

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON
BUSINESS COURT DIVISION

TRU-GIDE EDM, INC. f/k/a TUR-
GUIDE, INC.,

Case No. 14-2370-CK
Hon. Richard N. LaFlamme

Plaintiff,

v.

DENNIS WALKER, AMY
GEORGOPOOLOS, and WALKER EDM,

Defendant.

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OPINION AND ORDER GRANTING
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Background

Defendant Dennis Walker is a machinist in the field of Electro Discharge Machining (“EDM”). Walker previously operated Plaintiff, Tru-Guide, Inc. (“Tru-Guide”) as its sole stockholder. In December of 2010, Walker filed a bankruptcy petition under Chapter 7 of the U.S. Bankruptcy Code. On that date, all of Walker’s assets became property of the bankruptcy estate, which came under the control of Trustee Timothy J. Miller (“Bankruptcy Trustee”). Walker received a discharge from bankruptcy on March 15, 2011. On April 16, 2013, Robert Sutherby and Scott Cole purchased Walker’s Tru-Guide stock from the Bankruptcy Trustee. Meanwhile, Defendant Amy Georgopoolos formed Defendant Walker EDM, LCC (“Walker EDM”) in December of 2012, and

Dennis Walker began to work for Georgopoulos at Walker EDM in 2013. Walker's Chapter 7 bankruptcy proceeding is still ongoing.

Tru-Guide EDM's Complaint asserts a variety of claims that, taken together, allege (1) that Walker mismanaged Tru-Guide while operating the company under the supervision and control of the Bankruptcy Trustee, (2) that Georgopoulos assisted in and encouraged the mismanagement during that time, (3) and that Walker EDM conspired against and unfairly competed with Tru-Guide EDM following the Bankruptcy Trustee's sale of Tru-Guide.

Analysis

The "contemporaneous ownership rule," set forth in MCL 450.1492a requires that "the shareholder was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time." It is undisputed that Scott and Lee Cole, the sole shareholders of Plaintiff Corporation, were not shareholders at the time of the wrongs alleged in this case. Plaintiff claims that the contemporaneous ownership rule applies only when shareholders are bringing derivative suits and does not bar the corporation from bringing a direct action.

However, courts have consistently held the opposite. "As stated by the Court of Appeals, 'the rule is that, when stockholders are individually estopped from questioning wrongs done their corporation, they cannot redress the same wrongs through a suit brought directly by the corporation or derivatively, by themselves, for the corporation.'" *Koreyo Intern Corp v Hong*, 3 NYS3d 285(2014)(internal citation omitted). While Plaintiff argues that Defendants have cited no Michigan case law interpreting the Michigan statute in this way, it has produced no Michigan case law that interprets it differently. Additionally, the United States Supreme Court has dealt with this same issue and come to the same conclusion:

We are met with the argument, however, that since the present action is brought in the name of respondent corporation we may not look behind the corporate entity to the true substance

of the claims and the actual beneficiaries. The established law is to the contrary. Although a corporation and its shareholders are deemed separate entities for most purposes, the corporate form may be disregarded in the interests of justice where it is used to defeat an overriding public policy. In such cases, courts of equity, piercing all fictions and disguises, will deal with the substance of the action and not blindly adhere to the corporate form. Thus, where equity would preclude the shareholders from maintaining an action in their own right, the corporation would also be precluded.

Bangor Punta Operations, Inc v Bangor & AR Co, 417 US 703,713 (1974) (internal citations omitted).

Plaintiff is barred from maintaining the instant lawsuit because the real parties in interest, Lee and Scott Cole, who own 100% of the Tru-Guide EDM stock, were not shareholders at the time the alleged wrongs occurred. Because Scott and Lee Cole are prohibited by the contemporaneous ownership rule from bringing a derivative action against Defendants, they are also prohibited from bringing the same action as a direct action on behalf of the corporation. Therefore, Defendants' Motion for Summary Disposition is GRANTED.

IT IS SO ORDERED.

Date

/s/ Richard N. LaFlamme
Hon. Richard N. LaFlamme
Business Court Judge