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

NOLU PLASTICS, INC.,	:	
Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
VALU ENGINEERING, INC., et al.,	:	
Defendants.	:	**No. 04-5149**
	:	

MEMORANDUM AND ORDER

Schiller, J. **March 21, 2005**

Plaintiff Nolu Plastics, Inc. ("Nolu") brings this declaratory judgment action against Defendants Valu Engineering, Inc. ("Valu") and Stuart J. Ledingham ("Ledingham") and also seeks sanctions against Ledingham for civil contempt. Following an evidentiary hearing on January 26, 2005, and pursuant to Federal Rule of Civil Procedure 52(a), the Court now enters the following Findings of Fact and Conclusions of Law.[1]

I. FINDINGS OF FACT

A. The Parties

This case represents the most recent chapter in the long-running drama between Nolu and

[1] The Court ordered an evidentiary hearing to conclude this action efficiently. (R. at 3); *see also* FED. R. CIV. P. 57 (2004) ("The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar."). As the parties have not requested a jury trial on these issues, the Court will treat the January 26, 2005 evidentiary hearing as a non-jury trial on the merits. *See Wajda v. Nat'l Elevator Indus. Pension Plan*, Civ. A. No. 96-7545, 1996 WL 755416, at *1, 1996 U.S. Dist. LEXIS 19700, at *1 (E.D. Pa. Dec. 30, 1996) (entering findings of fact and conclusions of law after "evidentiary hearing/non-jury trial"); *Phila. Newspapers, Inc. v. Newspaper & Magazine Employees Union*, Civ. A. No. 87-4273, 1987 WL 15430, at *1, 1987 U.S. Dist. LEXIS 7228, at *1 (E.D. Pa. Aug. 7, 1987) (entering findings of fact and conclusions of law after evidentiary hearing on declaratory judgment action).

Valu, two closely-held corporations which manufacture and sell industrial parts and equipment. On October 31, 1999, Nolu and Valu merged and began operating as Solus Industrial Innovations, LLC ("Solus"). (R. Pl.'s Ex. 3 at 1 (Arbitration Award).) At that time, Ledingham was the principal shareholder of Valu and Christopher Mellor ("Mellor") was the principal shareholder of Nolu. (*Id.*)

To effectuate the merger, the parties signed several governing agreements. (*Id.* at 2.) They executed an Operating Agreement, which set out Solus's corporate structure, and a Contribution Agreement, which memorialized each party's contribution of assets to Solus. (R. Pl.'s Ex. 1 (Operating Agreement), Pl.'s Ex. 21 (Contribution Agreement).) Under the Operating Agreement, Mellor and Ledingham were to be members of Solus holding equal ownership interests and were to serve as Solus's two original managers. (R. Pl.'s Ex. 1; *see also* R. at 67.) A separate Employment Agreement made Ledingham Solus's CEO. (R. Pl.'s Ex. 18 (Employment Agreement).) Mellor died on November 26, 2000, leaving his ownership interest in Solus to his widow, Debbie Mellor. (R. Pl.'s Ex. 3 at 2.) R. Michael Rice filled Mellor's position as the second manager of Solus, while Ledingham assumed Mellor's duties as president of Solus in addition to his duties as CEO. (*Id.* at 2-3.)

After Mellor's death, the business relationship between the parties deteriorated. (R. at 43-44.) In August of 2003, Nolu offered $7.5 million to Valu for its interest in Solus, thereby attempting to sever that relationship. (*Id.* at 44; *see also* R. Pl.'s Ex. 3 at 14-15.) Ledingham rejected Nolu's offer, leading Nolu to trigger the "buy-sell provision" of Solus's Operating Agreement by offering to buy Valu's interest in Solus for $7 million. (R. Pl.'s Ex. 3 at 15.) The buy-sell provision was a "divorce" provision designed to allow the parties to walk away from their business relationship with "total peace." (R. at 43.) Once triggered, the buy-sell required

Ledingham to decide whether to sell Valu's interest in Solus for $7 million or to buy Nolu's interest in Solus at that price. (R. Pl.'s Ex. 1 § 10.) Ledingham, however, rejected both options. (R. at 44-45.)

B. The Arbitration Before the Honorable Arlin Adams

On March 30, 2001, prior to Nolu's attempt to exercise the buy-sell provision, Ledingham initiated an American Arbitration Association ("AAA") arbitration against Nolu pursuant to a compulsory arbitration clause in Solus's Contribution Agreement. (R. Pl.'s Ex. 3 at 12, Pl.'s Ex. 21 § 10.10.) Ledingham claimed that Nolu's asset contributions to Solus were unsaleable and forced Solus to go into forbearance under the loan agreement with its bank. (R. at 65, 69.) Nolu, in turn, asserted counterclaims against Ledingham for his breach of his fiduciary duties and his Employment Agreement. (R. Pl.'s Ex. 3.) After August 2003, Nolu also argued that Valu and Ledingham breached the buy-sell provision of the Operating Agreement. (*Id.*)

On July 15, 2004, the Honorable Arlin Adams ("the Arbitrator") issued an award and order ("the Award"). (*Id.*) The Arbitrator found that Nolu breached the Contribution Agreement between the parties and that Ledingham violated his Employment Agreement and his fiduciary duties to Solus. (*Id.* at 16-17.) In addition, the Arbitrator found that Ledingham breached his obligations under the Operating Agreement's buy-sell provision. (*Id.* at 17; *see also* R. Pl.'s Ex. 1 § 10.1.) Accordingly, paragraph seven of the Award ordered that:

> Ledingham will be given 30 days from the day of this opinion and order to agree in writing to pay to NOLU, as provided in § 9.3 [of] the Operating Agreement, $7.0 million for NOLU's share of Solus in exchange for receiving from the Mellor interest any and all documents necessary to transfer all their interest in Solus. If Ledingham does not exercise the opportunity to purchase NOLU's interest within the 30-day period, Mellor [or NOLU] shall have the right to purchase Valu's interest in Solus for a consideration of $7.0 million, in exchange for receiving from Ledingham any

> and all papers necessary to convey Ledingham's interest in Solus and to sign all resignations, releases and other documents necessary to effectuate a transfer.

(R. Pl.'s Ex. 3 at 17-18.) Ledingham elected not to exercise his option to purchase Nolu's interest in Solus. (R. at 54.) Subsequently, on September 13, 2004, Nolu notified Ledingham and Valu that Nolu had decided to exercise its option to purchase Valu's interest in Solus. (R. Pl.'s Ex. 12 (Letter from Bob Pincus to Stuart Ledingham dated Sept. 13, 2004).)

C. Nolu's Petition to Confirm the Arbitration Award

On September 13, 2004, Nolu also filed a Petition with this Court to, inter alia, confirm its right under the Award to purchase Valu's interest in Solus. *See Nolu Plastics Inc., v. Valu Eng'g, Inc.*, Civ. A. No. 04-4325, 2004 WL 2314512, 2004 U.S. Dist. LEXIS 20416 (E.D. Pa. Oct. 12, 2004). Ledingham and Valu, however, refused to complete the buy-sell transaction at that time and claimed the Award was ambiguous. *Id.* Pending a decision on Nolu's Petition, the parties stipulated to a temporary restraining order ("TRO") that enjoined Defendants from "engaging in conduct or expending funds outside the ordinary course of Solus's business." (R. Pl.'s Ex. 4 (TRO).) On October 12, 2004, this Court resolved the Petition by issuing a Memorandum and Order that confirmed paragraph seven of the Award and directed Defendants to comply with that paragraph without further delay. *See Nolu Plastics*, 2004 WL 2314512, at *6.

D. The Buy-Sell Closing

Nine days after this Court's ruling on Nolu's Petition, the buy-sell transaction finally closed. (R. at 55.) On October 21, 2004, Ledingham and Valu executed a transfer of interest instrument and a promissory note, under which Valu transferred "all of its right, title and interest" in Solus to Nolu for a consideration of $7 million. (R. Pl.'s Ex. 6 (Closing Documents).) Nonetheless, on that date,

two additional issues arose that prevented the parties from achieving "total peace" (*see* R. at 43): (1) Ledingham contended that he was not required to resign as CEO of Solus; and (2) Ledingham and Valu attempted to reserve their rights to unpaid preferred returns from Solus.

1. *Ledingham's Refusal to Resign*

Although Ledingham relinquished all of Valu's interest in Solus at the closing, he refused to resign as CEO of Solus at that time. (R. Pl.'s Ex. 6; *see also* R. at 38.) Despite his testimony that he did not believe he would continue to act as CEO of Solus after Nolu took control of the company (R. at 93), Ledingham would not sign an employment resignation certificate that had been negotiated and approved by his counsel (*id.* at 38, 60). Instead, less than a week later, he initiated a separate AAA arbitration against Solus in Orange County, California. (R. Pl.'s Ex. 7 (Letter and Demand for Arbitration dated Oct. 26, 2004).) In this second arbitration action, he claims that the Award did not require him to resign as CEO and that Nolu terminated him without cause as of October 21, 2004. (*Id.*) Accordingly, he seeks severance from Solus under his Employment Agreement. (*Id.*; *see also* R. Pl.'s Ex. 18 § 5.3.)

2. *Preferred Returns from Solus*

Ledingham and Valu also claim that, despite receiving $7 million from Nolu for their interest in Solus, they are entitled to an additional $1.4 million in preferred returns that they should have received between 2000 and 2004. When Nolu and Valu merged in 1999, Mellor and Ledingham agreed that the two entities, as members of Solus, would each be entitled to $15,000 a month in the form of a preferred return on their respective investments. (R. at 67.) Because Valu was contributing more assets to the new entity than Nolu was, Mellor and Ledingham further agreed that Valu would be paid an additional preferred return of $25,000 a month for a period of five years. (*Id.*)

Starting in January of 2000, then, Solus began to pay these preferred returns to both Nolu and Valu. (*Id.* at 68.) The payments were suspended, however, in September of 2001 when Solus's bank notified Solus that it was in technical default of its tangible net worth covenant. (*Id.* at 69-70.) Solus entered into a forbearance agreement, from which it did not emerge until April 2004. (*Id.* at 70-71.) After Solus emerged from forbearance, it made only two more preferred return payments, one in August 2004 and one in September 2004. (*Id.* at 71.) Thus, on the date of the closing, Ledingham and Valu sent Nolu a letter in which they attempted to reserve their rights to the unpaid preferred returns. (*Id.* at 133.)

E. Ledingham's Unilateral Activities

Also in dispute is the propriety of Ledingham's dealings with Solus between the July 15, 2004 Award and the October 21, 2004 closing. During this time, Ledingham engaged in several financial transactions without the approval of Solus's Board of Managers. Robert Steinberg, who became interim chief financial officer ("CFO") of Solus on October 21, 2004, uncovered these transactions after conducting an investigation of Solus's financial records. (*Id.* at 22.)

First, in September of 2004, Ledingham executed an amendment to Solus's lease agreement. (*Id.* at 22, 27-28.) Ledingham signed this lease addendum in his dual capacities as CEO of Solus and president and owner of KBA Enterprises, LLC ("KBA"), Solus's landlord. (*Id.* at 83-84, 87.) The lease addendum called for an increase in Solus's rent of approximately $4,500 per month, based on Solus's occupation of an additional 5,718 square feet of rental space. (R. Pl.'s Ex. 9 (Addendum to Lease Agreement).) On September 10, 2004, Ledingham relied on the lease addendum to charge Solus approximately $13,500 in additional rent for September, October and November. (*Id.*; *see also* R. at 89.)

Second, Ledingham engaged in at least two unilateral transactions after this Court had issued a TRO enjoining him from "engaging in conduct or expending funds outside the ordinary course of Solus's business." (R. Pl.'s Ex. 4.) On October 20, 2004, Ledingham pre-paid himself rent for the month of December. (R. at 89-90.) The December rent included both Solus's base rent and the additional rent specified by the lease addendum. (*Id.*) On that same date, Ledingham also pre-paid himself two promissory notes owed by Solus. As part of Solus's forbearance agreement, Nolu and Valu had each contributed a note to Solus valued at $100,000. (*Id.* at 75.) Although these notes did not mature until December 26, 2004, Ledingham sought to ensure that both notes were paid before Solus's new owners assumed control. (*Id.* at 75, 97.)

II. CONCLUSIONS OF LAW

On November 4, 2004, Nolu commenced the instant action seeking: (1) a declaration that Ledingham has resigned as CEO and manager of Solus by operation of law and has not been terminated without cause; (2) a declaration that Ledingham and Valu no longer have rights to any cash distributions (i.e., preferred returns) from Solus; (3) sanctions against Ledingham for pre-paying the two promissory notes owed by Solus; and (4) sanctions against Ledingham for increasing Solus's rent and causing Solus to pre-pay its December rent. In light of the evidence presented, the Court now finds in favor of Nolu on the two declaratory judgment claims and in favor of Ledingham on the two claims for civil contempt and sanctions.

A. Declaratory Relief

1. *Standard of Review*

Under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, a district court has the power

to declare the rights of any interested party in certain circumstances. *State Auto Ins. Cos. v. Summy*, 234 F.3d 131, 133 (3d Cir. 2001). "Whether declaratory relief should be granted in an appropriate case is committed to the sound discretion of the trial court." *Main Line Paving Co. v. Bd. of Educ., Sch. Dist. of Phila.*, 725 F. Supp. 1349, 1357 (E.D. Pa. 1989) (*citing Bituminous Coal Operator's Ass'n, Inc. v. Int'l Union UMW*, 585 F.2d 586, 595-96 (3d Cir. 1978)). In determining the appropriateness of declaratory relief, the district court may consider several factors, including whether a declaratory judgment will resolve an uncertainty giving rise to a controversy, the convenience of the parties, the public interest, and the availability of other remedies. *See Terra Nova Ins. Co. v. 900 Bar, Inc.*, 887 F.2d 1213, 1224 (3d Cir. 1989) (citations omitted).

2. *Discussion*

As a threshold matter, the Court finds that granting a declaratory judgment is appropriate here. Defendants argue that the issues upon which Nolu seeks declaratory relief, i.e., Ledingham's resignation and Defendants' rights to preferred returns, should be resolved in arbitration pursuant to the compulsory arbitration provisions in the Employment Agreement and Contribution Agreement, respectively. (*See* R. Pl.'s Ex. 18 § 12.9, Pl.'s Ex. 21 § 10.10.) The present dispute, however, rests upon the interpretation of paragraph seven of the Arbitrator's July 15, 2004 Award (*see* R. Pl.'s Ex. 3 at 17-18), not the Employment Agreement or the Contribution Agreement. On October 12, 2004, this Court explicitly held that paragraph seven was unambiguous, confirmed it, and ordered Defendants to comply with its provisions "without further delay." *Nolu Plastics*, 2004 WL 2314512, at *6. There is therefore no need for yet another round of arbitration to resolve these issues. *See, e.g., Cent. Pa. Motor Carriers Conference, Inc. v. Local Union No. 773*, 226 F. Supp. 795, 798 (E.D. Pa. 1964) (holding that arbitration award was final, binding judgment enforceable

by court and that plaintiff would suffer irreparable harm if defendant were allowed to re-arbitrate). A declaratory judgment, moreover, is a suitable method of resolving the present dispute, because it will answer the lingering questions surrounding the buy-sell arrangement and obviate the need for further litigation. *See, e.g.*, *Main Line Paving*, 724 F. Supp. at 1357 (finding declaratory judgment appropriate where it resolved uncertainty giving rise to controversy and resulted in issue preclusion).

Turning to the merits of Nolu's claims for declaratory relief, the Court holds that under paragraph seven of the Arbitrator's Award, Ledingham was required to resign as CEO and Manager of Solus as part of the closing on the buy-sell transaction. Paragraph seven unambiguously states that Ledingham was to "sign all *resignations*, releases and other documents necessary to effectuate a transfer" of Valu's interest in Solus. (R. Pl.'s Ex. 3 at 17-18 (emphasis added).) Ledingham contends that the term "resignations" does not encompass resignations of employment, but rather was satisfied when Valu resigned as the limited-liability member of Solus and as the tax matter partner with the Internal Revenue Service. (R. at 74.) This argument fails. The Award did not require Debbie Mellor, holder of the "Mellor interest" in Solus, to provide analogous member resignations where applicable. (R. Pl.'s Ex. 3 at 17 (declining to mention any obligation to provide resignations on the part of the Mellor interest).) As the plain language of the Award required Ledingham alone to submit "resignations," this term applies only to position(s) which Ledingham held and which Debbie Mellor did not – namely, employment positions within the company. *See, e.g.*, *United Steelworkers of Am. v. Adbill Mgmt. Corp.*, 752 F.2d 138, 142 (3d Cir. 1985) (relying on plain language of arbitration award to determine its meaning). Ledingham's argument that the Arbitrator did not consider his Employment Agreement when drafting this language (*see* R. at 9) strains credulity, given that the Arbitrator determined that Ledingham breached that agreement (*see*

R. Pl.'s Ex. 3 at 16). Furthermore, Ledingham testified that he did not believe he would continue to act as CEO of Solus after Nolu took control of the company, which is conclusive evidence that even Ledingham understood the term "resignations" to apply to his employment with Solus. (*See* Tr. at 93.) Accordingly, the Court finds that Ledingham has resigned as CEO and manager of Solus by operation of law and has not been terminated without cause.

On that same date, Defendants also forfeited their rights to preferred returns from Solus. Paragraph seven of the Award plainly states that unless Ledingham chose to buy Nolu's interest in Solus, he had to relinquish his own "interest" in the company. (R. Pl.'s Ex. 3 at 17.) Solus's Operating Agreement defines "interest" as "the ownership interest as a Member in the Company or the economic interest as an Assignee." (R. Pl.'s Ex. 1 § 2.16.) Although the Operating Agreement provides for the payment of preferred returns, it specifies that these preferred returns are only available to "members" (*id.* §§ 2.26, 4.4(a)) and describes a "member" as "any person or entity admitted to the Company as a Member or Substituted Member *and who has not ceased to be a Member*" (*id.* § 2.19 (emphasis added)). Therefore, when Ledingham complied with paragraph seven by selling his "interest" in Solus, Valu by definition ceased to be a member of the company and ceased to have any rights in unpaid preferred returns. This interpretation of the Award is the only way to allow the parties to walk away from their relationship with "total peace," which was clearly their intention. (R. at 43); *see also Local 1199, Drug, Hosp. & Health Care Employees Union v. Brooks Drug Co.*, 956 F.2d 22, 26 (2d Cir. 1992) (upholding arbitrator's award where supported by extrinsic evidence of parties' intent). Accordingly, the Court holds that Defendants are

no longer entitled to unpaid preferred returns or any other member cash distributions from Solus.[2]

B. Civil Contempt and Sanctions

Nolu also asks that Ledingham be held in civil contempt and sanctioned for his alleged bad faith conduct following the July 15, 2004 Award and prior to the October 21, 2004 closing. Some of the transactions in question occurred on October 20, 2004, just one day before the closing and well after the issuance of the TRO which enjoined Ledingham from engaging in unilateral activities. (*See* R. Pl.'s Ex. 4.)

The Court finds that Ledingham's actions, albeit ill-advised, do not rise to the level of sanctionable conduct. Ledingham correctly points out that, in general, a TRO or a preliminary injunction is superceded by a final judgment on the merits. *See Ameron v. United States Army Corps. of Eng'rs*, 610 F. Supp. 750, 757 (D.N.J. 1985), *aff'd on reh'g as modified*, 787 F.2d 875 (3d Cir. 1986); *Bryfogle v. Carvel Corp.*, 666 F. Supp. 730, 735 (E.D. Pa. 1987). Technically, then, this Court's TRO of September 29, 2004 was extinguished on October 12, 2004, when a final judgment was entered on Nolu's Petition. *See Nolu Plastics*, 2004 WL 2314512, at *6 (resolving merits of Petition and directing Clerk of Court to "close this case").) Therefore, while Ledingham's activities were contrary to the TRO's purpose, i.e., to protect Solus's assets from self-dealing until the buy-sell transaction could be resolved, he cannot be held in contempt for violating a court order. Moreover, there is evidence that at least some of Ledingham's actions, although undertaken unilaterally,

[2] Notably, Ledingham could have preserved his employment position in the company as well as his ability to receive preferred returns by opting to buy Nolu's interest rather than sell Valu's interest in Solus. Ledingham had at least two opportunities to act as the buyer: first, in 2003, when Nolu triggered the buy-sell provision of the Operating Agreement, and second, in 2004, when the Arbitrator issued the Award. In fact, prior to the closing of the buy-sell transaction, it was suggested to Ledingham that he ought to act as the buyer in order to retain these rights. (Tr. at 101-02.) Nonetheless, Ledingham ultimately chose to sell.

actually benefitted Solus. For instance, Solus was paying interest on the two $100,000 notes of approximately 8.5%, which meant that Solus could save money by paying the notes early. (*See* R. at 77 (noting R. Michael Rice's observation that "there are substantial interest savings possible to Solus if it pays off the high interest rate notes").) Regardless, the record certainly does not establish sufficiently egregious self-dealing to justify the exercise of the Court's "inherent" power to sanction a litigant for bad faith conduct. *Cf. Chambers v. Nasco*, 501 U.S. 32, 35 (1991) (upholding sanction of district court made pursuant to inherent powers where defendants had practiced a fraud upon the court and used tactics of delay, oppression and harassment).

Accordingly, Ledingham will not be held in civil contempt and this Court will not impose sanctions.[3]

III. CONCLUSION

Therefore, judgment is entered in favor of Nolu and against Defendants on Nolu's claims for declaratory relief, and judgment is entered in favor of Ledingham and against Nolu on Nolu's claims for civil contempt and sanctions. An appropriate Order follows.

[3] Nevertheless, the Court will require Ledingham to reimburse Solus for the personal life insurance premiums that he caused Solus to pay him over the years. During the evidentiary hearing in the instant action, Ledingham admitted under oath that he owed Solus $100,000 for those premiums and promised to repay these funds to the company. (R. at 114-15.)

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Plaintiff,	:	**CIVIL ACTION**
	:	
v.	:	
	:	
VALU ENGINEERING, INC., et al.,	:	
Defendants.	:	**No. 04-5149**
	:	

ORDER

AND NOW, this **21st** day of **March, 2005**, upon consideration of the parties' Findings of Fact and Conclusions of Law, following an evidentiary hearing on the merits, and for the foregoing reasons, it is hereby **ORDERED** that:

1. A declaratory judgment is entered in favor of Plaintiff Nolu Plastics, Inc. ("Nolu") and against Defendant Stuart J. Ledingham ("Ledingham") on Count I of the Complaint. The Court declares that Ledingham has resigned as CEO and Manager of Solus by operation of law and has not been terminated without cause.

2. A declaratory judgment is entered in favor of Nolu and against Defendants Ledingham and Valu Engineering, Inc. ("Valu") on Count II of the Complaint. The Court declares that Ledingham and Valu have no rights to unpaid preferred returns or any other member cash distributions from Solus.

3. Judgment is entered in favor of Ledingham and against Nolu on Counts III and IV of the Complaint, i.e., Nolu's claims for civil contempt and sanctions.

4. Pursuant to his admission at the evidentiary hearing in this action, Ledingham must reimburse Solus in the amount of $100,000 for personal life insurance premiums paid

on his behalf.

5. The Clerk of Court is directed to close this case.

BY THE COURT:

Berle M. Schiller, J.