

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**JAMES HARDY, JR.; HARDY RESOURCES,
LLC; JOHN HARDY; EVERGREEN PROCESSING, LLC,
formerly B&H RESOURCES, LLC; MARY HARDY;
HARDY ENERGY SERVICES, INC.; ELITE
COIL TUBING SOLUTIONS, LLC; and
NORTHSTAR FARMS, LLC**

PLAINTIFFS

v.

No. 1:09-cv-41-DPM

**HELEN BARTMESS, Executrix of the
Estate of George Bartmess**

DEFENDANT

ORDER

The Court appreciates counsel's work at the December 15th motion hearing. Here is where things stand.

1. The Hardys came into the hearing with four live claims: fraud, breach of fiduciary duty, tortious interference with contracts with third parties, and breach of the LLC Membership Interest Purchase Agreement. The Hardys indicated their intention not to pursue tortious-interference as a stand-alone claim, but rather present proof about this alleged conduct as part of their other claims. The tortious-interference claim is therefore dismissed without prejudice. The parties seem to agree, moreover, that the Hardys may proceed

with a claim under the Arkansas Trade Secrets Act—though they disagree about exactly how the Act applies and relates to the other claims. The Court will continue to reflect on this issue.

2. The Court denied Bartmess's motion for summary judgment, concluding that the record presented genuine disputes of material fact on the three remaining claims. As promised, however, the Court will return to the record and the governing law and reconsider. The Court recognizes that it does not know the record as well as the parties; and perhaps the Court did not discern how the undisputed facts and the law fit together on the remaining claims. Bartmess requested at the hearing to supplement the record with John Hardy's deposition. That request is granted. Bartmess should file a condensed copy of that deposition by 23 December 2011, and may file under seal if necessary.

3. The Court remains concerned about trial-related issues. The Court appreciates the Hardys revisiting their witness list and reconsidering how much time they really need to present their case adequately. The Court would appreciate Bartmess doing the same thing. The Court needs an exact list of all witnesses, whether each will testify live or by deposition, and a

requested amount of time for each person's direct testimony. The Court reminds the parties that, at the October hearing, the Hardys said they thought they could try their case in a little more than a week and Bartmess said she could try her counterclaim in no more than a day. Please file these status reports by 23 December 2011.

4. The Court looks forward to Bartmess's motion on the probate-claim issue. The motion is due by 23 December 2011. Hardy should respond by 30 December 2011. No reply will be needed.

5. The Court will hold another hearing on 10 January 2012 starting at 9:00 a.m. The Court will consider and decide the pending evidentiary motions, the expected motion on the probate-claim issue, and other trial-related matters. The Court may revisit the summary-judgment issues then too. The Court also requests the parties' views on whether the trial should be held in Batesville as planned or Little Rock. The Court would appreciate getting those views as part of the December 23rd witness lists. The Court would like to know, in particular, how the trial location will affect each witness and each party.

So Ordered.

D.P. Marshall Jr.
D.P. Marshall Jr.
United States District Judge

20 December 2011