

**The Bankruptcy Court for the District of Maryland (J. Schneider), interpreting Virginia law, denied the defendant's motion to dismiss Counts I, II, III, and V of a former shareholders complaint.**

*Voltin v. Green-Gifford Real Estate Holding, Inc. (In re Voltin)*, 2016 Bankr. Lexis 1125 (Bankr. D. Md. April 8, 2016).

Summary by Kristen M. Siracusa, Miles & Stockbridge P.C.

The Debtor, a former employee and shareholder of the defendant, filed a five count complaint for breach of contract, fraudulent transfer, unjust enrichment, conversion and an accounting based on an alleged breach of the terms of a shareholder agreement relating to the defendant's repurchase of the debtor's shares upon termination of the debtor's employment. The Debtor acquired 19.1% of the total shares of the defendant's stock during his employment pursuant to a Shareholders Agreement, pursuant to which, upon termination of employment, the Debtor's shares were to be sold to the defendant at the "Purchase Price" to be determined as specified in the Agreement. The Debtor and defendant were not able to agree upon the amount of the purchase price and the defendant thereafter unilaterally conducted a sale and repurchase of the Debtor's shares. The defendant notified the Debtor that he had purchased his shares and applied the purchase price against the defendant's claims against the Debtor for allegedly stealing from the company. The defendant filed the motion to dismiss the breach of contract, fraudulent transfer, unjust enrichment, and accounting claims.

The court, interpreting Virginia law, denied the motion to dismiss in its entirety. As to Count I- Breach of Contract, the defendant argued that the Debtor failed to adequately plead a violation or breach of a legal obligation of the defendant to the Debtor. Additionally, the defendant argued among other things, that the plaintiff failed to explain how the shareholder agreement was breached. The court found that the Debtor need only plead sufficient facts to enable the court to draw a reasonable inference that the elements of the claim have been satisfied, as required by *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court found that the Debtor had met his burden.

As to Count II- Fraudulent Transfer, the court found that it could reasonably infer from the complaint's allegation that the transfer occurred either in January 2015 or shortly before, both of which fall within the two years before the filing of the Debtor's bankruptcy case.

As to Count III- Unjust Enrichment, the defendant argued that, under Virginia law, a claim for unjust enrichment will not lie where there is an express contract, citing to *Southern Biscuit Co. v. Lloyd*, 174 Va. 299, 311, 6 S.E.2d 601, 606 (Va. 1940) where the court held that Virginia does not recognize a cause of action for unjust enrichment in the face of an express contract between the parties. The bankruptcy court set forth the elements of unjust enrichment under Virginia law, and was reluctant to disregard the provisions of Rule 8(d)(2) of the Federal Rules of Civil Procedure that provides authority for a plaintiff to plead in the alternative. As the court was hesitant "to permit one pleading to be read as a judicial or evidentiary admission against an alternative or inconsistent pleading" it held that Count III withstood the motion to dismiss. *Voltin* 2016 Bankr. Lexis 1125 at \* 8 quoting *Molsbergen v. United States*, 757 F.2d 1016, 1019 (9th Cir. 1985).

As to Count V- Accounting, the court held among other things that, under Virginia Law, a plaintiff need not be entitled to revenue earned by the company in order to be entitled to an accounting and that an accounting may be necessary to determine the value of the defendant and the claims withstood the motion to dismiss.