

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

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December 10, 2010

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Counsel for the Plaintiff

**Re: George L. Miller, Chapter 7 Trustee v. Sun Capital Partners,
Inc., et al.
Adv. Proc. No. 10-52279 (PJW)**

Dear Counsel:

This letter ruling is with respect to the motion of Timothy R.J. Stubbs and Patrick Lawlor to dismiss the Complaint as to Counts VII and VIII (Doc. # 21). For the reasons briefly set forth below, I will deny the motion. I will first address two inaccuracies in the Complaint.

The motion asserts that Stubbs and Lawlor were minority shareholders who did not own any voting shares in Indalex Holdings Finance, Inc. and therefore did not owe fiduciary duties to that company in their capacity as shareholders. In response, the Trustee states: "Because the Trustee has not alleged any claims against Stubbs and Lawlor in their capacity as shareholders, this argument should be discounted as meritless and irrelevant." (Doc. # 37, p. 14) The Complaint states otherwise:

As members of the Board and as controlling shareholder, Sun, Sun Indalex, Leder, Krouse, Terry, Liff, Gillen, Kreilein, Stubbs, Alger, McElwee, Lawlor, Skillen and Finnigan had a fiduciary duty to Indalex and its shareholders.

As members of the Board and as controlling shareholders when Indalex was insolvent Sun, Sun Indalex, Terry, Liff, Stubbs, Alger, McElwee, Lawlor, Skillen and Finnigan also had a fiduciary duty to Indalex's creditors.

(Complaint, ¶¶ 244 and 245) The Complaint should be amended accordingly.

The petitions were filed on March 20, 2009. Lawlor did not come on board until August 24, 2007, several months after the Board approved the large dividend which is the center piece of the Complaint. Notwithstanding that sequence of events, the Complaint asserts:

During the three years preceding the petition date, Leder, Krouse, Terry, Liff, Gillen, Kreilein, Stubbs, Alger, McElwee, Lawlor, Skillen and Finnigan served on the Board of Directors of Indalex Holdings Finance, Inc.

(Complaint, ¶ 242.) This obviously is an incorrect statement and the Complaint should be amended accordingly.

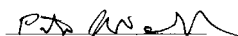
In my view, the Complaint does suffer from the lumping together of many of the defendants with respect to particular alleged wrongdoings. However, with Stubbs as the CEO and Lawlor as the CFO one would assume that these two individuals were either involved in or were aware of the alleged wrongful transactions and took no action to protect the company's interests. If so, they would be in breach of their fiduciary duties if the allegations of wrongdoing merit recovery. Thus, it seems to me that the Trustee should be permitted to engage in discovery to determine the nature and extent of their involvement and/or their failure to thwart the alleged wrongdoings.

Despite this lumping together of many of the defendants, the Complaint alleges sufficient facts to support the breach of fiduciary duty claims, as it lays out several corporate actions that allegedly reflect Stubbs's and Lawlor's failure to comply with their duties of loyalty and care. While the motion to dismiss characterizes these claims as being very difficult to prove, none of these claims presents a novel legal theory; rather, the Complaint strikes me as alleging garden variety breach of fiduciary duty claims. Furthermore, because the Complaint sufficiently alleges that Stubbs and Lawlor had divided loyalties, it would not be appropriate to dismiss the Complaint based on either the

business judgment rule or the exculpatory clauses. In re Bridgeport Holdings, Inc., 388 B.R. 548, 571 (Bankr. D.Del. 2008); In re Troll Comm'c, 385 B.R. 110, 119-20 (Bankr. D.Del. 2008).

Accordingly, I will deny the motion.

Very truly yours,



Peter J. Walsh

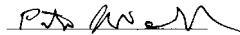
PJW:ipm

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In Re:)	Chapter 7
)	
IH 1, Inc., et al.)	Case No. 09-10982 (PJW)
)	
Debtors.)	(Jointly Administered)
)	
<hr/>		
GEORGE L. MILLER, Chapter 7)	
Trustee,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 10-52279 (PJW)
)	
SUN CAPITAL PARTNERS, INC.,)	
et al.,)	
)	
Defendants.)	

ORDER

For the reasons set forth in the Court's letter ruling of this date, the motion of Timothy R.J. Stubbs and Patrick Lawlor to dismiss the Complaint as to Counts VII and VIII (Doc. # 21) is **denied**.



Peter J. Walsh
United States Bankruptcy Judge

Dated: December 10, 2010

