

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

DAVID H. MARION, Receiver for : CIVIL ACTION  
ROBERT L. BENTLEY, et al. :  
 :  
v. :  
 :  
FIRST DEVELOPMENT PROPERTIES, :  
INC., et al. : NO. 03-05914-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

September 20, 2005

Robert L. Bentley conducted an elaborate Ponzi scheme, utilizing his firms, Bentley Financial Services, Inc. and Entrust Group. Investors were bilked of hundreds of thousands of dollars. The Securities and Exchange Commission petitioned this court for the appointment of a receiver for Mr. Bentley and his organizations (Civil Action No. 01-5366), and David H. Marion was appointed Receiver. Mr. Marion has been engaged in extensive efforts to recover, for the benefit of the investors, assets which may have been illegally transferred or otherwise dissipated by Mr. Bentley.

In some instances, Mr. Bentley or his entities transferred money to persons or entities which were aware of the illicit source of the funds. In other instances, the transfers amounted to fraudulent conveyances, because they were made without consideration, or made at a time when the transferor was insolvent, or made for the purpose of defrauding creditors.

In the present case, Mr. Marion is suing a closely-held corporation, First Development Properties, Inc. ("FDP") and its principals Steven Cucinotti and Donna Cucinotti. The evidence at trial established that, in about 1997, Mr. Bentley and/or his entities transferred \$180,000 to Mr. Cucinotti as an investment in FDP, which was engaged in acquiring residential real estate either for resale or for rental income. In exchange for the \$180,000, Mr. Bentley received a 25% interest in FDP. As Receiver, Mr. Marion stands in the shoes of Mr. Bentley, and is the owner of a 25% interest in FDP.

The theory upon which plaintiff's complaint is based, and the legal theory pursued at trial, is that the transfer involved in this case was made at a time when Mr. Bentley and his entities were insolvent (presumably, because they had no legitimate assets, and had a legal obligation to make restitution to their investors).

This legal theory does not, in my view, withstand scrutiny. There is no contention, and certainly no evidence, that any of the defendants is chargeable with knowledge of the illicit source of Bentley's funds, or that the investment was made in order to defraud creditors. In exchange for the \$180,000 investment, Mr. Bentley received a 25% ownership interest in FDP - so far as the record shows, consideration which was entirely adequate at the time.

The evidence at trial was to the effect that the affairs of FDP were conducted - primarily by Mr. and Mrs. Cucinotti - with less than scrupulous attention to adequate record keeping. And the operations of FDP have not thus far produced any financial return to Mr. Bentley or his organizations. Maintenance costs, vacancies in rental units, and fluctuations in the real estate market seem to have made all of the participants in FDP regret their investments.

In my view, the plaintiff is entitled to pursue the remedies available to a minority shareholder alleging corporate mismanagement. When Mr. Marion was appointed Receiver, he obtained complete jurisdiction over all receivership assets. One of the assets was a 25% ownership interest in FDP, and that ownership interest included the right to pursue claims of corporate mismanagement. But counsel appear not to have focused on the question of the appropriate procedural vehicle for vindicating the rights of a minority shareholder. The present case purports to be a direct action by the Receiver against the corporation and two of its shareholders, seeking an accounting - not of the assets in the Receivership, but of the money which, four years earlier, had been used to purchase the assets. The evidence at trial makes clear that the defendants have adequately accounted for the money - it purchased a 25% interest in the corporation. Vindication of a minority shareholder's claims of

corporate mismanagement would presumably involve a derivative action, on behalf of the corporation.

Everyone agrees that a minority shareholder has a right to inspect the books and records of the corporation; and the evidentiary record makes it clear that, sooner or later, a complete audit of the corporate books should be obtained. The immediate disagreement between the parties is the proper allocation of the expense associated with such an audit. The parties may wish to consider avoiding further litigation by mutually arranging for such an audit, with the understanding that the results of the audit will demonstrate the proper allocation of its costs.

Alternatively, there is reason to believe that all parties recognize that an orderly liquidation of FDP would serve the best interests of all concerned.

An Order follows.

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INC., et al. : NO. 03-05914-JF

ORDER

AND NOW, this 20th day of September 2005, IT IS HEREBY  
ORDERED:

1. In his capacity as Receiver, plaintiff David H. Marion is the owner of 25% of the stock of First Development Properties, Inc.

2. The financial affairs of First Development Properties, Inc. are in such disarray that an audit of the books would be desirable.

3. Unless the parties settle their differences in some other fashion, they shall, within 30 days, jointly select an accounting firm or other professional to perform an audit of defendants' books and records. Initially, the costs of such audit shall be borne equally by plaintiff, on the one hand, and the defendants on the other. The ultimate allocation of the costs of the audit will be determined in light of the outcome of the audit.

4. Unless the foregoing arrangements can be achieved without further judicial intervention, counsel shall, within 60 days, file briefs addressing the legal issues referred to in the accompanying memorandum: the extent of a minority shareholder's rights, and the appropriate mechanism for vindicating such rights, and whether this court is an appropriate forum for determining such matters.

BY THE COURT:

/s/ John P. Fullam  
John P. Fullam, Sr. J.