. Code §31B-4-409(b). Further, under West Virginia Code §31B-4-409(c), the duty of care "is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law". W. Va. Code §31B-4-409(c).

Here, the Court considers that Defendant has proffered evidence that no harm was incurred, the risk was justified because PBC would have "gone down with" Pillar Energy if Pillar Energy were to have gone under, and that Isner was authorized to execute the October 2016 Note. These considerations are for the jury to consider. Like the Court concluded for Count II, here, the jury could conclude that Defendant's actions were reasonable. The Court cannot conclude that no genuine issue of material fact remains. The motion must be DENIED as to Count V.

c. Count XII (Statutory Claim for Dissociation of Jeffrey Isner From PBC Energy, LLC)

Next, the Court considers Count XII (Statutory Claim for Dissociation of Jeffrey Isner From PBC Energy, LLC). *See* Pl's Mem., p. 13. Plaintiff argues summary judgment should be granted as to this cause of action because the record evidence demonstrates that Defendant has committed all the statutory prerequisites that enable this Court to dissociate him from PBC by hiding money, transferring money he knew risked the agreement under which PBC acquired its primary assets, and breaching the duties owed to Plaintiff and PBC. *Id.* On the other hand, Defendant opposes dissociation. *See* Def's Resp., p. 13. Defendant argues there is no conduct that would justify expelling him from PBC or dissolving PBC, making arguments he made as to the previous counts discussed in this order. *Id.* at 14. Defendant argues if the Court determines Plaintiff is entitled to receive his monthly salary payments from PBC or to be listed as an authorized user on the company's bank accounts, in an order that relief, and that this Court should fashion less drastic remedies. *Id.*

West Virginia Code §31B-6-601 governs events causing an LLC member's dissolution. West Virginia Code §31B-6-601(6) provides that a member is dissociated from a limited liability company upon the occurrence of any of the following events:...(6) On application by the company or another member, the member's expulsion by judicial determination because the member: engaged in wrongful conduct that adversely and materially affected the company's business; willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or other members under [§31B-]4-409; or engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member. W. Va. Code Ann. § 31B-6-601 (West).

Just as the Court found above that genuine issue of material fact remains as to Plaintiff's claims that Defendant breached a fiduciary duty owed, this Court must also conclude that summary judgment cannot be found in Plaintiff's favor here. The Court considers the fact that as that the transfer of certain monies from PBC to Pillar Energy risked violating a contract with Steve Rubin, that Steve Rubin is aware of the loans and has never declared a breach of the Stock Purchase Agreement. *See* Def's Resp., p. 2, 7. The Court cannot conclude that no genuine issue of material fact remains that Defendant has done anything that has adversely and materially affected the company's business justifying expulsion under W. Va. Code § 31B-6-601 under the facts presented.

Further, the Court considers the fact that Defendant acted on the advice of Advisory Board members and counsel when assessing Plaintiff's involvement and stopping the salary payments. *See* Def's Resp., p. 1. The Court also considers the fact that the parties dispute Plaintiff's lack of involvement – whether Plaintiff was frozen out and cannot participate or whether Plaintiff chose not to participate and stated he wanted out. The Court considers record evidence of Plaintiff stating he wanted to leave the companies and would not be working at the same level of participation in the companies. *See* Def's Mem. for Mot. for Summ. J., p. 7-9 (citing deposition testimony of Isner, Pat Graney, and Plaintiff, and email correspondence and a recorded meeting). Therefore, in light of the foregoing record evidence, the Court cannot conclude that no issue of fact remains that Defendant willfully or persistently committed a material breach of a duty owed. The motion is denied as to Count XII.

II. The "Partial Claims" insofar as they relate to PBC Energy

a. Count VII (Conversion with respect to PBC)

With regard to the “Partial Claims”, Plaintiff first requests summary judgment as to Count VII insofar as it relates to PBC Energy. Plaintiff contends that this conversion claim is “based on Defendant Isner’s improper acts of dominion over PBC and the benefits derived from it”. See Pl’s Mem., p. 14. Specifically, Plaintiff argues the following conduct: Defendant’s ceasing to pay Plaintiff the monthly payments, and controlling the financials, including considering only his own financials and not Plaintiff’s and denying Plaintiff access to PBC bank accounts. *Id.* Defendant argues this count must fail as Plaintiff has not alleged that Defendant unlawfully took possession of any personal property belonging to him. See Def’s Resp., p. 12. Defendant also reiterates that if Plaintiff is deemed to be entitled to monthly salary payments or tax distributions, the money he seeks would be with PBC and recovered from PBC. *Id.*

Plaintiff and Defendant both cited *Rodgers v. Rodgers*, 184 W. Va. 82, 399 S.E.2d 664 (1990) in support of West Virginia’s definition of conversion. “Any distinct act of dominion wrongfully exerted over the property of another, and in denial of his rights, or inconsistent therewith, may be treated as a conversion and it is not necessary that the wrongdoer apply the property to his own use. And when such conversion is proved the plaintiff is entitled to recover irrespective of good or bad faith, care or negligence, knowledge or ignorance.” Syl. Pt. 17, *Rodgers v. Rodgers*, 184 W. Va. 82, 399 S.E.2d 664 (1990) citing Syl. Pt. 3, *Pine & Cypress Mfg. Co. v. American Eng’g & Constr. Co.*, 97 W.Va. 471, 125 S.E. 375 (1924).

Further, “[t]he tortious or unlawful taking of personal property, and the exercise of ownership and dominion over it, against the consent of the owner is, in law, a conversion of the property[.]” *Mountaineer Fire & Rescue Equip., LLC v. City Nat’l Bank of West Virginia*, 244 W.Va. 508, 854 S.E.2d 870, 886 (W. Va. 2020) (quoting Syl. pt. 1, *Arnold v. Kelly*, 4 W. Va. 642

(1871)); see also footnote 11, *Jordan v. Jenkins*, 245 W. Va. 532, 545, 859 S.E.2d 700, 713 (2021).

Plaintiff has not presented evidence of Defendant unlawfully possessing any personal property belonging to him. Plaintiff has alleged wrongful control of the parties' shared business entity (each being a 50% owner). The Court has concluded above that there are issues of fact related to the Plaintiff's participation in the aforementioned shared business. There are issues of fact regarding whether Defendant has controlled the business and frozen Plaintiff out of it, or whether Plaintiff has voluntarily stepped away or reduced his level of participation in the business, leaving Defendant, the only other owner and employee of PBC, to run the business of the company. The Court agrees with Defendant that the proper remedy regarding any monthly payments found to be awarded to Plaintiff would be properly recovered from PBC, not from Defendant personally. *See* Def's Resp., p. 12. The Court finds Plaintiff is not entitled to summary judgment on Count VII. The motion is DENIED as to Count VII.

b. Count X (Unjust Enrichment with respect to PBC)

Also with regard to the "Partial Claims", Plaintiff also requests summary judgment as to Count X insofar as it relates to PBC Energy. Plaintiff argues in support of this unjust enrichment claim that Defendant received payments from PBC that were not provided to Plaintiff, and that Defendant made financial decisions based only on his own personal finances, and not Plaintiff's. *See* Pl's Mem., p. 15. Defendant argues that although he caused PBC to discontinue Plaintiff's salary payments, PBC, not Defendant, was the payor of the salaries. *See* Def's Resp., p. 13. Defendant also avers that there is no evidence that Defendant ever received a tax distribution without making an equivalent distribution to Plaintiff. *Id.*

The West Virginia Supreme Court of Appeals has held that a benefit unjustly enriches a party where it would be "inequitable and unconscionable" for them to retain it. *Realmark Devs., Inc. v. Ranson*, 208 W. Va. 717, 721, 542 S.E.2d 880, 884 (2000); *see also Antero Res. Corp. v. L&D Invs., Inc.*, No. 20-0964, 2022 WL 1222944, at *12 (W. Va. Apr. 26, 2022).

The Court notes Plaintiff has not proffered evidence that Defendant ever received a tax distribution without making an equivalent distribution to Plaintiff. The Court also considers, as discussed earlier in this order, that the decision to make such a distribution needed consent of both members. If Defendant caused PBC to discontinue Plaintiff's salary payments, PBC, not Defendant, was the payor of the salaries. *See Def's Resp.*, p. 13. The money is retained by PBC and thus, Defendant would not be unjustly enriched by this property. The Court finds Plaintiff is not entitled to summary judgment as to the unjust enrichment count. The motion is DENIED as to Count X.

CONCLUSION

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that Plaintiff's Motion for Partial Summary Judgment Against Defendant Jeffrey Isner is hereby **DENIED**.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 17 day of January 2024.

1/23/2024
J. Ruby
M. Thosson
Bus Ct

JUDGE JOSEPH K. REEDER
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

Order Denying Plaintiff's Motion for Partial Summary Judgment

