

FAYETTE COUNTY CIRCUIT COURT
DIVISION 7
CIVIL ACTION NO. 15-CI-1799



CHRISTOPHER WALTON

PLAINTIFF

V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

RHINO GP LLC

DEFENDANT

I. FINDINGS OF FACT

1. Admitted into evidence as part of the record without objection from the parties were Plaintiff's exhibits: 1-9, 12, 13, 15-19, 22-24 and Defendant's exhibits 1-10, 12-18.
2. Plaintiff became employed by Defendant in 2007 when Defendant purchased the Sands Hill Mining Company.
3. In April 2012 Plaintiff was promoted to Chief Operating Officer and the record evidence established that Plaintiff's performance as COO was satisfactory.
4. On October 19, 2013 Plaintiff was promoted to CEO under an employment contract that was approved by Defendant's Board of Directors. (Def. Ex. 5).
5. In his capacity as CEO Plaintiff worked for the Board of Directors and most closely with the Chairman and former CEO David Zatezalo.
6. While Plaintiff served as CEO the coal industry was experiencing difficult business conditions.
7. Plaintiff offered testimony and exhibits concerning the steps he took to address the business conditions which included analyzing the mining operations at each location to determine where production cuts, closures or layoffs were necessary.

8. Defendant offered testimony and exhibits to establish that the Board of Directors believed that Plaintiff did not perform well enough to continue in his role as CEO.
9. Plaintiff's employment contract allowed for him to be terminated by the Board with or without cause.
10. If Defendant terminated Plaintiff without cause he was entitled to 12 months of his base salary paid in a lump sum, but if the termination was for cause, no severance was due.
11. Cause for termination was defined in section 12.a. of the agreement and under section 12.a.i. "the failure of executive to perform substantially his duties" required Defendant to provide 10 days written notice.
12. On October 12, 2014, David Zatezalo recommended to Board Member Mark Zand that Walton be removed as CEO and replaced by Joe Funk. (Pl. Ex. 3).
13. Zatezalo also communicated on October 12 that Walton would be owed 1 year severance and testified via a deposition that was read into the record during trial that despite his belief that Plaintiff should be replaced as CEO, Plaintiff ~~was~~ owed severance under the contract. EL
14. The Court finds that Zatezalo's testimony was credible.
15. On October 27, 2014, Board member Joe Jacobs sent Plaintiff an email as President of Wexford Capital that was critical of Plaintiff's performance as CEO, including Defendant's failure to meet projections and forecasts, and requested a response in 10 days. The email did not indicate that Jacobs was writing on behalf of the Board or "the employer" as required by contract, nor did it state that it was intended to provide notice to Plaintiff of cause under his contract.

16. On November 10, 2014, the Board voted to authorize the termination of Walton's contract for cause.
17. Plaintiff's termination was effective November 14, 2014.
18. Jacobs October 27 email was not notice under Plaintiff's contract and Defendant failed to provide notice as required.
19. Based upon the evidence, including the testimony of the Chairman Zatezalo, the Court concludes that Plaintiff substantially performed his duties as CEO.

II. CONCLUSIONS OF LAW

1. The parties had a contractual agreement to employ Plaintiff as CEO. (Def. Ex. 5).
2. Defendant breached the agreement because Plaintiff was not provided notice of a for cause termination pursuant to section 12.a.1.
3. Defendant breached the agreement by terminating Plaintiff without cause and failing to pay 12 months of base salary, which was \$440,000 at the time of his discharge.
4. Pursuant to KRS 360.010, Plaintiff is entitled to an award of pre-judgment interest. As the amount due Walton under the parties' contract is liquidated and certain, Walton is entitled to prejudgment interest at a rate of 8% running from November 15, 2014, to April 21, 2017, in the amount of \$85,536.00.
5. Post judgment interest is awarded pursuant to KRS 360.040 at the rate of 12% per annum.

WHEREFORE, Plaintiff Christopher Walton shall hereby take judgment against Defendant Rhino GP LLC in the sum of \$525,536.00, together with interest at a rate of 12% per annum running from date of entry of judgment below until satisfied in full. This is a final and appealable judgment and there is no just cause for delay

DATED: 4/25/17

/S/ ERNESTO SCORSONE
A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT
By: Ernesto Scorsone
HON. ERNESTO SCORSONE, JUDGE
FAYETTE CIRCUIT COURT DEPUTY

ATTEST:

Robert Abell
George M. Reul, Jr.
Randolph H. Freking
Robert Abell

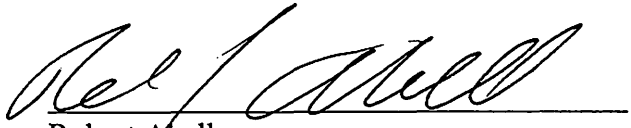
Counsel for Plaintiff Christopher Walton

Objected to: Keith Moorman
Kevin Havelda

Counsel for Rhino GP, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the listed findings of fact and conclusions of law were served by electronic mail to Keith Moorman, Esq. and Kevin Havelda, Esq., Frost Brown Todd LLC, 250 West Main Street, Suite 2800, Lexington, KY 40507 (*kmoorman@fbtlaw.com*, *khavelda@fbtlaw.com*), on April 12, 2017. The final judgment calculations were served on Keith Moorman and Kevin Havelda on April 20, 2017.


Robert Abell

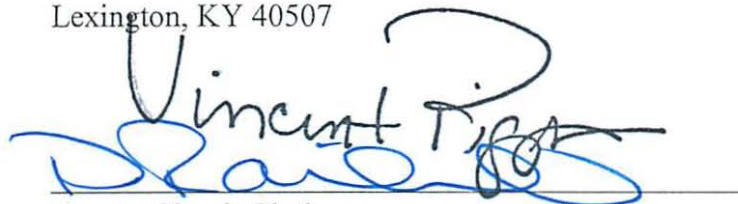
Certification of Clerk

I hereby certified pursuant to CR 77.04 that a true copy of the foregoing Findings of Fact, Conclusions of Law & Judgement was served by first-class mail, postage prepaid, this _____ day of APR 26 2017, 2017, on the following:

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Fayette Circuit Clerk