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EDITORS-IN-CHIEF

Michael L. Rich, Esq.

973.889.4329

mlrich@pbnlaw.com

Charles J. Stoia, Esq.
973.889.4106
cjstoia@pbnlaw.com

Delaware Chancery Court Provides Roadmap for Asserting or Defending Claim of Usurpation of Corporate Opportunity

The Delaware Court of Chancery recently provided a tutorial on fiduciary duty and usurpation of corporate opportunity in a dispute between two members of a joint venture. (*In re Mobilactive Media*, C.A. No. 5725-VCP (Del. Ch., decided January 25, 2013)). The parties -- a former general counsel for a large telecommunications company and a United Kingdom company -- founded the joint venture as a vehicle for taking advantage of mobile marketing opportunities in North America. The joint venture agreement broadly provided that interactive video and advertising activities in North America by either joint venturer or their affiliates would occur exclusively through the joint venture. While starting with high hopes, the joint venture completed only two engagements. Meanwhile, the defendant acquired numerous companies within the mobile marketing industry. Eventually, the defendant went through a restructuring and transferred all of its assets to a newly formed Canadian company, which ultimately was sold for approximately $100 million. Plaintiff filed suit to recover for breach of contract and usurpation of corporate opportunity. Defendant sought dissolution. The Court found that defendant not only breached the joint venture agreement, but also violated its fiduciary duties by usurping corporate opportunities within the joint venture's line of business. The Court granted monetary relief based on the profits defendant unjustifiably received from participation in opportunities that should have been, but were not, offered to the joint venture.

New Jersey Assembly Introduces New Bill Invalidating Restrictive Covenants for Employees Eligible for Unemployment Benefits

Several sponsors introduced a new bill (A-3970) in the New Jersey Assembly on April 4, 2013 that limits enforcement of certain employment contracts of individuals eligible for unemployment compensation. It provides that qualifying employees "shall not be bound by any covenant, contract or agreement ... not to compete, not to disclose, or not to solicit." The law, if enacted, would apply prospectively only. The rationale is that workers laid off, downsized or terminated through no fault of their own, and thus able to collect unemployment benefits, should not be held to a restrictive covenant in a difficult job market. The bill is attracting wide criticism from the business community, which views it as a potential blow to employers trying to protect their businesses, customer bases, confidential information and trade secrets.

New York Business Court Holds Broad Release Language Precludes Claims for Fraud

A New York County Supreme Court judge, specially assigned to New York County's "business court," recently ruled that a release, which waived "any and all rights, claims, demands . . . whether known or unknown" operates to bar all claims covered by the release, even claims of fraud. In Kafa Investments, LLC, 2013 N.Y. Slip Op. 23034, plaintiffs were minority owners of a limited liability company that owned the Hotel on the Avenue ("Hotel OTA") located on Broadway in New York City. In March 2007, plaintiffs negotiated a redemption of their shares of Hotel OTA based upon a representative sale price of $125 million. In 2009, plaintiffs sued the controlling members of the Hotel OTA LLC alleging that the property was worth more than represented at the time of the redemption as evidenced by the fact that Hotel OTA was sold for $201 million five months after payment to plaintiffs. Plaintiffs alleged that the controlling members misrepresented the value of Hotel OTA. Plaintiffs alleged breach of fiduciary duty, fraudulent inducement and intentional misrepresentation. In granting summary judgment dismissing all claims, the judge ruled that all claims were barred by the broad language of the release in the Redemption Agreement, including any claims alleging fraud. The court stated that a party that releases a fraud claim can challenge that release as fraudulently induced only if the party can identify "a separate fraud from the subject of the release." The court noted that plaintiffs were sophisticated entities and the Hotel OTA Redemption Agreement was designed to terminate the parties' relationship.

New Jersey Federal Court Rules Business Fraud Claims Must be Pled with Particularity

In Duraport Realty Three, LLC v. Trinity Products, Inc., Civil Action No. 12-cv-2305, (D.N.J. 2013), Judge Dennis Cavanaugh dismissed a fraud claim in an action involving a contract to utilize specialized industrial equipment and trained laborers relating to the unloading and handling of massive steel pilings. After Trinity refused to make certain payments under the contract, Duraport sued alleging breach of contract and fraud. Trinity moved to dismiss the fraud claim. Judge Cavanaugh noted that a valid fraud claim must specify "the who, what, when, where and how" regarding the fraudulent statements. In granting the motion to dismiss, the court ruled that Duraport's complaint failed to "identify who made what alleged

alleged representation was made."

Appellate Division Upholds Trial Court's Finding of No "Apparent Authority" and Award of Attorneys' Fees for Frivolous Litigation

In Shazo v. Greentree Closet Design, L-6495-10, the New Jersey Appellate Division upheld a trial court's ruling that plaintiff failed to present sufficient proofs to establish that Defendants National Custom Installation ("NCI") and its principal, Jeff Mattingly, were responsible for the conduct of bankrupt defendants Greentree Closet Design ("Greentree") and Paul Santos. Plaintiff provided a deposit to Greentree and Santos to perform construction work on plaintiff's home. Greentree and Santos never performed the work. Plaintiff sued NCI and Mattingly alleging that Greentree and Santos acted as agents for NCI and Mattingly. Plaintiff presented testimony at trial about a meeting at Greentree's place of business whereby Plaintiff was introduced to Mattingly as Santos' partner. Plaintiff admitted that Mattingly did not respond to the introduction and that Mattingly's only involvement in the conversation was Mattingly's acknowledgment that the project would take six to eight weeks to complete. In finding that these facts did not prove that Santos was an agent of Mattingly, the Court stated that "every apparent authority case focuses on whether the principal held out the agent such that a 'person of ordinary prudence' is justified" in relying on the agent. The Court noted that apparent authority cannot be established solely by the conduct of the agent. Because plaintiff's proofs were so lacking, the appellate court upheld the trial judge's award of counsel fees as a sanction for pursuing frivolous litigation.