

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

ERNEST KELLY, an individual; MARIE,
KELLY, an individual KATHRYN McCARTY,
an individual; HELOISE LECHE, an individual;
CARL BURDICK, an individual; KIT BURDICK,
an individual; SCOTT HUNSAKER, JR., an
individual; GERSHON TUCKER, an individual;
EDWARD HILL, an individual; PAT HILL, an
individual; BILL DOVE, an individual; ANN
ETHERIDGE, an individual; TOM GRAY, an
individual; SHERRI GRAY, an individual;
ANDREW HUNTER, an individual; JOHN
HUNTER, an individual; ROBERT ANTHONY,
an individual; and RICHARD D. REDMAN,
an individual,

Plaintiffs,

vs.

P. M. CAMPBELL, an individual; ROBERT
A. WALLACE, an individual; SCOTT
BRANCH H.E.S., Inc., an Arkansas
Corporation; and, HYDRO-EXTRACTION
CORPORATION, Inc., an Oklahoma
Corporation,

Defendants.

DISTRICT COURT
FILED

JUN 21 2000

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CJ 99 03276
Judge Shallcross

Attorney Lien Claimed
Jury Trial Demanded

AMENDED PETITION

The Plaintiffs, described more particularly below, for their causes of action against
P. M. Campbell (hereinafter "CAMPBELL"), Robert A. Wallace (hereinafter
"WALLACE") (sometimes collectively the "INDIVIDUAL DEFENDANTS") and the
Corporate Defendants, SCOTT BRANCH H.E.S., Inc. and HYDRO-EXTRACTION

CORPORATION, Inc. (collectively, the "CORPORATE DEFENDANTS") allege and state as follows:

1. Ernest Kelly and Marie Kelly are citizens of the State of Oklahoma and residents of Kay County, Oklahoma.
2. Kathryn McCarty is a citizen of the State of Arkansas and a resident of Pike County, Arkansas.
3. Heloise Leche is a citizen of the State of Oklahoma and a resident of Kay County, Oklahoma.
4. Carl Burdick and Kit Burdick are citizens of the State of Texas and residents of Midland County, Texas.
5. Scott Hunsaker, Jr. is a citizen of the State of Oklahoma and a resident of Kay County, Oklahoma.
6. Gershon Tucker is a citizen of the State of Oklahoma and a resident of Kay County, Oklahoma.
7. Edward Hill and Pat Hill are citizens of the State of Oklahoma and residents of Kay County, Oklahoma.
8. Bill Dove is a citizen of the State of Oklahoma and a resident of Ponotoc County, Oklahoma.
9. Ann Etheridge is a citizen of the State of Oklahoma and a resident of Ponotoc County, Oklahoma.

10. Tom Gray and Sherri Gray are citizens of the State of Oklahoma and residents of Tulsa County, Oklahoma.

11. Andrew Hunter and John Hunter are citizens of the State of Alabama and residents of Blount County, Alabama.

12. Robert Anthony is a citizen of the State of Oklahoma and a resident of Kay County, Oklahoma.

13. Richard D. Redman is a citizen of the State of Virginia and a resident of Chesterfield County, Virginia. All individual Plaintiffs are collectively referred to hereinafter as the "MINORITY SHAREHOLDERS."

14. Defendant P.M. Campbell is a citizen of the State of Oklahoma and a resident of LeFlore County, Oklahoma.

15. Defendant Robert A. Wallace is a citizen of the State of Oklahoma and a resident of LeFlore County, Oklahoma.

16. Defendant Scott Branch H.E.S., Inc. (sometimes referred to hereinafter as "DEFENDANT SCOTT BRANCH" or "SCOTT BRANCH") is an Arkansas corporation conducting business within the State of Arkansas and the State of Oklahoma and Tulsa County, Oklahoma.

17. Defendant HYDRO-EXTRACTION Corporation, Inc. (sometimes referred to hereinafter as "Defendant H.E.C." or "H.E.C.") is an Oklahoma Corporation

conducting business within the State of Arkansas and the State of Oklahoma and Tulsa County, Oklahoma.

18. At all pertinent times, the actions complained of herein occurred within the State of Oklahoma and Tulsa County, Oklahoma.

19. This Court has jurisdiction over the parties and subject matter hereto and venue is proper in this County and Court.

BACKGROUND FACTS

20. The Corporate Defendants were formed by the Individual Defendants to: (1) act as the holding company for certain intellectual property (the "Technology") invented by Campbell, and (2) act as an operating company for extraction of small coal particles (known as "FINES" due to their size) contained on and beneath certain leased property located near Bates, Scott County, Arkansas and Heavener, LaFlore County, Oklahoma (hereinafter the "LEASEHOLD SITE"). Corporate Defendant Scott Branch was the entity through which the processing and extraction operations were to be conducted. Corporate Defendant H. E. C. was the entity in which the Technology would reside.

21. The costs to develop the Technology to a point of commercialization exceeded several million dollars according to the Investment Plan. Because the Technology was unproven and had not been reduced to practice or fully prototyped, and as an enticement to invest in such a project, the Minority Shareholders received

representations from the Individual Defendants that the risk of investment loss in the Technology development would be mitigated by the profits to be earned from processing the Fines on the Leasehold Site. Thus, the manner in which investor funds would be used was of tantamount importance to the Minority Shareholders as they would not have invested merely in a company solely developing an unproven technology.

22. The Business Plan distributed by the Individual Defendants to the Minority Shareholders described the plan (hereinafter the "INVESTMENT PLAN") for the manner in which investments would be made in the Corporate Defendants as well as the manner in which the invested funds would be expended to accomplish the Investment Plan for developing the Technology and extracting coal from the Leasehold Site.

23. Specifically, the Investment Plan called for the Minority Shareholders to "loan" funds to the Corporate Defendants, which at all pertinent times were controlled by the Individual Defendants, in increments or "units" of twenty-five thousand dollars (\$25,000.00), evidenced by promissory notes and equity in the Corporate Defendants. The subject promissory notes evidencing the "loans" were in fact "securities" as that term is defined in the Securities Act of 1933, 15 U.S.C. § 77a, *et seq.*, and the Oklahoma Securities Act, OKLA. STAT. TIT. 71, §§ 1-703. These securities were never registered with either the Securities Exchange Commission or the Oklahoma Department of Securities, nor was any formal opinion of counsel given to the Minority Shareholders or Corporate Defendants indicating the same were exempt from registration.

24. The Investment Plan further called for investment of the funds to be used to first acquire equipment and pay for operations to process the Fines from the surface and below the surface of the Leasehold Site. These fines would be dried and then sold to coal suppliers in the region and/or entities using coal as a "feedstock" for operations.

25. Second, the profits from such extraction and processing operations would be used to fund development of the Technology including prototyping and reduction to practice of the same upon the coal reserves located beneath the Leasehold Site.

26. Finally, among other representations, the invested funds would be used to fund activities needed to license the Technology to other persons or entities in the extraction industries.

27. Almost immediately after the initial securities were sold and investments made, the Individual Defendants began drawing upon the same for personal expenses. These draws were unauthorized and not part of the Investment Plan used to solicit the investments.

28. Simultaneously, the Individual Defendants began siphoning investor funds from one Corporate Defendant to the other in an attempt to prematurely fund the Technology Development. The net result of this was that the Investment Plan was not followed and operations in both Corporate Defendants suffered as a result of the misuse of investor funds. Indeed, the Corporate Defendant charged with the responsibility of developing the Technology was grossly under funded and unable to complete even the

first reduction to practice tests. Likewise, the Corporate Defendant charged with processing the Fines operations from the Leasehold Site, lacked sufficient capital to acquire proper equipment, pay employees on a punctual basis, pay Leasehold Site minimum lease payments or production payments, service the debt on the investor “loans”, or conduct any reasonable business operations. Eventually, the Corporate Defendants defaulted on the lease for the Leasehold Site causing the Corporate Defendants, and therefore the Minority Stockholders, irreparable harm.

29. Aside from intentionally taking actions that financially destroyed the Corporate Defendants’ ability to perform operations according to the Investment Plan, the Individual Defendants failed to properly run both organizations in a proper and businesslike manner. Indeed, so little attention and effort was directed toward processing and marketing the Fines that the actual portion mined and marketed was done so at an actual *loss* to the Minority Shareholders and other investors not a party to this suit.

30. The Individual Defendants have now, based upon information and belief, taken equipment and/or assets of the Corporate Defendants and transferred the same to a wholly new entity owned, at least in part, by Campbell to use the same in extraction operations on another location for their benefit and to the detriment of the Corporate Defendants.

31. The malfeasance and misfeasance of the Individual Defendants, combined with the inaction of the Corporate Defendants to protect and preserve the assets and property subject to their control and ownership damaged the Minority Shareholders and the Corporate Defendants.

FIRST CLAIM FOR RELIEF

COUNT I
(Fraud)

The Minority Shareholders adopt by reference the allegations contained in paragraphs 1 through 31 above as if fully set forth herein.

32. A stated condition of the agreement to invest funds, through “loans”, was that the Investment Plan would be followed to allow the invested funds to be properly utilized to profit from the actions of mining the Fines and then develop the Technology.

33. It was the Individual Defendants’ intention to cause the Minority Shareholders to rely upon the guarantees, assurances, representations and statements in the Business Plan and other related investment documents to consummate the transactions.

34. Without such guarantees, assurances, representations and statements, the Minority Shareholders would not have made the “loans” and purchased the equity in the Corporate Defendants.

35. Such guarantees, assurances, representations and statements were made at a time when they were false or were made in such reckless disregard for their truth as to constitute actual and/or constructive fraud.

36. As a natural and proximate consequence of such fraud by the Individual Defendants the Minority Shareholders each suffered actual damages in an amount to be proven at trial but believed to be in excess of Ten Thousand Dollars (\$10,000.00).

**COUNT II
(Punitive Damages)**

37. The Individual Defendants' conduct with regard to such fraud was wanton and reckless with regard to the rights of the Minority Shareholders, and exemplary damages should be awarded against the Individual Defendants also in an amount in excess of Ten Thousand Dollars (\$10,000.00).

SECOND CLAIM FOR RELIEF

**COUNT I
(Breach of Fiduciary Duty)**

The Minority Shareholders adopt by reference the allegations contained in paragraphs 1 through 37 above as if fully set forth herein.

38. The Individual Defendants owed a fiduciary duty to the Minority Shareholders by virtue of his control over the actions of the day to day operations of the Corporate Defendants and the invested funds.

39. The Individual Defendants breached this duty by taking action to misappropriate invested funds and failing to adhere to the Investment Plan outlined in the Business Plan.

40. By breaching his fiduciary duty to the Minority Shareholders, the Individual Defendants caused damages to the same in an amount to be proven at trial but believed to be in excess of Ten Thousand Dollars (\$10,000.00). The Minority Shareholders seek such amounts from the Individual Defendants.

**COUNT II
(Punitive Damages)**

41. The Individual Defendants' breach of fiduciary duty was made in an intentional and/or reckless manner such that exemplary damages should be awarded against the Individual Defendants also in an amount in excess of Ten Thousand Dollars (\$10,000.00).

**THIRD CLAIM FOR RELIEF
(Action for an Accounting)**

The Minority Shareholders adopt by reference the allegations contained in paragraphs 1 through 41 above as if fully set forth herein.

42. Hundreds of thousands of dollars were invested in the Corporate Defendants for, among other purposes, extracting Fines and developing the Technology, neither of which occurred as planned or represented by the Investment Plan in the Business Plan. Further, despite repeated requests for records indicating all receipts and

expenditures of the Corporate Defendants during the period of time of the subject loans/investments, the Individual Defendants and corporate officers have failed to produce the same.

43. The Minority Shareholders are entitled to an accounting of all receipts/revenues and expenses/expenditures made and received during the time in which investments were made in the Corporate Defendants up through and including the date of the filing of this Petition.

FOURTH CLAIM FOR RELIEF
(Derivative Action by Shareholders)

The Minority Shareholders adopt by reference the allegations contained in paragraphs 1 through 43 above as if fully set forth herein.

44. At all relevant times, the Minority Shareholders were shareholders of the Corporate Defendants at the time of the transactions they seek to enforce by this Cause of Action.

45. The Minority Shareholders took efforts on numerous occasions to obtain action by the Corporate Defendants to pursue the Investment Plan outlined in the Business Plan. The action taken included seeking assurances from the Individual Defendants, who controlled the Corporate Defendants by virtue of his ownership in the same, at annual shareholders meetings and in personal conversations that the Invested Funds would be utilized for the purposes stated in the Investment Plan. The Minority

Shareholders also submitted correspondence to the Individual Defendants and Corporate Defendants seeking an accounting of Invested Funds.

46. The Individual Defendants have wholly failed to communicate with the Minority Shareholders about the requested actions and have further failed to take the requested action by causing the Corporate Defendants to cease using the Invested Funds in a manner inconsistent with the Investment Plan. Nor have the Corporate Defendants provided an accounting to the Minority Shareholders as required by law. Nor have the Corporate Defendants enforced the right to have corporate funds applied to corporate debts rather than personal debts of the Individual Defendants.

47. Action was also taken seeking an explanation from the Corporate Defendants and the Individual Defendants as to why they have failed to take the requested action or caused the Corporate Defendants to take the required action and no such explanation has been given to date. All requests for enforcement of corporate rights of the Corporate Defendants have been summarily ignored without explanation.

48. Pursuant to OKLA. STAT. TIT. 12, § 2023.1, the Minority Shareholders seek to compel the Corporate Defendants to: (1) cease taking action that is inconsistent with the Investment Plan, and (2) take action to enforce the rights of the Corporate Defendants to:

- a. Seek reimbursement from the Individual Defendants for invested funds misappropriated from the Corporate Defendants by the Individual Defendants for their personal use;
- b. Complete development of the Technology pursuant to the Investment Plan;
- c. Take action to reacquire the Leasehold Site, if possible;
- d. Take action to either conduct operations *in futuro* that will allow for repayment of funds invested by the Minority Shareholders or liquidate the Technology and disburse the funds from such sale to all shareholders of the Corporate Defendants.

WHEREFORE, the above premises considered, the Minority Shareholders seek the following relief from the following parties and in the following amounts:

1. Damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) from the Individual Defendants for their actual and/or constructive fraud; and
2. Exemplary damages also in an amount in excess of Ten Thousand Dollars (\$10,000.00) for such actual or constructive fraud; and
3. Damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) from the Individual Defendants for their Breach of Fiduciary Duty; and
4. Exemplary damages also in an amount in excess of Ten Thousand Dollars (\$10,000.00) for such breach of Fiduciary Duty; and


5. An accounting of all expenses/expenditures and receipts/revenues for the time in which investments were made by the Minority Shareholders in the Corporate Defendants; and

6. Enforcement of the corporate rights which the Corporate Defendants could have taken but have not due to the inaction and mismanagement of the Individual Defendants together with any damages caused by such failure to take action that could have allowed the Corporate Defendants to utilize invested funds according to the Investment Plan.

7. All attorney's fees, court costs, expenses and interest, both pre-judgment and post judgment, for any and all damages awarded herein; and

8. Any further relief which this Court deems just and equitable.

Respectfully submitted,
J. ANDREW ENLOW, INCORPORATED

By: 
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415 South Boston Ave., Suite 700
Tulsa, OK 74103-5021
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Attorney for the Plaintiff

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

ERNEST KELLY, an individual; MARIE,)
KELLY, an individual KATHRYN McCARTY,)
an individual; HELOISE LECHE, an individual;)
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ETHERIDGE, an individual; TOM GRAY, an)
individual; SHERRI GRAY, an individual;)
ANDREW HUNTER, an individual; JOHN)
HUNTER, an individual; ROBERT ANTHONY,)
an individual; and RICHARD D. REDMAN,)
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vs.)

P. M. CAMPBELL, an individual; ROBERT)
A. WALLACE, an individual; SCOTT)
BRANCH H.E.S., Inc., an Arkansas)
Corporation; and, HYDRO-EXTRACTION)
CORPORATION, Inc., an Oklahoma)
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Defendants.)

DISTRICT COURT
F 3

JUL 06 2000

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CJ 99 03276
Judge Shallcross

Attorney Lien Claimed
Jury Trial Demanded


ORDER DENYING DEFENDANT'S MOTION TO VACATE JUDGMENT

On the 28th day of June, 2000 the Defendant's Motion to Vacate Judgments against Defendants Scott Branch H. E. S., Inc and Hydro-Extraction Corporation, Inc. came on for hearing. Plaintiffs appeared through their counsel, J. Andrew Enlow, Defendants appeared through their counsel, David Ashbaugh.

Kelly et al. v. Campbell, et al. CJ 99 03276
Order Denying defendant's Motion to vacate Judgment
Page 2

Upon hearing and being fully appraised of the pleadings, facts and issues, the Court hereby denies Defendant's Motion to Vacate Judgment.

Done this 30 day of JUNE, 2000.



JUDGE OF THE DISTRICT COURT

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

ERNEST KELLY, et al.)
)
 Plaintiffs,)
)
 v.)
)
 P.M. CAMPBELL, an individual;)
 SCOTT BRANCH H.E.S., Inc., an)
 Arkansas corporation; and HYDRO-)
 EXTRACTION CORPORATION, Inc.)
 an Oklahoma corporation,)
)
 Defendants.)

Case No. CJ 99-03276
Judge Shallcross

DISTRICT COURT
FILED

MAY 28 2002

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

2002 MAY 28 P 4:16
SALLY HOWE SMITH
COURT CLERK

PLAINTIFFS' DISMISSAL WITH PREJUDICE OF
DEFENDANT, ROBERT A. WALLACE

Plaintiffs; and each and all of them listed in the above styled action hereby
DISMISS Defendant, ROBERT A. WALLACE, Individually as a Defendant from this
action WITH PREJUDICE to the re-bringing and/or refilling of this case at any subsequent
time, ever, against him.

Dem
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Respectfully submitted,

BOONE, SMITH, DAVIS, HURST &
DICKMAN

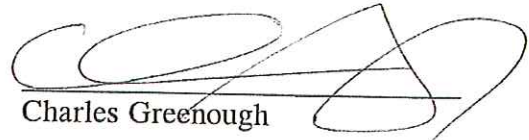


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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 28, 2002, a true and correct copy of the above and foregoing document was mailed via first class mail, with proper postage thereon to:

Douglas W. Sanders, Jr.
Sanders, Sanders & Sullivan
P.O. Box 279
Poteau, OK 74953



Charles Greenough