

MEHRDAD JON JAHANSHAHI,	:	IN THE COURT OF COMMON PLEAS OF
SHAHROKH NAGHDI and	:	LYCOMING COUNTY, PENNSYLVANIA
HAPPY VALLEY ROASTERS, INC.,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 99-00,899
	:	
CENTURA DEVELOPMENT CO., INC.,	:	CIVIL ACTION – LAW
and KEITH L. ECK, Individually and as	:	
President of Centura Development Co., Inc.,	:	
Defendants	:	MOTION TO COMPEL

Date: June 20, 2000

**OPINION AND ORDER**

The matter before the Court for determination is the Plaintiffs’ Motion to Compel Answers to Interrogatories and Request for Production of Documents which was filed on May 23, 2000. Counsel have appeared for argument.<sup>1</sup> Briefs have not been submitted. An evidentiary record was not made; however, counsel at argument acknowledged the existence of facts necessary for determination of the Motion.

Essentially, the facts in the case necessary for determination of this Motion are established by the pleadings. These pleadings allege that Defendants Centura Development Company, Inc. and Defendant Keith L. Eck, acting individually and as president of Centura entered into negotiations to lease to Plaintiffs a commercial property. The pleadings acknowledge that an actual lease agreement was not signed, however, Plaintiffs contend that both Defendants breached a promise

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<sup>1</sup> Argument was held June 19, 2000. Briefs were not required. Counsel agreed an evidentiary record, other than as noted in this Opinion, was not required.

made to Plaintiffs to enter into a lease agreement. Plaintiffs assert they suffered damages from their detrimental reliance upon the Defendants' representations that a lease agreement would be entered. They also seek to recover reimbursement for out-of-pocket expenses, lost investment capital and lost income because of Defendants wrongful failure to enter into a final lease for the property in question.

Plaintiffs' allegations include an allegation at paragraph 5 of the Amended Complaint that Defendant Eck acted as a duly authorized officer and agent of Centura as well as acting for his own personal agenda, "which Plaintiffs believe to be identical." Defendants' responsive pleading denies that allegation and asserts that Eck did not act for his own personal agenda but solely as an agent and officer of Centura. Paragraph 7 of Plaintiffs' Amended Complaint alleges that Eck was the sole owner and operator of Centura and authorized to enter into any agreement or promise that he made on behalf of himself and Centura. This allegation was admitted.

At the argument it was acknowledged by counsel that depositions of Eck and a secretary for Centura have been taken and that those depositions established certain matters, including the following: Eck and Centura operate in an office setting where and from which Eck operates as many as twenty other businesses; the secretary employed by Centura to manage and perform corporate tasks also performs many tasks for other businesses owned by Eck, including but not limited to Eck Realty, apparently a proprietorship; office equipment at that location owned by Centura is made use of by Eck and Eck's other business entities and/or vice versa; Centura is required to have three directors but operates with only two directors, Eck and Eck's wife.

The Motion to Compel seeks to discover financial and tax information including income tax returns of Centura and Eck for relevant years, bank account records of Centura and bank account records of Eck. The Defendants do not dispute that the requests are limited appropriately as would relate to type of material and relevant years, however, Defendants assert that this information is not relevant to the allegations raised in the Amended Complaint. The basis for Defendants' contention is that the Complaint does not seek to "pierce the corporate veil" in order to impose liability on Eck individually. Plaintiffs contend that the Complaint does allege such liability and/or even if it does not the facts developed in discovery thus far form a sufficient basis to allow Plaintiff to have this requested discovery in order to establish facts that might lead to an appropriate amended complaint which would specifically raise facts sufficient to pierce the corporate veil.

This Court believes it is appropriate to grant Plaintiffs' discovery request. In our prior Opinion on Preliminary Objections filed November 8, 1999, this Court determined that the allegations of Plaintiffs' first Complaint were not sufficient to sustain a theory that Eck was personally liable under the theory of piercing the corporate veil. We held, however, that the allegations were sufficient to allege that Eck may have done acts by which he assumed personal responsibility or liability to the Plaintiff. The pleadings to the Amended Complaint and response still support our prior holding in this regard. However, the Amended Complaint and response do now establish that Eck is the sole owner and sole person in control of Defendant Centura. The matters developed in discovery establish an intermingling of Eck's other businesses with the business enterprises of Defendant Centura and perhaps Eck's personal affairs as well. Discovery also has established that Centura does not operate with a full board of directors.

This Court believes that the requested discovery may establish or lead to evidence of: 1) a pattern of conduct by Eck which would affect his credibility on issues of whether Eck undertook personal guarantees on behalf of Centura; or 2) sufficient facts upon which Plaintiffs could seek to file an amended complaint, more specifically alleging grounds for piercing the corporate veil. Accordingly, the requested discovery must be granted. The discovery request hereby authorized, however, must not be overburdensome nor invade Defendants' privacy and will be so limited.

At the agreement of the parties it is also determined that the request for information set forth in paragraph 3 of Plaintiffs' Motion is deemed moot inasmuch as that information has been furnished. Paragraph 5 of Plaintiffs' Motion is also deemed moot inasmuch as Defendants' counsel has asserted that no such contracts exist and has represented the same to the Court and Plaintiffs' counsel and this representation has been accepted and such representation shall be deemed to be a verified response of Plaintiff to that requested discovery.

Plaintiffs' request for \$750 for counsel fees in pursuing this Motion will be denied. Said amount would certainly be more than would be just. No argument or information concerning appropriate counsel fees have been presented to the Court. The Court believes that there was a reasonable basis to oppose the Motion. Counsel fees are not appropriate in this matter at this time.

Accordingly, the following Order will be entered.

**ORDER**

The documents requested in discovery as identified in Plaintiffs' Motion to Compel filed May 23, 2000, shall be furnished to Plaintiffs' counsel. Initially this shall be accomplished by Defendants

making the requested documents available for inspection and review by Plaintiffs' counsel and/or appropriate agents or employees of Plaintiffs' counsel. Specific documents of a reasonable number requested to be copied by Plaintiffs' counsel at the time of that inspection shall be furnished by Defendants. Plaintiffs' counsel shall not utilize any information so discovered for any purpose other than as directly related to the purpose of this litigation and shall not disclose or copy the same except as directly necessary to carry out the claims established in this litigation. Plaintiffs' counsel shall employ appropriate safeguards as would be related to reproduction or recopying of any documents so furnished. The foregoing shall be accomplished within the next thirty days.

Plaintiffs' counsel may also seek to have entire sets of documents copied if deemed necessary in order to advance this litigation. To the extent that any such copying is considered by Defendants to be burdensome the parties shall attempt to reach a good faith resolution of the same including who shall pay the expenses thereof or actually conduct the copying process. Upon the parties failure to reach an appropriate agreement, this Court will determine the same upon conference with counsel.

BY THE COURT,

WILLIAM S. KIESER, JUDGE

cc: Court Administrator  
Frank McNaughton, Esquire  
David F. Wilk, Esquire  
Judges  
Nancy M. Snyder, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)