

DISTRICT COURT  
CLARK COUNTY, NEVADA

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*E. J. Hain*  
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TED R. BURKE; MICHAEL R. and )  
LAURETTA L. KEHOE; JOHN BERTOLDO; )  
PAUL BARNARD; EDDY KRAVETZ; JACKIE )  
& FRED KRAVETZ; STEVE FRANKS; PAULA )  
MARIA BARNARD; PETE T. and LISA A. )  
FREEMAN; LEON GOLDEN; C.A. MURFF; )  
GERDA FERN BELLBE; BOB and ROBYN )  
TRESKA; MICHAEL RANDOLPH; and )  
FREDERICK WILLIS, )

CASE NO. A558629-B  
DEPT. NO. XIII

Date: January 12 and  
January 26, 2009  
Time: 9:00 a.m.

Plaintiff(s),

vs.

LARRY H. HAHN, individually, and as )  
President and Treasurer of )  
Kokoweef, Inc., and former )  
President and Treasurer of )  
Explorations Incorporated of )  
Nevada; HAHN'S WORLD OF SURPLUS, )  
INC., a Nevada corporation; PATRICK )  
C. CLARY, an individual; )

Defendant(s).

AND ALL RELATED CLAIMS.

DECISION AND ORDER

THIS MATTER having come before the Court on January 12,  
2009 and January 26, 2009 on the motions referenced hereinbelow,  
and the Court, having considered the papers submitted in  
connection with such item(s) and heard the arguments made on  
behalf of the parties and then taken the matter under advisement  
for further consideration;

NOW, THEREFORE, the Court decides the submitted issues

1 as follows:

2 A. Defendant Hahn's Motion to Dismiss Amended  
3 Complaint, with Joinder by Defendants Kokoweef,  
4 Inc. And Clary (1/12/09).

5 The Countermotion to strike the Joinder is DENIED. The  
6 Motion is GRANTED as to the First Cause of Action. According to  
7 Plaintiffs' allegations preceding the First Cause of Action,  
8 Defendants Hahn and Clary did not "issue" securities. The issuer  
9 would be the corporation. In addition, NRS 90.640 does not  
10 provide a civil remedy to anyone other than the "administrator."  
11 Thus, the First Cause of Action is DISMISSED with prejudice.

12 In that the Second Cause of Action does not provide  
13 particularized statements of fraud (NRCP 9(b)) regarding the  
14 respective Plaintiffs, and in that the alleged misrepresentations  
15 to Plaintiff Burke occurred after the stock purchases outlined in  
16 paragraphs 19-32 of the First Amended Complaint, the Motion is  
17 GRANTED, and the Second Cause of Action is DISMISSED.<sup>1</sup>

18 The Motion is GRANTED as to the Third Cause of Action,  
19 as it is also devoid of particularity regarding the  
20 representations made to each Plaintiff. The Third Cause of  
21 Action is thus DISMISSED.

22 The Court is not of the view that negligent  
23  
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25 <sup>1</sup>Paragraph 49 alleges that the fraud is found in the "making  
26 of false representations," but nothing is alleged regarding what  
27 was represented to each Plaintiff and by whom at the time each  
purchased securities.

1 misrepresentation requires the same particularity in pleading as  
2 fraud. Therefore, the Court cannot say that the Fourth Cause of  
3 Action fails to state a claim on which relief can be granted, and  
4 the Motion is thus DENIED as to such cause of action.

5  
6 The Motion is GRANTED AS TO THE Fifth Cause of Action  
7 for the reasons discussed relative to the other fraud-based  
8 causes of action, and such cause of action is DISMISSED.

9 The Sixth Cause of Action suffers from the same lack of  
10 particularity as the other fraud-based causes of action, and the  
11 Motion is thus GRANTED as to such cause of action, and the same  
12 is DISMISSED.

13 The Motion is DENIED as to the Seventh, Eighth, Ninth,  
14 and Tenth Causes of Action, as they do not fail to state claims  
15 upon which relief can be granted.<sup>2</sup>

16 B. Plaintiff's Application for TRO/Preliminary  
17 Injunction and Motion for Appointment of a  
18 Receiver. (1/12/09).

19 The Court has dismissed the First and Second Causes of  
20 Action which contain the predicate for Plaintiffs' effort to  
21 obtain injunctive relief and appointment of a receiver.

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22 <sup>2</sup>The Eighth and Tenth Causes of Action are the only ones  
23 that appear to be derivative. In this regard, all of the other  
24 causes of action seek monetary recovery by the Plaintiffs  
25 themselves for their own benefit; and, although the alternative  
26 remedy of rescission is sought in the Third, Fourth, Fifth, and  
27 Sixth Causes of Action, the subject corporations are named only  
as "Nominal Defendants."

26 The Court agrees with Plaintiffs that they have adequately  
27 pleaded futility of demand on the directors to sue on behalf of  
the corporation.

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In any event, the Court is not persuaded that the Motion, insofar as it seeks injunctive relief, has merit relative to the stock and asset issues. Shares of stock and assets have a determinable value and all of Plaintiff's causes of action regarding the stock and assets are amenable to monetary relief. Therefore, the Motion is DENIED IN PART relative to those issues.

Defendants maintain that they are not utilizing corporate funds for payment of costs of defense. The Court will accept counsel's representation to that effect and will also DENY the Motion IN PART regarding that issue, without prejudice to renewal if discovery demonstrates that corporate funds are being so used.

Even though injunctive relief is not specifically sought in connection with any of the causes of action besides the Second, the Court will proceed to entertain the Motion for injunctive relief relative to destruction or alteration of corporate records, and the same is GRANTED to that extent; and, since the Court is only enjoining something that should not be done anyway, it considers that security in the sum of \$250.00 should suffice.

Again, beyond the fact that the Court has dismissed the First and Second Causes of Action, the Court does not agree that NRS 90.640 provides for appointment of a receiver at the behest of a private litigant. Instead, subsection 1 of the statute

1 specifically states as a premise a "...showing by the  
2 administrator..."

3  
4 Furthermore, with respect to seeking appointment of a  
5 receiver under NRS 32.010, the Court is not inclined at this  
6 juncture to appoint a general receiver that would take over  
7 operation of the business, and it is not persuaded that what  
8 Plaintiff seeks to inform himself about concerning corporate  
9 financial matters could not be obtained through discovery.  
10 Therefore, the Motion is DENIED IN PART insofar as it seeks  
11 appointment of a receiver, limited or otherwise.

12 C. Defendant Clary's Motion for Sanctions.

13 The Court is not in a position to determine whether  
14 sanctions are to be imposed until the underlying pleading  
15 purporting to assert causes of action against Defendant Clary is  
16 viable for purposes of further proceedings. In this regard,  
17 although certain causes of action have been dismissed against  
18 Defendant Clary, the Court considers a sanction motion to be  
19 premature. However, in making this ruling, the Court in no way  
20 intimates a view that there is a basis for Plaintiffs'  
21 contentions or that sanctions will not be appropriate.

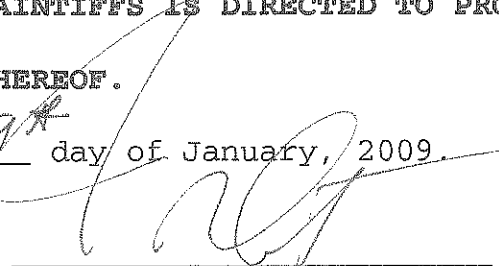
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23 Therefore, the sanction Motion is DENIED without  
24 prejudice to renewal after the viability of the remaining cause  
25 of action pleaded against Defendant Clary (the Fourth Cause of  
26 Action) is determined.

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NOW, THEREFORE, IT IS HEREBY SO ORDERED, ADJUDGED, AND  
DECREED.

COUNSEL FOR PLAINTIFFS IS DIRECTED TO PROVIDE PROMPT  
WRITTEN NOTICE OF ENTRY HEREOF.

DATED this 29<sup>th</sup> day of January, 2009.



MARK R. DENTON  
DISTRICT JUDGE

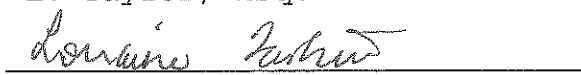
CERTIFICATE

I hereby certify that on the date filed, I placed a  
copy of the foregoing in the attorney's folder in the Clerk's  
Office or mailed a copy to:

PATRICK CLARY, ESQ.

M. NELSON SEGAL, ESQ.

ROBERTSON & VICK  
Attn: Jennifer L. Taylor, Esq.

  
LORRAINE TASHIRO  
Judicial Executive Assistant  
Dept. No. XIII