

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ETHIDIUM HEALTH SYSTEMS, LLC,	:	
	:	CIVIL ACTION
	:	
v.	:	
	:	
TAKE CARE HEALTH SYSTEMS, LLC,	:	NO. 06-3061
ET AL.	:	

ORDER

Ethidium Health Systems, LLC, filed a complaint in this court against defendants Take Care Health Systems, LLC, Hal F. Rosenbluth, David A. Twersky, Peter K. Miller, Patrick Lucas, and Daniel P. Spring alleging that Take Care infringed on Ethidium's copyrights and misappropriated Ethidium's trade secrets.¹ Jurisdiction over that complaint was based on 28 U.S.C. § 1331 (federal question jurisdiction), § 1338 (jurisdiction over copyright cases), and § 1367 (supplemental jurisdiction).

Before me now is Ethidium' Motion for a Temporary Restraining Order and Preliminary Injunction, filed on October 26, 2006, enjoining defendants Rosenbluth and Twersky from breaching their fiduciary duty and usurping control of Ethidium from the minority shareholders.² After hearing oral argument and reviewing the complaint, and the motion and all documents

¹Defendants Rosenbluth and Twersky have also filed a state court complaint against Ethidium and Matias Klein, the President and Chief Technology Officer of Ethidium. Klein is also a director and a shareholder of Ethidium. The state court complaint is a securities fraud action against Klein and a derivative case on behalf of Ethidium for Klein's continued breaches of fiduciary duty and mismanagement and waste of company assets.

² Plaintiff has also filed a Motion for Preliminary Injunction requesting that I order defendants to refrain from developing, distributing, using, offering for sale, or selling their infringing and competing electronic medical records software system. That motion is not at issue in this order.

submitted by the parties,³ I hold that this court has no jurisdiction over this motion.⁴ For this court to exercise supplemental jurisdiction, the corporate governance issues must be “so related to claims in the action *within such original jurisdiction* that they form part of the same case or controversy.” 28 U.S.C. § 1367 (2006) (emphasis added). The claims in Ethidium’s complaint within the original jurisdiction of this court are: (1) copyright infringement; (2) contributory copyright infringement; and (3) misappropriation of trade secrets. Although the dispute is between the same parties, the corporate governance issues do not form the same case or controversy as the copyright infringement allegations.

Plaintiff argues that the current motion forms the same case or controversy as Count VI of the complaint, a breach of fiduciary duty claim against Rosenbluth and Twersky. This court’s jurisdiction over Count VI of the complaint is not at issue here. Count VI of the complaint is a state law cause of action and the instant action must be related to those causes of action within the original jurisdiction of the court. I cannot exercise supplemental jurisdiction over a state law claim that is only related to the federal law claims through its similarity to a related state law claim. The additional state law claim must also have an independent basis for supplemental jurisdiction; it must also form the same case or controversy as the federal law claims. Therefore, under the plain language of § 1367, I have no jurisdiction over this motion.

Plaintiffs further argue that the current motion forms the same case or controversy as their original complaint because if I do not grant their TRO, the company will be dissolved and the underlying cause of action will be essentially moot. Regardless of the veracity of this assertion,

³ No testimony was presented.

⁴ “Lack of subject matter jurisdiction may be raised by the court sua sponte at any time.” Mosch v. Brown, 2006 U.S. Dist. LEXIS 72079 at *6 (E.D. Pa. 2006).

it does not create jurisdiction in this court. Finally, the subject matter of the current motion does not fall under federal law and there is no diversity.⁵

Despite this court's lack of subject matter jurisdiction, I have also considered the merits of Ethidium's motion. "A party seeking a preliminary injunction must show: (1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." Kos Pharm., Inc. v. Andrx Corp., 369 F.3d 700, 708 (3d Cir. 2004).

Here, based on the record before me, Ethidium has not offered a sufficient factual basis to show a likelihood of success on the merits. Ethidium requests that I enjoin the defendants from holding a special meeting and removing two minority shareholders from office. Majority shareholders have certain duties, including a fiduciary duty to the corporation and to minority shareholders. In re Reading Company, 711 F.2d 509, 517 (3d Cir. 1983). As defendants mentioned in their argument in front of me, however, "The right to vote is basic and fundamental to most shares of stock and is independent of any right that the corporate entity possesses." Reifsnyder v. Pittsburgh Outdoor Advertising Co., 173 A.2d 319, 322 (Pa. 1961). As shareholders, Rosenbluth and Twersky have a right to call a meeting and a right to vote their shares. I will not interfere with that right.

⁵ According to Ethidium's complaint, Ethidium is a Pennsylvania limited liability corporation with its principal place of business in Pennsylvania. Defendants Rosenbluth and Twersky both reside in Pennsylvania.

Therefore, on this 27th day of October 2006, it is ORDERED that plaintiff's motion is DENIED.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.