

USA
JSM
CV

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

03 JUL 17 10:45
INDUSTRIAL TECHNOLOGY VENTURES, LP
2500 Northwinds Parkway, Suite 475
Alharetta, GA 30004,

Plaintiff,

v.

PARTNERS CONCEPTS DEVELOPMENT, INC.
2079 A Lawrence Drive
De Pere, WI 54115,

and

RONALD H. VAN DEN HEUVEL
2079 A Lawrence Drive
De Pere, WI 54115,

and

DANIEL PLATKOWSKI
2079 A Lawrence Drive
De Pere, WI 54115,

and

STEVEN C. PETERS
2079 A Lawrence Drive
De Pere, WI 54115,

and

KATHLEEN G. BERG
2079 A Lawrence Drive
De Pere, WI 54115,

and

JAMES KELLAM
2079 A Lawrence Drive
De Pere, WI 54115,

03 - C - 0669

Case No. _____

and

BERNARD DAHLIN
2079 A Lawrence Drive
De Pere, WI 54115,

and

TISSUE PRODUCTS TECHNOLOGY CORP.
2079 A Lawrence Drive
De Pere, WI 54115,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, Industrial Technology Ventures, Inc. ("ITV"), by and through its attorneys, Liebmann, Conway, Olejniczak & Jerry, S.C., and as and for its Complaint against the Defendants, alleges and shows the Court as follows:

PARTIES

1. Plaintiff, ITV, is a limited partnership organized and existing under the laws of the State of Georgia, with its principal place of business at 2500 Northwinds Parkway, Suite 475, Altharetta, Georgia.

2. Defendant, Partners Concepts Development, Inc. ("PCDI"), is upon information and belief, a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115, and which is in the business of operating a number of paper and wood products businesses as well as businesses unrelated to paper and wood products, and whose Registered Agent for service of process is Steven C. Peters, 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

3. Defendant, Tissue Products Technology Corp. ("TPTC"), is upon information and belief, a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115, which is in the business of providing Custom Paper Products, Inc., ("CPPI") with jumbo rolls of paper for conversion, and whose Registered Agent for service of process is Ronald H. Van Den Heuvel, 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

4. Defendant, Ronald H. Van Den Heuvel, is an adult resident of the State of Wisconsin, having an address at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

5. Defendant, Daniel Platkowski, is an adult resident of the State of Wisconsin, having an address at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

6. Defendant, Steven C. Peters, is an adult resident of the State of Wisconsin, having an address at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

7. Defendant, Kathleen G. Berg, is an adult resident of the State of Wisconsin, having an address at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

8. Defendant, James Kellam, is an adult resident of the State of Wisconsin, having an address at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

9. Defendant, Bernard Dahlin, is an adult resident of the State of Wisconsin, having an address at 2079 A Lawrence Drive, De Pere, Wisconsin, 54115.

JURISDICTION AND VENUE

10. The amount in controversy in this action exceeds \$75,000.00, exclusive of costs and interests.

11. Plaintiff, ITV, is domiciled in and incorporated under the laws of the State of Georgia, with its principal place of business in Georgia, and all Defendants are incorporated in and have principal places of business in and reside in the State of Wisconsin, and therefore jurisdiction is proper under 28 U.S.C. §1332.

12. Venue is proper in this Court pursuant 28 U.S.C. §1391(a)(1)(2) and (3) because all of the Defendants reside in the State of Wisconsin, because a substantial part of the transactions took place in this district, and all Defendants are subject to personal jurisdiction in this district.

GENERAL ALLEGATIONS

13. The Plaintiffs reallege and incorporate by reference all of the allegations contained in Paragraphs 1 - 12 above.

14. Cordova Enhanced Fund, LP ("Cordova") purchased five membership interests in PCDI Oconto Falls Tissue, LLC, pursuant to a Membership Interest Purchase Agreement dated December 10, 1999, at a total purchase price of \$2.2 Million.

15. PCDI Oconto Falls Tissue, LLC, owned 100% of the shares of Oconto Falls Tissue, Inc. ("OFTI") and OFTI owned 100% of the assets of a tissue making facility in Oconto Falls, Wisconsin.

16. PCDI owned approximately 65% of PCDI Oconto Falls Tissue, LLC, and in exchange for its investment in PCDI Oconto Falls Tissue, LLC, Cordova received preferred membership interests which had features such as a current dividend, a one time liquidation preference, anti-dilution rights, a performance based valuation adjustment, and veto rights on a variety of corporate transactions.

17. With the consent of PCDI Oconto Falls Tissue, LLC, Cordova later sold two of its membership interests in PCDI Oconto Falls Tissue, LLC, to ITV for a purchase price of \$1 Million, and ITV took the PCDI Oconto Falls Tissue, LLC, interests with all the same rights and preferences as Cordova had in those interests.

18. Simultaneous with the purchase of interests from Cordova in PCDI Oconto Falls Tissue, LLC, ITV purchased a 5% non-dillutable ownership interest in PCDI pursuant to a Stock Purchase Agreement dated August 4, 2000 among PCDI, Ron Van Den Heuvel and ITV, at a purchase price of \$2.5 Million.

19. At the time of stock purchase, Ron Van Den Heuvel and others represented to ITV that PCDI owned and operated a number of paper and wood products businesses as well as businesses unrelated to paper and wood products, and that PCDI was going to sell off all businesses unrelated to paper and wood, and that the exit of PCDI Oconto Falls Tissue, LLC would take place at the PCDI level with either a sale of PCDI or initial public offering of PCDI.

20. Ron Van Den Heuvel was and continues to be the majority and controlling shareholder in PCDI.

21. In its purchase agreement for PCDI shares, ITV required that PCDI hire a Chief Operating Officer and Chief Financial Officer acceptable to ITV, and despite repeated efforts over the last several years to get PDCI to fulfill these promises, PCDI has made no attempt to fill either of these positions.

22. ITV viewed these positions as significant gaps in PCDI's management and believed filling those positions was critical to the success of PCDI, and the agreement by

PCDI to fill these positions within six months of ITV's purchase of PCDI interest was a significant factor in ITV proceeding with the investment in PCDI.

23. As part of the purchase of interest in PCDI, ITV received a contractual right to appoint one member on the Board of Directors, and at the time of the August, 2000 investment through approximately July, 2001, Mr. Anthony J. Maselli was the Board Member appointed by ITV. Subsequently, Mr. Maselli was replaced by Paul R. DiBella in July of 2001 as ITV's appointed Board Member. However, Mr. DiBella and ITV resigned the Board position in PCDI in March 2003 after making a number of attempts to get Ron Van Den Heuvel and PCDI to comply with the agreement and follow the proper corporate governance practices.

24. Over the years, Ron Van Den Heuvel has failed to provide the Shareholders and Directors with adequate information on the operations of PCDI, he has purchased and sold material assets of PCDI without Board or Shareholder approval, he has pledged shares of PCDI without the required consent of the Shareholders and Directors, he has sold an entity known as Care for Ages for substantial cash without explanation or approval of how the proceeds from the sale were utilized, pledged assets of PCDI for PCDI loans without the consent or approval of the Directors and Shareholders, and failed to inform the Directors or Shareholders of multiple lawsuits that were lodged against PCDI that resulted in damages against PCDI (including a suit by Paul Anderson for wrongful discharge and a Pennsylvania financial institution suit regarding land PCDI purchased in Pennsylvania). All of these practices are in contravention to the Shareholders Agreement and have resulted in damage to ITV.

25. On December 12, 2001, Ron Van Den Heuvel formed Oconto Falls Tissue Technologies, Inc., which later changed its name to Tissue Products Technologies Corp. or TPTC.

26. Pursuant to a series of consents, PCDI Oconto Falls Tissue, LLC, was merged with and into TPTC and characterized as a recapitalization with the members of PCDI Oconto Falls Tissue, LLC, subscribing for all of the outstanding shares of TPTC and, therefore, PCDI Oconto Falls Tissue, LLC, was dissolved into TPTC.

27. The Plaintiffs' understanding was that the only Shareholders of TPTC were PCDI, Cordova and ITV.

28. ITV consented to the recapitalization subject to the terms and conditions set forth in a letter dated February 8, 2002 and amended in April 2002, and ITV's consent was accepted subject to the conditions set forth in the letter as confirmed in the Consent of Members of PCDI Oconto Falls Tissue, LLC, dated December 31, 2001 at which time ITV was promised by oral and written representations made by Ron Van Den Heuvel, Steven Peters, and Dan Platkowski, that all of the tissue industry related activities of PCDI Oconto Falls Tissue, LLC, PCDI, and other affiliates would be combined and merged into TPTC.

29. The combination and merger into TPTC would make TPTC an attractive investment, and it would further allow for TPTC to refinance certain debt of PCDI Oconto Falls Tissue, LLC.

30. Ron Van Den Heuvel, Peters, and Platkowski provided ITV with a detailed business plan for TPTC which showed the organizational structure for TPTC and a chart of entities that were going to be rolled into TPTC.

31. The TPTC plan showed 2002 projected revenues of approximately \$80 Million in 2002 and 2003 projected revenues of approximately \$200 million.

32. Ron Van Den Heuvel stated to ITV that TPTC could not issue preferred stock interests, and that ITV would have to convert its preferred interests in PCDI Oconto Falls Tissue, LLC into common stock of TPTC.

33. ITV relied on these representations, entered into the exchange transaction, but retained a right of rescission as set forth in the consent letter.

34. At organization, the Board members of TPTC were Ron Van Den Heuvel, Steven Peters, James Kellam, Bernard Dahlin and Kathleen Berg. TPTC failed to hold a Board meeting during 2002.

35. In early 2002, Ron Van Den Heuvel, Peters and Platkowski formed Custom Paper Products, Inc. ("CPPI") which is a business of converting jumbo tissue rolls into end products, and for which Ron Van Den Heuvel, Peters and Platkowski are the controlling owners and Directors.

36. CPPI was one of the Company's represented to ITV that was going to be rolled into TPTC, and in April of 2002, ITV began talking to Ron Van Den Heuvel about a recapitalization of TPTC to reduce the debt level from approximately \$67 Million to a more commercially reasonable level. CPPI was operating well at the time and projected to generate revenues in excess of \$12 Million, and ITV viewed this as an opportune time de-leverage the financial structure of TPTC.

37. ITV reiterated the need to hire a strong COO and CFO and in August of 2002 brought certain members of Prudential Capital to Wisconsin to meet with Ron Van Den Heuvel and others to discuss a possible investment by Prudential Capital, however,

despite Prudential Capital's interest, TPTC failed to produce certain projected financial information Prudential Capital needed to continue its evaluation, despite repeated efforts of ITV to get these done.

38. At the time that TPTC failed to produce financials and a forecast under a recapitalization to Prudential Capital, ITV learned that Mr. Ray Van Den Heuvel would not allow TPTC to spend money on a CFO or a consultant to prepare a statement to facilitate Prudential's discussions and also learned that several Van Den Heuvel family controlled entities (namely Voss Electric and Spirit Construction), lent money to and/or guaranteed debt at TPTC. **[Vos Electric Inc. and Spirit Construction Services Inc.]**

39. By the end of 2002, and continuing through today, none of the entities that were represented to ITV as being rolled up in TPTC were actually rolled up into TPTC, and it was represented that Mr. Ray Van Den Heuvel would not permit the roll ups to happen, so as not to jeopardize the cash TPTC was generating to pay down the debt to him and/or his Van Den Heuvel family guarantees at TPTC.

40. TPTC ended 2003 with over \$40 Million in revenues and net profit after taxes of over \$3 Million, and Ron Van Den Heuvel sent out materials to ITV stating that the over \$8 Million of cash (adding back depreciation to net income) was available for payment of principal and distribution to the equity owners, but these distributions were never made to equity owners.

41. When questioned, Ron Van Den Heuvel stated that TPTC did not have the cash to make the distributions, however, in late 2002 CPPI sales did not materialize, and TPTC continued to provide CPPI with jumbo rolls on credit which ballooned the

receivables due to TPTC from CPPI to approximately \$3.5 Million, and neither TPTC nor its Directors have taken any action against CPPI to collect these receivables.

42. ITV has learned that the owners of CPPI have contracted to sell a majority interest in CPPI to the Oneida Nation, and ITV is concerned that the proceeds of the sale will not be used to pay the trade payable to TPTC.

43. ITV has reason to believe that based on these actions, inactions and interlocking positions of Ron Van Den Heuvel, TPTC and CPPI, that the Officers and Directors of TPTC have not exercised their fiduciary duties, and have engaged in undisclosed conflict of interest transactions.

44. ITV has reason to believe that TPTC is continuing to sell goods to CPPI on account and ITV believes that Ron Van Den Heuvel, Steven Peters, and Dan Platkowski as Officers and Directors of TPTC have improperly used funds due to TPTC to fund the operations of CPPI.

45. ITV also has reason to believe that without proper authorization from the Board of Directors of PCDI and TPTC, that Mr. Ray Van Den Heuvel and Mr. David Van Den Heuvel have been acting as or have become Senior Officers of PCDI and TPTC and believe that Mr. Ray Van Den Heuvel and Mr. David Van Den Heuvel are owners and Officers or Directors of Voss Electric and Spirit Construction, and are acting for TPTC in a way that is in the interests or spirit of Voss Electric and/or Spirit Construction as potential creditors of PCDI and TPTC.

46. On or about March 21, 2003, Paul DiBella commenced negotiations with Ron Van Den Heuvel to structure a transaction that would result in the redemption of all ITV stock of PCDI and TPTC, however, the negotiations were unsuccessful because Ron

Van Den Heuvel represented at multiple times that he had the authority to represent both PCDI and TPTC, and consummate a transaction on behalf of and in the name of both entities.

47. On June 4, 2003 and June 5, 2003, Ron Van Den Heuvel disclosed that in fact he did not have the authority to represent either PCDI or TPTC, but it was then revealed to ITV that Mr. Ray Van Den Heuvel is in control of all aspects of PCDI and TPTC.

FIRST CAUSE OF ACTION:
STRICT RESPONSIBILITY MISREPRESENTATION

48. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 47 above.

49. As set forth above, upon information and belief, the Defendants made various representations of material facts.

50. Upon information and belief, such representations of fact were untrue.

51. Upon information and belief, the Defendants made the representations of fact based upon their own personal knowledge, or in circumstances in which they necessarily ought to have known the truth or untruth of the statements.

52. Upon information and belief, the Defendants had an economic interest in the transactions involved.

53. Upon information and belief, the Plaintiff believed such representations to be true and relied on the representations as being true.

54. As a result of the Defendants' making the representations of fact that were untrue under the circumstances set forth above, the Defendants are strictly responsible for

the substantial damages accruing to the Plaintiff as a result of the Defendants untrue representations.

SECOND CAUSE OF ACTION:
INTENTIONAL MISREPRESENTATION

55. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 54 above.

56. Upon information and belief, Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC both as a group and individually made material representations to ITV.

57. Upon information and belief, Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC made these representations recklessly or without caring whether the representation was true or false.

58. Upon information and belief, Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC collectively and individually made representations in order to induce ITV to proceed with the investment in PCDI.

59. Upon information and belief, ITV believed the representations made by the Directors Ron Van Den Heuvel and Steven Peters, as Director of PCDI, and by the Directors of TPTC to be true, and as a result have suffered pecuniary damage.

THIRD CAUSE OF ACTION:
NEGLIGENT MISREPRESENTATION

60. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 59 above.

61. Upon information and belief, Ron Van Den Heuvel and Steven Peters, as Director of PCDI, and the Directors of TPTC both collectively and individually made

material representations to ITV concerning ITV's investment in PCDI and the organizational structure of TPTC.

62. Upon information and belief, the representations made by Ron Van Den Heuvel and Steven Peters, as Director of PCDI, and by the Directors of TPTC were not reliable, and that Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC failed to use ordinary care when making those representations to ITV.

63. That ITV believed the representations of Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and by the Directors of TPTC and entered into an investment with PCDI and TPTC which resulted in pecuniary damage.

FOURTH CAUSE OF ACTION:
BREACH OF CONTRACT

64. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 63 above.

65. That ITV had a purchase agreement for PCDI shares and ITV consented to the merger of PCDI OCONTO FALLS TISSUE, LLC into TPTC based on oral and written representations made by Ron Van Den Heuvel, Steve Peters and Dan Platkowski.

66. That Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC failed to adhere to the terms and conditions of the Stock Purchase Agreement as well as the terms and conditions stated in the Consent of Members of PCDI OCONTO FALLS TISSUE, LLC dated December 31, 2001.

67. That because Ron Van Den Heuvel and Steven Peters, as Director of PCDI, and the Directors of TPTC did not adhere to the Stock Purchase Agreement or the Consent of Members of PCDI OCONTO FALLS TISSUE, LLC dated December 31,

2001, the Plaintiff has suffered pecuniary damage as well as irreparable damage to its investment with PCDI and TPTC.

68. That Ron Van Den Heuvel and Steven Peters, as Director of PCDI, and by the Directors of TPTC breached the agreements reached between them and ITV.

FIFTH CAUSE OF ACTION:
UNJUST ENRICHMENT

69. The Plaintiffs reallege and incorporate by reference all of the allegations contained in Paragraphs 1 – 68 above.

70. That ITV entered into its investment with PCDI based on the terms and conditions of the Stock Purchase Agreement as well as the conditions set forth in the letter as confirmed in the Consent of Members of PCDI OCONTO FALLS TISSUE, LLC dated December 31, 2001, and those agreements have not been followed, resulting in the Directors of PCDI and TPTC being unjustly enriched.

SIXTH CAUSE OF ACTION:
EQUITABLE ESTOPPEL

71. The Plaintiff alleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 70 above.

72. That Ron Van Den Heuvel and Steven Peters, as Director of PCDI, and by the Directors of TPTC made certain promises to ITV concerning its investment with PCDI and the merger of PCDI OCONTO FALLS TISSUE, LLC into TPTC.

73. That ITV reasonably relied on those promises and was induced to proceed with its investment in PCDI and share exchange in TPTC.

74. That ITV's reliance on the promises made by Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and by the Directors of TPTC was to its detriment

and, therefore, Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and by the Directors of TPTC should be estopped from selling majority interests in CPPI to the Oneida Nation.

SEVENTH CAUSE OF ACTION:
BREACH OF FIDUCIARY DUTY

75. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 74 above.

76. That Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC were charged with the management of PCDI and TPTC and as Directors owed a fiduciary duty to the individual Shareholders of PCDI and TPTC.

77. That Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC owe a duty to ITV to act in good faith in dealing fairly in all of the Corporation's business.

78. That Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC were in a position in which they possessed superior knowledge and influence over the business of PCDI and TPTC and, therefore, were in a position of trust.

79. Upon information and belief, that Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC breached the fiduciary duty they owed to ITV through usurpation of corporate opportunity, conflicting interests, and oppression of minority shareholders.

EIGHTH CAUSE OF ACTION:
INJUNCTION

80. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 79 above.

81. Upon information and belief, Ron Van Den Heuvel and Steven Peters, as Directors of PCDI, and the Directors of TPTC are contemplating selling a majority ownership interest to CPPI to the Oneida Nation. Such a sale would be unlawful and would result in obvious irreparable harm for which no adequate remedy at law exists.

82. The Plaintiff seeks temporary and permanent injunctive relief prohibiting the sale of CPPI to the Oneida Nation based on the allegations set forth above and the resulting irreparable harm.

NINTH CAUSE OF ACTION:
STATE SECURITIES LAW CLAIMS

83. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 82 above.

84. Pursuant to Wis. Stats. §551.41, it is unlawful for any person, in connection with the offer, sale or purchase of any security to directly or indirectly (1) employ any device, scheme or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

85. Upon information and belief, as set forth in the foregoing paragraphs of this Complaint, the defendants made untrue statements of material facts, employed schemes to defraud and did defraud, and engaged in a course of business which operated to defraud the Plaintiff.

86. Pursuant to Wis. Stats. §551.59, the Plaintiff seeks damages for the actions taken by the Defendants, including reasonable attorneys' fees.

TENTH CAUSE OF ACTION:
FEDERAL SECURITIES LAW CLAIMS

87. The Plaintiff realleges and incorporates by reference all of the allegations contained in Paragraphs 1 – 86 above.

88. Pursuant to 15 § U.S.C. 78j(b), Rule 10-b5, 17 CFR § 240.10b-5 and 15 U.S.C. A. § 77(o), upon information and belief, the Defendants used manipulative and deceptive devices to sell the stock referenced in the foregoing paragraphs of this Complaint.

89. Upon information and belief, as set forth above, the Defendants made false statements of material fact intending to deceive the Plaintiffs in connection with the sale of securities. The Plaintiff reasonably relied upon the false and misleading statements and the false and misleading statements have resulted in damage to the Plaintiff.

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. For a sum to compensate it for its pecuniary losses and damages;
- B. For specific performance of the Stock Purchase Agreement as well as all the conditions set forth in the Consent Letter dated December 31, 2001 or rescission of ITV's investment in PCDI and TPTC;
- C. For a preliminary injunction to stop the interested Directors of PCDI and the Directors of TPTC from selling CPPI interests to the Oneida Nation;
- D. An award of Plaintiff's attorneys fees, costs, and disbursements incurred in pursuing this action; and

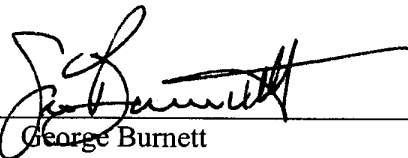
E. For such other relief as the Court may deem just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated this 17th day of July, 2003.

LIEBMANN, CONWAY, OLEJNICZAK, & JERRY, S.C.
Attorneys for Plaintiff

By: 
George Burnett

POST OFFICE ADDRESS:

231 South Adams Street
Green Bay, WI 54301
P. O. Box 23200
Green Bay, WI 54305-3200
(920) 437-0476
State Bar No. 1005964