

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

PHILADELPHIA WATERFRONT PARTNERS,	:	JANUARY TERM, 2007
L.P., PHILADELPHIA WATERFRONT	:	
DEVELOPMENT, LLC, CHARLES L. KAMPS,	:	NO. 03811
III, SCOTT A. BLOW, and PATRICK T.	:	
HANLEY,	:	COMMERCE PROGRAM
	:	
Plaintiffs,	:	Control No. 070646
	:	
v.	:	
	:	
CHURCHILL DEVELOPMENT GROUP, LLC,	:	
CHURCHILL RESIDENTIAL DEVELOPMENT,	:	
L.P., CHURCHILL COMMERCIAL	:	
DEVELOPMENT, L.P., JOSEPH F. LOGUE,	:	
JR., and DOUGLAS T. HARRIS, ESQUIRE,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 13th day of November, 2007, it is **ORDERED** that the Preliminary Objections of defendants Churchill Development Group, LLC, Churchill Residential Development, L.P., Churchill Commercial Development, L.P., and Joseph F. Logue, Jr. to plaintiffs' Amended Complaint are **OVERRULED** in accord with the court's Opinion issued simultaneously. It is further **ORDERED** that the same defendants' Motion in Opposition to Entry of Appearance is **DENIED**.

BY THE COURT,

MARK I. BERNSTEIN, J.

defendants own 25% of the membership interests in PWD. The individual plaintiffs also claim to own 75%, and defendants 25%, of the Class C limited partnership interests in PWP. PWD is the general partner of PWP.

Defendants filed Preliminary Objections to the Amended Complaint. Defendants claim that the corporate plaintiffs should be dismissed as parties because the individual plaintiffs lack authority to bring suit on behalf of the corporate plaintiffs. In support of this claim, defendants point to a provision in the Purchase Agreement in which CDG was appointed sole manager of PWD. As such, CDG was expressly given “the exclusive power and authority to manage the business and affairs of” PWD.² Defendants argue that the Purchase Agreement does not expressly revoke or limit CDG’s management authority over the corporate plaintiffs in the event that the majority of the interests in the corporate plaintiffs revert to the individual plaintiffs. Defendants claim that, since CDG continues to have exclusive management authority over the corporate plaintiffs, only CDG may authorize corporate plaintiffs to file claims in this action.

In their Amended Complaint, plaintiffs have asserted the following claims against defendants:

1. Defendant Logue fraudulently conveyed certain real estate option rights from the corporate plaintiffs to two of the defendant corporate entities controlled by Logue, thereby depleting the assets of the corporate plaintiffs to the detriment of both the corporate plaintiffs and the individual plaintiffs as interest holders in corporate plaintiffs.
2. Defendants Logue and Harris (plaintiffs’ prior counsel) fraudulently induced the individual plaintiffs to enter into the Purchase Agreement with Logue.
3. Defendant Logue as manager of corporate plaintiffs breached his fiduciary duty to the individual plaintiffs as interest holders in corporate plaintiffs.
4. Defendant Harris as counsel for corporate plaintiffs breached his fiduciary duty to the individual plaintiffs as interest holders in the corporate plaintiffs

² Amended Complaint, Ex. A, ¶ 2(c). Since PWD is the general partner of PWP, this grant of authority over the affairs of PWD necessarily constitutes a grant of authority to manage PWP too.

5. Defendants Logue and Harris conspired to breach their fiduciary duties and otherwise to harm the plaintiffs.
6. Defendants Logue and CDG breached the Purchase Agreement by failing to meet certain deadlines for performance contained in the Agreement, by failing to give effect to the reversion, and by continuing to act on behalf of corporate plaintiffs after the reversion occurred.³

These claims contain allegations of harm suffered by both the individual plaintiffs and the corporate plaintiffs caused by the same wrongful acts of defendants. If, as a result of the reversion, the individual plaintiffs hold the majority interest in the corporate plaintiffs, then the individual plaintiffs may control corporate plaintiffs. The court cannot determine through preliminary objection whether the individual plaintiffs have authority to act for the corporate plaintiffs. Such determination requires factual resolution. Since the underlying question raised by plaintiffs' claims involves ownership, control, and authority to manage PWP and PWD, those entities should be named as parties to this action.⁴ The court will not dismiss the corporate plaintiffs or their claims at this time.⁵

BY THE COURT,

MARK I. BERNSTEIN, J.

³ These are the primary claims set forth in the Amended Complaint. Plaintiffs have also asserted claims for Constructive Trust and Unjust Enrichment, which are based on the same facts as the primary claims.

⁴ Even if this was simply a derivative action brought by a minority interest holder, the corporate plaintiffs would be necessary and indispensable parties to this action. Fitzpatrick v. Shay, 314 Pa. Super. 450, 456, 461 A.2d 243, 246 (1983).

⁵ For the same reasons, defendants' motion challenging plaintiffs' counsel's right to represent the corporate plaintiffs will be denied.