September 28, 2012

BRIEF: Avent v. Paragon Gaming, LLC: Plaintiffs' Response to Defendants' Separate Statement of Facts in Support of Their Motion for Summary Judgment -- Filed Sept. 28, 2012 -- in the Maricopa County Superior Court of Arizona, citing Bigler & Tillman's Void or Voidable? -- Curing Defects in Stock Issuances Under Delaware Law

Seth Barrett Tillman

For Opinion See 2013 WL 2283585 (Trial Order), 2013 WL 2283606 (Trial Order), 2012 WL 8161900 (Trial Order), 2012 WL 8161923 (Trial Order)

Superior Court of Arizona.
Maricopa County
Loretta T. AVENT, a married woman, Loretta T. Avent & Associates, Inc., an Arizona corporation, Robert Sigler, an unmarried man, Plaintiffs,
v.
PARAGON GAMING, L.L.C, et al., Defendants.
No. CV2010017742.
September 28, 2012.

Response to Defendants' Separate Statement of Facts in Support of Their Motion for Summary Judgment

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(Assigned to the Hon. Arthur Anderson).

Under Ariz. R. Civ. P. 56(c)(2), Plaintiffs respond to each of the separately numbered paragraphs of Defendant's Separate Statement of Facts in support of their Motion for Summary Judgment as follows:

1. Admitted, but not a material fact.

. . . .

51. The document speaks for itself, but it does not authorize breaches of fiduciary duties. Fiduciary duty requires more than conformance to technical or contractual requirements or corporate bylaws. C. Stephen Bigler and Seth Barrett Tillman, *Void or Voidable?—Curing Defects in Stock Issuances Under Delaware Law*, The Business Lawyer; 63 Bus Law. At 1109, 1113 (Aug. 2008) (citing Jack B. Jacobs, *The Uneasy Truce Between Law and Equity in Modern Business Enterprise Jurisprudence*, 8 DEL. L. REV. 1, 9 (2005)); *see Lynch v. Vickers Energy Corp.*, 383 A.2d 278, 281 (Del. 1977) (finding duty of "complete candor" to minority shareholders requires disclosing all "germane" information, not just technically accurate information because objective is "to prevent insiders from using special knowledge which they may have to their own advantage"). Exercise of power must be fair and equitable to those who are adversely affected. *Id.*

. . . .

112. Disputed. The Declaration Affirmation Ratification and Waiver is undated. Seay testified he did not know if he signed it before or after he ratified the notes and had no idea who would know when it was signed. DSOF Exhibit 18 at 15:4-16:1. Bennett testified she did not know when she, Menke, or Seay signed it. Exhibit I at 93:23-94:11. Other than knowing it was not signed it 2009, she could not narrow the date further than 2006 to 2008. *Id.* Although Bennett, Menke, and Seay were technically the Required Interest of the Members, technical compliance with the operating agreement does not mean they met their fiduciary duties. Bigler and Tillman, *supra* ¶51. Bennett and Menke confess a conflict of interest that precluded participation in the ratification of the notes and the evidence proves Seay had a conflict of interest. They were not disinterested members.

. . . .

Dated this 28th day of September 2012,

STANLEY L. LERNER, P.C.

LAW OFFICES OF WILLIAM R. HOBSON, P.C.

LAW OFFICES OF KEVIN KOELBEL, P.C

By: *s/ Kevin Koelbel*

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