

Venturetek, L.P. v Rand Publishing Co., Inc.

2006 NY Slip Op 30387(U)

March 8, 2006

Supreme Court, New York County

Docket Number: 0605046/1998

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. Cahn

PART 49m

Justice

Venturo et al, L.P.

INDEX NO.

605046/98

MOTION DATE

5/16/05

MOTION SEQ. NO.

026

MOTION CAL. NO.

- v -

Rand Public

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

MAR 13 2006

COUNTY CLERK'S OFFICE
NEW YORK

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION IN MOTION SEQUENCE**

MOTION/CASE IS RESPECTFULLY REFERRED TO

JUSTICE

DATED:

J.S.C.

Dated: 3/8/06

[Signature]

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

* 2] .
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

-----X
VENTURETEK, L.P., RICHARD ELKIN, ANTOINE
BERNHEIM, STACY BERNHEIM, and GENSTAR,
LTD., individually and as shareholders
of Rand Publishing Co., Inc.,

Plaintiffs,

-against-

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RAND PUBLISHING CO., INC., MASON P.
SLAINE, MICHAEL E. DANZIGER,
WARBURG PINCUS VENTURES, L.P. and
E.M. WARBURG, PINCUS & CO., L.L.C.,

Defendants.
-----X

CAHN, J.

Plaintiffs' counsel, Jaroslawicz & Jaros, Esqs., moves for an order (1) awarding them 30% of the settlement funds, which were recovered from defendants Warburg Pincus Ventures, L.P. and E.M. Warburg, Pincus & Co., LLC (Warburg), as attorneys' fees; (2) awarding them \$10,805.55 of the same settlement funds, as reimbursement for expenses; and (3) directing that the balance of the settlement funds remain in an interest-bearing checking account maintained either by Willkie Farr & Gallagher, Esqs., the counsel for Warburg, or by plaintiffs' counsel, until further order of this court.

BACKGROUND

The facts of this case have been detailed in several prior decisions and orders of this court, familiarity with which is presumed.

Plaintiffs are shareholders owning 50% of Rand Publishing

Co., Inc. (Rand), a small information publishing company. In October 1998, plaintiffs brought the instant derivative suit against (1) defendants Mason P. Slaine and Michael E. Danziger, two of Rand's three directors who are the shareholders owning the remaining 50% of Rand, and (2) Warburg. Plaintiffs asserted claims against Slaine and Danziger for, inter alia, usurpation of corporate opportunities, breach of fiduciary duty, and the imposition of a constructive trust. Plaintiffs asserted claims against Warburg, which had formed a new, larger information publishing company with Slaine in December 1996, for tortious interference with contract and aiding and abetting a breach of fiduciary duty.

In March 2005, at the conclusion of extensive discovery, all parties moved for summary judgment. While these motions were pending, the Warburg defendants agreed to settle the claims asserted against them for \$750,000.00. A stipulation of settlement was marked "So Ordered" by this court on April 11, 2005 (see Jaroslawicz Aff., Exh. A). Pursuant to the stipulation of settlement, the settlement funds were placed in an interest-bearing escrow account, currently being held by Warburg's counsel.

Plaintiffs' counsel, Jaroslawicz & Jaros, now seek to be awarded 30% of the settlement funds, as attorneys' fees, and \$10,805.55, as disbursements. In support of the application,

David Jaroslawicz, the lead counsel, has submitted affidavits averring that he undertook the action on a contingency basis, and has received no remuneration or reimbursement since this action began; that his firm has expended more than 1,000 hours in investigating and preparing the complaints, engaging in extensive motion practice, conducting depositions and discovery, and preparing for hearings and trial; and, that the recovery of the settlement funds from Warburg was due solely to the diligence of plaintiffs' counsel. Jaroslawicz additionally avers that the amount plaintiffs' counsel currently seek, as fees, is far less than the amount that counsel would have earned had plaintiffs been billed at an hourly basis, and is a fair and reasonable percentage of the money recovered for Rand. In further support of their request, Jaroslawicz has submitted an affidavit containing a summary reconstruction of the hours expended by plaintiffs' counsel with respect to the Warburg defendants.

In the remainder of their motion, plaintiffs' counsel request that the settlement funds continue to be held in an interest-bearing escrow account, under the control of either Warburg's or plaintiffs' counsel, pending a final determination in this action.

The nominal defendant, Rand, has submitted the only opposition to this motion.

[* 5]
CPLR 4403, the settlement funds will remain in an interest-bearing escrow account held by Willkie Farr & Gallagher, the counsel for defendants Warburg Pincus Ventures, L.P. and E.M. Warburg, Pincus & Co.; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support Office (Room 311) to arrange a date for the reference to the Special Referee.

Dated: March 8, 2006

Enter: *Henrich*
J.S.C.

FILED
MAR 13 2006
COUNTY CLERK'S OFFICE
NEW YORK