

VIRGINIA LAWYERS WEEKLY

VERDICTS & SETTLEMENTS

LLC member alleges looting by other members - \$500,000 Settlement

By Virginia Lawyers Weekly
June 16, 2008

This case involved a dispute among three members of a commercial equipment rental LLC.

In December 2006, two LLC members (defendants) made a demand of the third member (plaintiff) for his dissociation from the LLC, offering \$120,000 in return for his one-third LLC interest. Before and after his rejection of their offer, plaintiff discovered that defendants were allegedly using LLC funds for personal expenses ranging from tanning salons, Victoria's Secret and veterinarian's bills to unjustifiable and excessive restaurant, golf and bar expenses and trips to Las Vegas, Florida and Montana.

As a result, plaintiff sued defendants as an individual member and derivatively on behalf of the LLC. Plaintiff alleged breach of fiduciary duty, fraud, and conversion against defendants, and sought repayment of the improper expenditures and dissolution of the LLC, among other things. At a preliminary hearing, the judge granted plaintiff's motion to appoint a liquidating receiver, and defendants lost operational control of the LLC. Plaintiff submitted an abundance of evidence of defendants' alleged misconduct to the receiver and the court. As there was nothing more than a skeletal operating agreement, the judge ruled that the business could not be continued and scheduled a dissolution date for the LLC.

Defendants desired to continue the business by themselves and ended up paying plaintiff \$500,000 for his one-third interest in the LLC; refinanced more than \$1.2 million of business debt for which plaintiff was a principal signor or co-signor; conveyed to plaintiff the company truck; paid the plaintiff's health insurance premiums for six months; and immediately vested the plaintiff in the LLC's 401(k) plan.

Type of Action: Business Litigation – Breach of Fiduciary Duty / Conversion / Dissolution of LLC

Name of Case: Clark Neff, et al. v. Paul Nicely, et al.

Court: Winchester Circuit Court

Case No.: CL07-529

Date: April 1, 2008

Name of Judge: John E. Wetsel Jr.

Verdict/Settlement: Settlement

Amount: \$500,000 payment, release of \$1.2 million in personally guaranteed business debt, conveyance of company truck, payment of health insurance premiums for six months and immediate vesting in 401K plan

Plaintiffs' Attorneys: Mark Kellogg, Brandon Gladstone and Travis Markley, Springfield
[08-T-103]

© Copyright 2008, by Virginia Lawyers Media, all rights reserved