

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

**Supreme Court No. 20160386
Ward County Civil No. 51-2014-CV-00478**

Gary Kramlich and Glory)
Kramlich,)
)
Appellants and Cross-Appellees,)
)
vs.)
)
Robert Hale and Susan Hale,)
individually, Somerset Court)
Partnership, Somerset-Minot)
LLC, Vision Management,)
Bullwinkle Builders LLC,)
)
Appellees and Cross-Appellants.)

APPELLEES AND CROSS-APPELLANTS' REPLY BRIEF

**ON APPEAL FROM ORDER DATED NOVEMBER 8, 2016,
DOCKET NO. 248, THE HONORABLE DOUGLAS L. MATTSON
PRESIDING IN WARD COUNTY DISTRICT COURT, NORTH
CENTRAL JUDICIAL DISTRICT**

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TABLE OF AUTHORITIES

No further citations

¶1 STATEMENT OF THE ISSUES

¶2 **The first two issues are raised by the Kramlichs, and the third issue is raised by the Hales.**

Issue 1. Where a controversy relates to two interrelated entities and an arbitration clause exists as to only one of two interrelated entities, does the arbitration clause apply to both entities?

Issue 2. Whether the lower court's decision to send the partnership entity to arbitration violates the Kramlichs' Demand for Jury Trial.

Issue 3. Did the lower court err in denying the Hales' motion to dismiss the case as moot or unfounded?

¶3 ARGUMENT

¶4 The counts as well as the claims for relief listed in the Kramlich's complaint – described as best as totally confusing by the lower court¹ – are moot or in the alternative unfounded because the offer to purchase their interest has been withdrawn.

¶5 It is essential to note that the complaint in this matter primarily relates to an accounting following an offer made by the Hales to the Kramlich's to purchase the interest as to these two entities that they were given.² This case

¹ **Hearing of 11-18-14:** “There is a lot to the complaint. Hard to follow, but there is a lot to it. But I almost got the rope around it.” T. 3.

Hearing of 4-7-15: “Mr. Ward I feel like I have to ferret out all your claims.” T. 28.

Hearing of 8-12-16: “This case has been something of a nightmare.” T. 27.

Order Dated November 8, 2016, Docket No. 248: “[With] the exception of the sixth prayer for relief regarding equalized distribution, Plaintiffs’ prayers for relief do not track with the cause of action.” ¶18.

The court also referred to the case as a “kitchen-sink action” that the Hales asserted should be dismissed and re-filed as a minority partnership or minority shareholder action. Id. at ¶19.

² The lower court totally understood and accepted the fact that the Kramlich's had not paid in one dollar as contribution for the interest in the partnership and corporation given to them as a gift, a fact admitted to by Attorney Ward.

THE COURT: Did the Kramlich's pay any cash in to either of those entities?

MR. WARD: Not directly, no. They did it by loans only

THE COURT: I thought when you do a loan you are creditor and not an owner.

Hearing of 4-8-16, T. 33, lines 1-6.

was not brought as a case relating to minority shareholder rights, or in conjunction with any limited partnership action. This makes sense because the original action was focused on the value of the business and the value of the interest owned by the Kramlichs, which would be applied in regards to the offer to purchase made by the Hales.³ Once the offer to purchase went away, all the counts⁴ listed in the complaint and all claims for relief became unfounded, and the case became moot.

¶6 The complaint itself clearly shows that this action by the Kramlichs is not brought as a minority shareholder action, but as an action for accounting

³ The court noted that the Kramlichs were inappropriately attempting to determine the value of the buildings and other assets instead of the value of their interest in the two entities. Hearing of 4-8-16:

THE COURT: That's the problem. You aren't appraising a building. It's my understanding your client is claiming a percentage of an ownership interest in a business entity that's ongoing.

MR. WARD: You are correct.

Hearing of 4-8-16, T. 65, lines 14-18.

⁴ The court, in its decision denying the Hales Motion to dismiss, agreed with the Kramlichs' position that the Hales only argued that the *claims for relief* were asserted to be moot or in the alternative unfounded, concluding that the Hales did not argue that the *causes of actions* themselves were also moot or unfounded. **Order Dated November 8, 2016, Docket No. 248, ¶¶19-21.** However, the record shows that the Hales not only asserted that the claims for relief were moot and unfounded, but also – in addition – argued that each of the claims for relief were moot or unfounded. **See Hearing of 8-12-16, T. pages 24-25**, where Mr. Boughey goes through each of the counts with the court, arguing that dismissal is appropriate as to each count.

and for determination of the valuation of the interest that the Hales sought to purchase.

¶7 Count 1 is entitled “breach of contract,” and yet entirely fails to list what portion of the partnership agreement or corporate documents have been breached. As a result, this claim is properly considered unfounded and should have been dismissed.

¶8 Count 2 relates to their allegation of fraud and misrepresentation, which the lower court considered to be totally baseless. In response to this frivolous allegation, the court received documentation that Robert Hale was not acting as the attorney in regards to either these two entities, and that the entities were created and the bylaws provided by Shane Goettle of the McGee law firm. The lower court should have dismissed this count as being totally unfounded.

¶9 Count 3 relates to the purchase of the interest of the Kramlichs by the Hales, which has been withdrawn, making the entire Count moot. The lower court should have dismissed this count as being moot.

¶10 Count 4 relates to assertions of embezzlement and fraud, which the district court found to be totally unsubstantiated and improperly raised in the

civil matter.⁵ The lower court clearly considered this count unfounded, and should have dismissed this count.

¶11 Count 5 relates to the assertion that there should be some sort of equal distribution, which by the originating documents of both entities is absolutely unfounded. Distribution relating to both entities is done in accordance with the originating documents, which do not provide for an equal distribution to limited partners or to minority shareholders, except by proper dividends. This count is entirely unfounded and should have been dismissed by the lower court.

¶12 Count 6 makes little sense, but it appears that the Kramlichs are asserting that the corporate documents failed to accurately represent the equity owners. This claim is also totally unfounded. The equity owners are the Hales. The Kramlichs did not put in one penny and therefore are not

⁵ THE COURT: What do you mean, then, by claiming criminal action? Are you using that as a means to leverage in terms of to secure a settlement? . . . Well, why aren't you downstairs, then, talking to the state's attorney? This is a civil action. I am really confused when I see, when somebody is alleging criminal acts in a civil case. I mean, at some point in time you bring the heavy artillery and you either put up or shut up. . . . Well, then, in terms of the way that you are asserting criminal acts, and that, counsel, you are on thin ice. At least at this point in time you are on thin ice, I perceive, and that. If you don't have anything to back that up when you are making that, because you aren't even saying in your pleadings it appears that there is a criminal act. You are asserting, correct me if I am wrong in your pleadings, but you are out and out stating that a criminal act was done to your clients.

Hearing of 4-7-15, T. 22-23.

equity owners. The Hales have put millions of dollars into this business, and the Kramlich's not one penny. This claim, like the others, is completely unfounded and should have been dismissed by the lower court.

¶13 Count 7 restates Count 2 above, in which the Kramlichs attempt to assert that Robert Hale was acting as an attorney in regards to the two entities. Just as in Count 2, Count 7 is totally unfounded and should have been dismissed by the lower court.

¶14 More to the point, however, justifying dismissal of this entire action are the **claims for relief**, which as indicated in our prior brief are either moot or unfounded. See Hales' Appellees and Cross-Appellants Brief at ¶¶35-42.

¶15 Conclusion

¶16 The lower court should have dismissed the matter in its entirety as moot or in the alternative unfounded.

¶17 Dated this 30th day of May, 2017.

_____/s/_____
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Gary Kramlich and Glory Kramlich,)
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Plaintiffs, Appellants and Cross-Appellees,)
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-vs-)
)
Robert Hale and Susan Hale, individually,)
Somerset Court Partnership, Bullwinkle)
Builders, LLC, Somerset-Minot, LLC,)
Vision Management Services, LLC)
and Spectrum Care, LLC)
)
Defendants, Appellees and Cross-Appellants.)

APPELLEE AND CROSS-APPELLANT'S CERTIFICATE OF SERVICE

**ON APPEAL FROM ORDER DATED NOVEMBER 8, 2016,
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¶1 Defendant-Appellees Robert and Susan Hale have served the following document:

- 1) Appellees and Cross-Appellants' Reply Brief 5-30-17 (WORD)
- 2) Appellees and Cross-Appellants' Reply Brief 5-30-17 (PDF)

The aforementioned documents were served on the 30th day of May, 2017, by email to the following:

Michael Ward
Attorney at Law
Michael Ward mike.9273@yahoo.com

¶2 Dated this 30th day of May, 2017.

_____/s/_____
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