



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WILLIAM HORNE,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	
OPTIMISCORP, a Delaware Corporation,)	
)	
Defendant.)	

VERIFIED COMPLAINT FOR INDEMNIFICATION

Plaintiff William Horne, by and through his counsel, files this complaint against Defendant OptimisCorp and states as follows:

PARTIES

1. Plaintiff William Horne (“Horne”) is a former officer of Defendant OptimisCorp, which is sometimes referred to herein as the “Company.”
2. Horne became OptimisCorp’s Chief Financial Officer (“CFO”) in 2008. On May 13, 2013, Horne was terminated as CFO.
3. OptimisCorp is a privately held Delaware corporation with its principal place of business in Pacific Palisades, California.
4. OptimisCorp’s registered agent is National Corporate Research, Ltd., 850 New Burton Road, Suite 201, Dover, DE 19904.
5. Pursuant to 8 *Del. C.* § 145(c) of the Delaware General Corporation Law (the “DGCL”), Horne is entitled to indemnification of legal expenses,

including attorneys' fees, as he was "successful on the merits or otherwise in defense of" all claims asserted against Horne in the case captioned *OptimisCorp v. Waite*, C.A. No. 8773-VCMR (Del. Ch.) (the "Fiduciary Litigation"). The Fiduciary Litigation is now final, and Horne is therefore entitled to full and complete indemnification for all fees and expenses incurred.

THE FIDUCIARY LITIGATION

6. In September, 2012, a subordinate accused Alan Morelli ("Morelli"), OptimisCorp's Chief Executive Officer ("CEO") and Chairman of the Board of Directors (the "Board"), of sexual harassment, and the Board sought to remove Morelli as CEO at an October 20, 2012 Board meeting (the "October 20 Meeting"). The Board voted to remove Morelli, but the actions taken at the October 20 Meeting were later nullified in March 2013 by the terms of a stipulated settlement that resolved an action filed by Morelli pursuant to 8 *Del. C.* § 225.

7. As a result of settlement of the § 225 action, Morelli was reinstated as both CEO and Chairman. Shortly thereafter, Horne was terminated by the Company.

8. On August 5, 2013, Morelli, OptimisCorp and Analog Ventures, LLC (the "Fiduciary Plaintiffs") filed their Verified Complaint (the "Fiduciary Complaint") against Horne and three former OptimisCorp directors.

9. The crux of the Fiduciary Complaint was that Horne and others bribed Morelli's subordinate to make a false claim of sexual harassment as a pretext to remove Morelli as CEO, and then took other alleged actions in furtherance of that removal scheme.

10. Based on, *inter alia*, the above conduct, the Fiduciary Complaint alleged six counts against Horne:

- a. Counts 1 and 2 alleged that Horne breached his fiduciary duties to the Company, with one count seeking injunctive relief and the other damages;
- b. Counts 3 and 4 alleged that Horne breached the Stockholders Agreement in undefined ways, with one count seeking injunctive relief and the other damages;
- c. Counts 5 and 6 alleged that Horne tortiously interfered with unidentified "third parties, including the Company's existing and prospective employees, consultants, vendors, business partners and financing sources," with one count seeking injunctive relief and the other damages.

11. All of the above enumerated claims were alleged against Horne by reason of the fact that he was and based on acts he took as an OptimisCorp officer.

12. Count 7 of the Fiduciary Complaint did not assert claims against Horne.

13. The Fiduciary Litigation involved significant discovery, including the depositions of thirty-two individuals, many of which lasted more than a single day.

14. This Court presided over a six-day trial from February 6-13, 2015.

15. On August 26, 2015, this Court issued a 213-page post-trial Memorandum Opinion (the “Fiduciary Opinion”) and simultaneously issued a Final Order and Judgment (*OptimisCorp v. Waite*, 2015 WL 5147038 (Del. Ch. Aug. 26, 2015)).

16. The claims asserted by the Fiduciary Plaintiffs against Horne in the Fiduciary Litigation were “a moving target,” (*OptimisCorp*, 2015 WL 5147038, at *8 n.41) and those tried differed from those originally pled.

17. All of the claims pled or tried against Horne arose from and were premised on his position as an OptimisCorp officer.

18. The Fiduciary Plaintiffs abandoned many of their original claims against Horne. All claims against Horne that remained at the time of trial were dismissed on the merits.

19. On April 25, 2016, the Delaware Supreme Court affirmed the Fiduciary Opinion. Thus, the judgment in Horne’s favor is now final and no longer subject to appeal.

COUNT I

(Claim for Indemnification of Fees and Expenses Under § 145 of the DGCL)

20. Horne incorporates by reference the allegations of the foregoing paragraphs into Count I.

21. Section 145(c) of the DGCL provides that “[t]o the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding . . . or in defense of any claim, issue, or matter therein, such person *shall* be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith.” (emphasis added).

22. The Fiduciary Litigation was brought against Horne by reason of the fact that Horne was an OptimisCorp officer.

23. Horne was successful on the merits of every claim asserted against him in the Fiduciary Litigation. The Fiduciary Opinion has been affirmed by the Delaware Supreme Court and is now final and not subject to any further appeal.

24. Horne is therefore entitled to indemnification under 8 *Del. C.* § 145(c).

COUNT II

(Claim for an Award of Fees and Expenses Incurred in Connection With Prosecuting This Enforcement Action)

25. Horne incorporates by reference the allegations of the foregoing paragraphs into Count II.

26. Under Delaware law, Horne is entitled to recover from the Company his fees and expenses incurred in prosecuting this action to enforce his indemnification rights.

27. Therefore, OptimisCorp is liable for the fees and expenses incurred by Horne in connection with these proceedings.

WHEREFORE, Horne prays for judgment against OptimisCorp as follows:

- a. Ordering OptimisCorp to pay to Horne all expenses, including costs and attorneys' fees, incurred by Horne in connection with the Fiduciary Litigation, including the appeal to the Delaware Supreme Court, all with pre-judgment and post-judgment interest;
- b. Ordering OptimisCorp to pay to Horne all attorneys' fees and expenses incurred by Horne in bringing this action, including interest;
- c. Granting such other relief as the Court deems just and proper.

PRICKETT, JONES & ELLIOTT, P.A.

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