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Order on Defendants' Motion to Dismiss Under O.C.G.A. § 9-11-17, or, in the Alternative, to Require Ragland to Identify the Other Parties (GLEN WILLIAM RAGLAND)

Elizabeth E. Long
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
FEB - 4 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

GLEN WILLIAM RAGLAND, on his own behalf and as attorney-in-fact for Selling Shareholders,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION FILE NO. 2008-CV-153555
SEVEX NORTH AMERICA, INC. AND SEVEX AG,	)	
Defendants.	)	

ORDER ON DEFENDANTS' MOTION TO DISMISS UNDER O.C.G.A. § 9-11-17 OR, IN THE ALTERNATIVE, TO REQUIRE RAGLAND TO IDENTIFY THE OTHER PARTIES

Defendants Sevex North America, Inc. ("Sevex") and Sevex AG have filed a Motion to Dismiss or, in the alternative, to require Plaintiff Ragland to identify the other parties in the above-styled case. After having considered the Complaint and the briefs submitted on the Motion, the Court finds as follows:

The Civil Practice Act provides that "[e]very action shall be prosecuted in the name of the real party in interest." O.C.G.A. § 9-11-17(a). The purpose of this provision is "to protect the [defendants] against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata." Krawagna v. H & S Liquor, Inc., 176 Ga. App. 816, 817 (1985).

Ragland is the former President, CEO and majority shareholder of ATD Corporation ("ATD"). On February 16, 2006, Ragland entered into a stock purchase agreement (the "Agreement") with Sevex pursuant to which Ragland and his associated shareholders sold their

ATD shares to Sevex. Ragland served as the "attorney-in-fact" for the sale of the others' shares. The purchase price included a purchase price adjustment pursuant to a formula set forth in the Agreement if ATD's earnings before interest, taxes, depreciation and amortization ("EBITDA") reached certain levels during the 2006 fiscal year.

Ragland, on his own behalf and as "attorney-in-fact" for the selling shareholders, filed this action alleging that Sevex failed to satisfy its obligation to make a purchase price adjustment. As grounds in support of this Motion, Defendants argue that the Agreement's language is ambiguous as to whether Ragland was entering into the Agreement for the benefit of another as required by O.C.G.A. § 9-11-17(a) such that he would be authorized to sue for them. Section (a) specifically states in part:

> [A] party with whom or in whose name a contract has been made *for the benefit of* another...may bring an action in his own name without joining with him the party for whose benefit the action is brought... (emphasis added).

The text of the Agreement makes it clear that Ragland entered into the Agreement in his own name and as attorney-in-fact for and on behalf of the other selling shareholders. The first paragraph of the Agreement states:

> This STOCK PURCHASE AGREEMENT ("Agreement") is made and entered into as of February 16, 2006 ("Closing Date"), by and between GLEN WILLIAM RAGLAND, a resident of the State of Georgia ("Ragland"), *both individually on his own behalf and as attorney-in-fact for and on behalf of* the persons listed on Exhibit A attached to the Letter of Intent (*the "Shareholders"* or "Sellers")....
> (emphasis added).

Moreover, Ragland's Complaint seeks relief for contractual duties (the purchase price adjustment) owed by Sevex to Ragland directly. See Luther v. Luther, 289 Ga. App. 428, 431 (2008) (The real party in interest is the person who has the right sought to be enforced under the substantive governing law.). Once payment is received from Sevex, Ragland would be obligated

to distribute the funds to himself and the other shareholders. The purchase price adjustment under Section 5(b) of the Agreement expressly states:

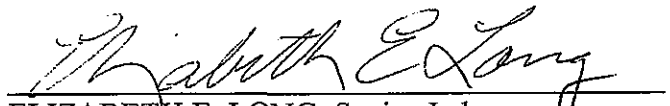
> If the EBITDA Payment is a positive amount, then Buyer will pay the EBITDA Payment to Ragland for the benefit of the Sellers within five (5) business days of the final determination of the Company's EBITDA for the 2006 fiscal year, and Ragland shall promptly pay to each Seller such Seller's Percentage Interest of the EBITDA Payment.

The Agreement does not require Sevex to pay the other shareholders anything directly. Therefore, this Court holds that Ragland is the real party in interest and payment to him would protect Defendants from claims of other shareholders. See Krawagna, 176 Ga. App. at 817.

Finally, Defendants argue that "even if Ragland may pursue claims for the other selling shareholders under § 9-11-17, they still must be identified." "[T]he names of the parties to an action must appear either in the caption of the petition or in the body thereof...." Shaef Chemical Co. v. Cook, 106 Ga. App. 223, 223 (1962). Viewing the entirety of the pleadings, the Court is satisfied that the selling shareholders have been properly identified. The Preamble to the Agreement states the Agreement was made "both individually on [Ragland's] behalf and as attorney-in-fact for and on behalf of the persons listed on Exhibit A attached to the Letter of Intent (the "Shareholders" or "Sellers")..." Therefore, Defendants' argument of uncertainty regarding who the actual parties are is without merit. The Complaint was filed by Ragland, on his own behalf and as attorney-in-fact for the selling shareholders listed on Exhibit A attached to the Letter of Intent.

The Court hereby **DENIES** Defendants' Motion to Dismiss or, in the alternative, to require Plaintiff Ragland to identify the other parties.

SO ORDERED this 4th day of February, 2010.



ELIZABETH E. LONG, Senior Judge
Fulton County Superior Court – Business Case Division
Atlanta Judicial Circuit

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