



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

NICHOLAS A. RUGGERIO,)
)
Plaintiff,)
)
v.) Civil Action No. 18961-NC
)
ESTATE OF MICHAEL A. POPPITI, SR.,)
EDMUND F. LYNCH, ADM CTA,)
CIRO C. POPPITI, MICHAEL A.)
POPPITI, JR., SANDY POPPITI and)
CRICKLEWOOD ASSOCIATES, L.P.,)
)
Defendants.)

MEMORANDUM OPINION

Submitted: June 16, 2005
Decided: October 5, 2005

Nicholas A. Ruggerio, Wilmington, Delaware, *Plaintiff Pro Se*

Jeffrey M. Weiner, Esquire, FOX ROTHSCHILD LLP, Wilmington, Delaware, *Attorney
for Defendants*

PARSONS, Vice Chancellor.

This action relates primarily to two Delaware entities, Cricklewood Associates, L.P. (“Cricklewood” or the “Partnership”) and ENAR, Inc., involved in the purchase, development and sale of real estate. In the mid-1990s plaintiff, Nicholas Ruggerio, participated in the creation of the two entities with his longtime friend, defendant Michael A. Poppiti, Sr. (“Poppiti, Sr.”). Until his death on August 15, 1999, Poppiti, Sr. largely controlled the two entities with members of his family. Ruggerio contends that Poppiti, Sr. and the other defendants, Ciro Poppiti (“Ciro”), Sandy Poppiti (“Sandy”), Michael Poppiti, Jr. (“Michael”) and the administrator of Poppiti, Sr.’s estate, Edmond F. Lynch (collectively “Defendants”), failed to report or account to him regarding his ownership interest in the two entities. Ruggerio’s complaint also alleges breaches of fiduciary duty and commingling of assets and seeks an accounting, damages and attorneys fees. Defendants deny Ruggerio’s claims and counterclaim for monies loaned to ENAR in the amount of \$188,900 plus interest.¹

Defendants moved for summary judgment arguing, inter alia, that any claims that arose before June 18, 1998 were time-barred under the analogous statute of limitations, 10 *Del. C.* § 8106. On February 23, 2005, the Court granted summary judgment in favor of Defendants as to all transactions that took place before June 18, 1998 and denied the motion in all other respects.²

¹ Pre-Trial Stipulation and Order (“PTO”) at 2.

² *Ruggerio v. Estate of Poppiti*, 2005 WL 517967, at *1 (Del. Ch. Feb. 23, 2005).

This matter was tried on March 30, 2005. This memorandum opinion reflects the Court's post-trial findings of fact and conclusions of law. For the reasons set forth below, the Court concludes that Ruggerio failed to prove any of his claims, and that no further accounting of Cricklewood or ENAR is necessary. With respect to Defendants' counterclaim, I conclude that Defendants failed to meet their burden to prove either the existence of a debt still owed by ENAR to Cricklewood or a basis for holding Ruggerio personally responsible for any such debt. Therefore, I will dismiss the counterclaim with prejudice.

I. FACTS AND PROCEDURAL HISTORY³

A. The Cricklewood Partnership

In the mid-1990s, Ruggerio approached Poppiti, Sr. with a real estate development opportunity. The property, known as Cricklewood Greene, was located in Middletown, Delaware. Ruggerio had brought other opportunities to the attention of Poppiti, Sr. in the past, but this time Ruggerio asked to be involved in any ensuing project. At that time, Poppiti, Sr.'s son Michael and Ruggerio both owed Poppiti, Sr. money.⁴ Poppiti, Sr. decided to enter into a partnership with Michael and Ruggerio, under which they would

³ Unless otherwise noted, the facts set forth in this opinion are taken from the trial transcript, Defendants' trial exhibits and the Cricklewood and ENAR financial documents from Defendants' appendix on summary judgment that were admitted into evidence at trial.

⁴ "[Poppiti, Sr.] was everybody's banker." *See* Trial Transcript ("Tr.") at 51 (Ciro). The parenthetical reference in this citation indicates the witness testifying at the cited page.

work together with Poppiti, Sr. to develop Cricklewood Greene and might earn more than enough money to pay off their debts to him.⁵

On or about July 21, 1995, the three men formed Cricklewood Associates, L.P., a Delaware limited partnership. Cricklewood was funded by loans of \$840,253 from a Poppiti, Sr. trust and \$2,909,246 from the Ruth E. Poppiti Trust (“REP Trust”). Cricklewood Associates, Inc. (“Cricklewood Corporation”) became Cricklewood’s general partner and a 1% shareholder. Ruggerio, Poppiti, Sr. and Michael were limited partners, each with a 33% ownership interest.

The Partnership developed a total of 143 individual lots in Cricklewood Greene. The development and sale of those lots occurred in four phases from 1996 to 2002. The sales prices for the individual lots ranged from \$40,000 to \$50,000.⁶ By 2003 Cricklewood had sold all the lots, resulting in a total net capital account balance of (\$278,341)⁷ on the Partnership’s books. In addition, the Poppiti, Sr. trust retained a \$400,000 deficiency.

Initially, Ruggerio had a job overseeing installation of Cricklewood Greene’s infrastructure, including sewer, water and electricity. From April 1996 to May 1997, Ruggerio received \$5,000 per month for his services.

⁵ *Id.*

⁶ Defs.’ Ex. (“DX”) 29.

⁷ DX 39.

In April 1996, Cricklewood purchased a property known as the Pike Creek Office Park (“Pike Creek”). In March 1998, the Partnership sold a portion of Pike Creek (“Parcel I”) to Avanti, LLC.⁸ On October 21, 1999, Cricklewood entered into a sales agreement with Pitcarin Properties Inc., to sell the remaining portion of Pike Creek, known as the B4 parcel. Due to problems with installation of the sewer system, the sale did not close until September 28, 2001.⁹ Net proceeds totaled \$490,190.41.¹⁰

On July 15, 1996, Cricklewood purchased real estate known as the Marker Property in Middletown, Delaware for \$300,000.¹¹ The Partnership sold that property on April 4, 2001, resulting in net proceeds of \$328,428.81.

At trial Ruggiero admitted that he knew of no revenue or income received by Cricklewood that was not deposited into a Cricklewood bank account. Additionally, Ruggiero candidly acknowledged that there was no improper expenditure of Cricklewood funds.¹²

⁸ Ruggiero’s claims with respect to certain aspects of the sale to Avanti were dismissed on summary judgment. *See Ruggiero v. Estate of Poppiti*, 2005 WL 517967, at *1.

⁹ Tr. at 80 (Ciro).

¹⁰ The original agreement of sale was for \$600,000. Over the course of five amendments, however, the price was reduced to \$525,000.

¹¹ Cricklewood purchased the Marker Property, which is comprised of lots 1A and 1B in the subdivision of the Lands of Henry’s Farm Market, from Robert and Mary Louise Marker.

¹² Tr. at 83 (Ruggiero). Additional background information about the transactions upon which Ruggiero’s claims apparently were based appears in the summary judgment opinion. *Ruggiero v. Estate of Poppiti*, 2005 WL 517967, at *2.

B. ENAR

In the mid-1990s Ruggerio was in financial trouble. He owed federal and state income taxes from 1994 and county and city real estate taxes dating back to 1991.¹³ Ruggerio also was in arrears on mortgages on a number of properties, including his residence.¹⁴ In 1996 and 1997, Wilmington Trust began foreclosure actions against Ruggerio's properties. To avoid an imminent sheriff's sale, Poppiti, Sr. stepped in to assist him. Poppiti, Sr. proposed to use his strong credit to avoid the foreclosure actions and allow adequate time to liquidate Ruggerio's properties in an orderly fashion.

On March 25, 1997, Poppiti, Sr. formed ENAR for the benefit of Ruggerio, its only stockholder. The initial officers of ENAR were: Poppiti, Sr., president, secretary and treasurer; Ciro, vice president and assistant secretary; and Sandy, vice president and assistant secretary.

By May 1997, ENAR had refinanced the mortgages on Ruggerio's six properties with one consolidated loan through Wilmington Trust. The new mortgage in the amount of \$690,000 was guaranteed by Poppiti, Sr. To secure the mortgage, Ruggerio conveyed

¹³ PTO at 2.

¹⁴ *Id.*

five properties¹⁵ to ENAR, and Wilmington Trust conveyed his residence, 14 Wineberry Drive, to ENAR.¹⁶

After the recapitalization, ENAR began liquidating the properties. In total, it took ENAR 28 months to complete the liquidation.¹⁷ During that time, ENAR bore all of the costs associated with carrying the properties and satisfied a number of Ruggerio's debts, including unpaid federal income taxes and city and county real estate taxes. To support its operation ENAR received \$32,180 from Poppiti, Sr. and \$188,900 from Cricklewood.

The sale of the six ENAR properties resulted in net revenues of \$600,377, as indicated in the following table.

¹⁵ Ruggerio personally conveyed 2717, 2719 and 2721 W. Third Street and 221 N. DuPont Street in Wilmington, and Nicholas A. Ruggerio, Inc. conveyed 5076 Brigantine Court, also in Wilmington, to ENAR.

¹⁶ On October 29, 1997, ENAR purchased Ruggerio's current residence at 123 Bunting Drive ("Bunting Drive") for \$205,000. Again, Poppiti, Sr. guaranteed the mortgage provided by Wilmington Trust. ENAR initially paid the mortgage payments and property taxes for Bunting Drive, but the parties disagree about the nature of the Bunting Drive transaction. Ruggerio contends that he received Bunting Drive as a gift from Poppiti, Sr. and therefore was not required to maintain the mortgage payments. Defendants argue that the property was purchased for Ruggerio to live in after the sale of Brigantine Court and that the mortgage and taxes were intended to be paid for him only until Ruggerio could make such payments on his own. At some point, Wilmington Trust instituted foreclosure proceedings against Bunting Drive. Foreclosure was avoided, however, when Ruggerio's brother-in-law purchased it. Ruggerio still occupies Bunting Drive. The propriety of the transactions relating to the Bunting Drive property are not at issue in this litigation.

¹⁷ PTO at 5.

Property	Sales Price	Real Estate Commissions	Taxes & Fees	Net Proceeds
5076 W. Brigantine	\$55,000	NA	\$3,480	\$51,520
14 Wineberry Dr.	501,000	25,050	7,515	468,435
2717, 2719 & 2721 W. Third St.	90,000	5,850	22,348 ¹⁸	61,802
221 N. DuPont St.	24,500	2,500	3,359	18,641
				600,398

In addition, ENAR collected rents in the amount of \$14,500 and spent approximately \$99,390 on mortgage interest expense and other costs. Thus, during the period from March 1997 to July 1999, ENAR's operations resulted in a net loss of approximately \$84,890.

On August 16, 1999, Cricklewood paid the remaining balance on the consolidated Wilmington Trust note in the amount of \$188,900. Defendants apparently contend that this constituted a loan from Cricklewood to ENAR and that ENAR never repaid it. This "loan" represents the basis for Defendants' counterclaim. Until 2003, the amount remained on Cricklewood's books as accounts receivable from ENAR at which point it was written off as a loss. The financial records of Cricklewood introduced by Defendants further suggest that in or around early 2001 they considered debiting Ruggerio's capital account for the outstanding debt, but it is not clear whether that was ever done.¹⁹

¹⁸ This figure takes into account an apparent loss of \$1,500 in connection with escrowing of funds to satisfy certain tax obligations.

¹⁹ DX 34A.

Before Ruggerio filed his complaint, Defendants provided him with accounting compilations from the firm Belfint, Lyons and Shuman,²⁰ as well as later work conducted by Miller & Associates.²¹ Still, Ruggerio seeks a further accounting of Cricklewood and ENAR. Ruggerio alleges that he requested such an accounting from Sandy but never received anything.²² Ruggerio concedes, however, that he has never been told about nor found a single cent of income that ENAR received that was not deposited into the ENAR bank account. Ruggerio also failed to identify any expenditure from the ENAR bank account that he claims was made for any reason other than his benefit.²³

C. Procedural History

Ruggerio filed this action on June 13, 2001. On July 23, 2001, Defendants answered and counterclaimed and moved to dismiss Ruggerio's complaint. On

²⁰ For years Belfint, Lyons and Shuman also acted as personal accountants for Poppiti, Sr. and his law firm.

²¹ From 1996 to 1998 Belfint, Lyons and Shuman prepared Cricklewood's U.S. Partnership Return of Income Form 1065. From 1999 to 2003 Miller & Associates performed that task.

²² Tr. at 31 (Ruggerio) ("I think I mentioned it to Sandy. I said Sandy, I think we should have some accounting. You're telling me I owe this money. I said I don't think it's fair to just throw it in front of me. Get me some, you know, some accounting").

²³ *Id.* at 43 (Ruggerio). At the summary judgment stage, Ruggerio seemed to argue that Cricklewood had debited a distribution against Ruggerio's partnership interest in Cricklewood to satisfy the outstanding balance on the loan from Cricklewood to ENAR. In support of that argument, Ruggerio relied on the deposition of Ciro Poppiti ("Ciro Dep.") at page 51. Ruggerio contended that Ciro, Michael and Poppiti, Sr. breached their fiduciary duties to him by, in effect, making a distribution of his Partnership interest without his approval, authority or power of attorney.

August 30, 2004, Defendants moved for summary judgment. I heard argument on the latter motion on October 25, 2004.

On November 3, 2004, Ruggerio's attorney, Francis J. Trzuskowski, Esq. moved to withdraw. Trzuskowski averred that he had been unable to contact Ruggerio and that Ruggerio owed him a substantial amount in unpaid attorneys fees and costs. Ruggerio received timely notice of Trzuskowski's motion, but did not object or otherwise respond to it.

On November 12, 2004, I granted Trzuskowski's Motion to Withdraw and granted Ruggerio 30 days to find replacement counsel before the Court held a conference to discuss scheduling in this matter. Ruggerio did not obtain new counsel or contact the Court. On December 20, I scheduled a pre-trial conference for March 23, 2005 and a two-day trial for March 30 and 31.

As previously noted, on February 23, 2005, the Court granted Defendants' motion for summary judgment as to all claims based on transactions that occurred before June 18, 1998, and denied it as to all other claims. In the same opinion, the Court denied Defendants' motion to dismiss.

Ruggerio did not participate in the pretrial process, eschewing Defendants' entreaties to collaborate on the pretrial order. At the March 23 pretrial conference, Ruggerio appeared pro se. He asked the Court to postpone the trial to give him time to find new representation. He admitted, however, that he had only begun to seek new counsel within the past week or so. Defendants opposed the requested continuance on several grounds, including the long pendency of the action, which has prevented them

from closing the estate of Poppiti, Sr. On that basis and because Ruggerio, as plaintiff, offered no valid excuse for his dilatory conduct, I denied the requested extension. I advised Ruggerio, however, that if he were able to find new counsel willing to enter an appearance on his behalf, his counsel could move for a postponement of the trial. The Court never received such an application.

At trial, Ruggerio proceeding pro se, presented no witnesses or evidence and engaged in only limited cross-examination of Defendants' witnesses. Ruggerio complained, however, that Trzuskowski remained in possession of certain documents important to his case. Based on that representation, I held the record open for three weeks to give Ruggerio an opportunity to supplement it. Nevertheless, Ruggerio never sought to supplement the record. He also failed to take advantage of the Court's order establishing a schedule for post-trial briefing and submitted no post-trial papers. When the Court attempted to contact Ruggerio to arrange a post-trial argument, it could not reach him. Thus, no post-trial argument was held.

II. ANALYSIS

A. Ruggerio's Claims

Ruggerio contends that several of the Defendants owed him fiduciary duties in connection with both Cricklewood and ENAR and that they improperly engaged in financial self-dealings that harmed his interests, including the commingling of funds. In terms of relief, Ruggerio argues that the net proceeds from the allegedly self-dealing transactions should be set aside and considered to have been held in a constructive trust for his benefit. Additionally, Ruggerio alleges that, although he requested it, Defendants

never provided him with an adequate accounting of the income and disbursements of Cricklewood and ENAR. Ruggiero argues that the compilation accounting documents he received lack the procedural safeguards and reliability of audited financial statements.

Defendants argue that they have treated Ruggiero fairly and properly accounted to him as to all ENAR's and Cricklewood's revenues and expenditures. Defendants also argue that, contrary to Ruggiero's allegations, they made all books and records available to him and his former counsel, Trzuskowski, before he filed his complaint. Defendants presented evidence that the financial documents produced to Ruggiero provided detailed information by transaction, date, deposit, check number, check amount and balance for each account.²⁴ Furthermore, the evidence showed that Defendants maintained separate and distinct checking accounts for ENAR and Cricklewood to safeguard against commingling of funds.

It is well established that plaintiffs must carry their burden of proof in persuading a Court that the accused have acted in the manner alleged.²⁵ A claimant's total failure to present evidence in a trial generally leads a court to conclude that the party is unable to carry their burden of proof with respect to their claims.²⁶

²⁴ At trial Defendants introduced into evidence, without objection, the financial documentation from their motion for summary judgment. Those documents are contained in App. to Defs.' Opening Br. in Supp. of their Mot. for Summ. J. at 1-391. Tr. at 206.

²⁵ *Ryan v. TAD's Enter., Inc.*, 709 2.Ad 682, 706 (Del. Ch. 1996).

²⁶ *Jacobson v. Dryson Acceptance Corp.*, 2002 WL 31521109, at *1 (Del. Ch. Nov. 1, 2002).

The actions and inactions of Ruggerio during the lengthy pendency of this action compel the conclusion that he has failed to carry his burden of proof. In support of their summary judgment motion and at trial, Defendants presented extensive evidence on the propriety of the challenged actions. In defending against the motion for summary judgment, Ruggerio, through his former counsel, relied almost exclusively on the procedural safeguards afforded to the nonmovant in that situation. Ruggerio presented little, if any, evidence in support of his own claims. In denying Defendants' summary judgment as to actions that occurred on or after June 18, 1998, I made the following observation about the evidence Defendants submitted.

In the context of a trial, those documents and any related testimony of witnesses with relevant knowledge may well be sufficient to support a judgment in Defendants' favor. The documentary evidence alone, however, does not provide a satisfactory basis for concluding that there are no material issues of fact in dispute.²⁷

Defendants presented similar evidence and more at trial. In sharp contrast, Ruggerio presented no credible evidence at trial to support his claims.

Nothing prevented Ruggerio from presenting his case, even if he had to do so pro se. After his counsel withdrew in November 2004 Ruggerio had ample time to find substitute counsel or prepare his case himself. Yet, Ruggerio chose not to participate in the pretrial process and waited until the last minute to petition this Court to postpone the trial for an opportunity to find new counsel.

²⁷ *Ruggerio v. Estate of Poppiti*, 2005 WL 517967, at *5.

Ruggerio's failure actively to pursue his claims continued through trial and post-trial proceedings. Although Ruggerio had the opportunity to present witnesses and evidence and to cross examine Defendants' witnesses, he did virtually nothing. In response to Ruggerio's comment that he did not have the documents his former counsel had compiled, I kept the record open for three weeks after the trial to enable Ruggerio to retrieve those documents and submit any additional evidentiary support he had for his claims. Once again, the time lapsed with no action taken by Ruggerio. Similarly, he opted not to file any post-trial brief or other submission.

Based on the evidence presented at trial, almost exclusively by Defendants, I conclude that Ruggerio has not met his burden of proof as to any of his claims for breach of fiduciary duty, fraud or self-dealing based on actions that occurred on or after June 18, 1998. Indeed, Ruggerio's main complaint at trial was that he did not receive adequate reports and information from Defendants about the financial condition and activities of Cricklewood and ENAR. In response, Defendants presented uncontroverted evidence that they did provide information to Ruggerio before he filed his complaint. To be sure, Defendants' conduct in terms of reporting to their partner in Cricklewood and the sole stockholder of ENAR falls short of what might be considered best practices. The record demonstrates, however, that Ruggerio's complaints about insufficient information stem largely from his own inattentiveness to what was happening as to his investments in Cricklewood and ENAR.

Ruggerio did not participate in the preparation of the pretrial order or any post-trial briefing or argument and took an extremely passive role at trial. Consequently, he

failed to identify any specific transaction of Cricklewood or ENAR that he is challenging. As a result, the Court has no basis upon which to evaluate any purported claims of breach of fiduciary duty or other wrongdoing. Absent identification of a challenged transaction, the Court cannot determine, for example, whether self-dealing may have been involved and by whom, whether any apparent conflict of interest was material, and what the appropriate standard of review and burden of proof would be. In effect, Ruggerio appears to be inviting the Court to serve as his lawyer and delve through the myriad details of numerous transactions in the hope of finding a viable claim for his benefit. Obviously, that is not the role of this state's judiciary. To the contrary, Ruggerio, as plaintiff, must present his claims in a cogent and persuasive manner, supported by admissible evidence — a task which he utterly failed to do.

Therefore, there is no basis for Ruggerio's claims for damages, the imposition of a constructive or resulting trust, or an accounting. Defendants are entitled to dismissal of all Ruggerio's remaining claims with prejudice, subject only to his continuing ability to challenge the enforceability of the loan from Cricklewood to ENAR upon which Defendants' counterclaim is based.

B. Defendants' Counterclaim

Defendants allege through their counterclaim that Ruggerio should be personally liable for the balance due on ENAR's outstanding loan from Cricklewood. In particular, they seek a judgment in the amount of \$188,900 plus interest to cover that debt. Defendants urge this Court to pierce ENAR's corporate veil under Delaware law and

hold that its sole stockholder, Ruggerio, acted as the alter ego of ENAR and is personally liable for its obligations.

As the counterclaimants, Defendants have the burden of proof on their counterclaim and have failed to meet it. Defendants base their counterclaim on a purported loan from Cricklewood to ENAR of \$188,900, which was made on or about August 16, 1999.²⁸ Defendants, however, presented no documentation for the loan except for miscellaneous records from Cricklewood's books categorizing the \$188,900 as accounts receivable and ultimately writing it off as bad debt. There is no loan agreement or promissory note, for example. Nor is there any indication in the financial documentation put in evidence by Defendants of the interest rate or term of the loan. The absence of such documentation is especially troubling in the circumstances of this case, because Defendants stood on both sides of the transaction. Both Poppiti, Sr. and Michael were officers of ENAR as well as limited partners of Cricklewood. Furthermore, there is no reliable evidence in the record as to whether or not the outstanding debt of \$188,900 has ever been debited against Ruggerio's partnership interest in Cricklewood.

In addition, I find that Defendants have not shown any basis for piercing the corporate veil to hold Ruggerio personally responsible for an alleged debt of ENAR. Although Ruggerio is ENAR's sole stockholder, several of the Defendants comprised all of its officers and effectively controlled its operations. Defendants, not Ruggerio, made the relevant decisions of ENAR, including those regarding the extent to which it would

²⁸ PTO at 2.

adhere to the corporate formalities necessary to maintain the limited liability and other benefits of the corporate form of organization. To the extent ENAR operated so loosely in that regard as to subject Ruggerio to liability in his role as the sole stockholder, the evidence would suggest that Defendants are to blame. Therefore, I do not consider it equitable to permit Defendants to pierce the corporate veil to impose liability on Ruggerio personally.

III. CONCLUSION

For the reasons stated, I conclude that Ruggerio failed to prove any of his claims, and that his claims against Defendants should be dismissed with prejudice. Additionally, as to Defendants' counterclaim, I find that Defendants have failed to prove the existence of an enforceable debt still owed by ENAR to Cricklewood or that, in any event, it would be appropriate to hold Ruggerio liable for any such debt. Accordingly, Defendants' counterclaim will be dismissed with prejudice.

An appropriate form of judgment consistent with this memorandum opinion will be entered.