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# Order Granting Motion to Add Third Party (MICHAEL MCCHESNEY)

Elizabeth E. Long
*Superior Court of Fulton County*

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Recommended Citation
Long, Elizabeth E., "Order Granting Motion to Add Third Party (MICHAEL MCCHESNEY)" (2008). *Georgia Business Court Opinions*. Paper 103.
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**IN THE SUPERIOR COURT OF FULTON COUNTY**
**STATE OF GEORGIA**

| | | |
|---|---|---|
| MICHAEL MCCHESNEY,<br><br>Plaintiff,<br><br>v.<br><br>IH RIVERDALE, LLC and<br>GEOFFREY NOLAN,<br><br>Defendants, Third-Party Plaintiffs<br><br>v.<br><br>MCCHESNEY CAPITAL PARTNERS, LLC<br>GEORGE MCCHESNEY and<br>NICK WALDORFF,<br><br>Third-Party Defendants | ) | Civil Action No.: 2004CV83192 |

FILED IN OFFICE
MAY 14 2008
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

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**ORDER GRANTING MOTION TO ADD THIRD PARTY**

On April 22, 2008, the parties in this action appeared before the Court to present oral argument on IH Riverdale's 2005 Motion to Add Third Parties in this case (the "McChesney Action"). After reviewing the arguments presented by counsel, the briefs on these motions, and the records of the cases, the Court finds as follows:

In 2005, IH Riverdale filed a Motion to Join Third Parties[1] McChesney Capital Partners ("MCP"), George McChesney, and Nick Walldorff as third party defendants (collectively, the "Third-Party Defendants") pursuant to O.C.G.A. § 9-11-14(a). Georgia's interpleader statute joins a third-party "who may be secondarily liable to the original defendant... as in cases of

[1] The McChesney Action is one of three actions pending in this Court among the same parties and their entities. Before the cases were related to each other and transferred to the Business Court in 2007, discovery disputes and other matters had halted progress in all three cases. After relating the cases and assigning them to a single Judge, the parties agreed to focus on several major issues in the IH Riverdale Action, civil action number 2003CV73603, before addressing outstanding issues in the McChesney Action. Thus, the 2005 Motion to Add Third Party is before this Court at this time.

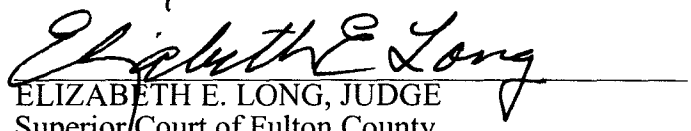
indemnity, subrogation, contribution, warranty and the like." Lamb v. K.M. Insurance Co., 208 Ga. App. 746, 746 (1993) (citations omitted).

IH Riverdale asserts that MCP had an obligation pursuant to a like-kind exchange agreement to indemnify Michael McChesney's losses on the Meadow Springs loan, which form the basis of the damages alleged by McChesney against IH Riverdale. IH Riverdale asserts that any losses incurred by Michael McChesney were the result of MCP's failure to perform, which was part of a scheme executed by George McChesney and Nick Waldorff. Michael McChesney and the Third-Party Defendants object to interpleader on the ground that IH Riverdale's third-party complaint does not allege derivative liability, but instead asserts a separate cause of action against the Third-Party Defendants. See e.g., Mathews v. McConnell, 124 Ga. App. 519, 522 (finding that a third-party plaintiff was "seeking affirmative relief" in a "separate and independent controversy between himself and the third-party defendant" making joinder of a third party defendant improper).

The distinction between direct and secondary liability in this case is not clear given the multiplicity of parties, issues, facts, and actions. In evaluating the facts of the McChesney Action, the Court finds that IH Riverdale's allegations that the damages for which Michael McChesney seeks to recover originated with the actions of MCP, Nick Waldorff, and George McChesney to be secondary liability claims. In addition, that IH Riverdale's claims against the Third-Party Defendants do not appear to be stand-alone claims supports the Court's finding of secondary liability. Also, the facts at issue in the McChesney Action are substantially the same facts that would be introduced against the Third-Party Defendants. See, Burt v. Long, 125 Ga. App. 385, 385 (1972) ("If the third party defendant is not retained in this action and plaintiff receives a judgment, the evidence of the transaction will have to reduplicated in another lawsuit. The purpose third party practice is to avoid this very result."). Finally, the Third-Party

Defendants are already involved in the other related actions and their addition to the McChesney Action is not anticipated to expand the proceedings or cause any delay. In light of the above-stated reasoning, the Court hereby **GRANTS** IH Riverdale's Motion to Add Third Party Defendants.

**SO ORDERED** this 14th day of May, 2008.



ELIZABETH E. LONG, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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