

Georgia State University College of Law
Reading Room

Georgia Business Court Opinions


2-26-2014

Order on Plaintiff's Motion for Temporary
Restraining Order and Defendants' Motion to
Compel Arbitration (United Sciences, LLC et al.)

John J. Goger

Fulton County Superior Court, Judge

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

Institutional Repository Citation

Goger, John J., "Order on Plaintiff's Motion for Temporary Restraining Order and Defendants' Motion to Compel Arbitration (United Sciences, LLC et al.)" (2014). *Georgia Business Court Opinions*. 289.

<https://readingroom.law.gsu.edu/businesscourt/289>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact mbutler@gsu.edu.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

UNITED SCIENCES, LLC AND WESS ERIC)
SHARPE,)

Plaintiffs,)

v.)

SAMUEL B. KELLETT, JR., KAROL)
HATZILIAS, CRAIG JONES, CLAY)
TIMMINS, ARTOUSH OHANIAN, and NEW)
SOUTH ACQUISITIONS, LLC,)

Defendants.)



Civil Action File No.
2014CV242263

**ORDER ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND DEFENDANTS' MOTION TO COMPEL ARBITRATION**

On February 21, 2014, counsel appeared before the Court to present oral argument on Plaintiffs' Motion for Temporary Restraining Order and Defendants' Motion to Compel Arbitration. Upon consideration of the argument of counsel, the briefs submitted on the motions and the record of the case, this Court finds as follows:

On February 3, 2014, the Board of Directors of United Sciences, LLC ("United Sciences") voted to terminate Plaintiff Wess Eric Sharpe ("Mr. Sharpe") from his position as CEO. Citing a prior felony conviction and Mr. Sharpe's alleged misrepresentations of his educational background, the Board of Directors (the "Board") determined that Mr. Sharpe's termination was "for cause." Plaintiffs contend that the stated reasons for the Board's decision are merely pretext and intended to deflect any opposition to the misconduct and self-dealing of Defendant Samuel Kellett ("Mr. Kellett"), who Mr. Sharpe has accused of master-minding transactions unfavorable to United Sciences. Plaintiffs further assert that the Board's vote to terminate Mr. Sharpe is invalid because it failed to abide by the procedures set forth in the

Operating Agreement. Moreover, Plaintiffs accuse the members of the Board of violating their fiduciary duty and subjecting the company to irreparable harm by creating the potential of a \$2.3 million judgment against the company in the event Mr. Sharpe's termination is deemed "without cause."

Plaintiffs filed a motion for emergency injunctive relief, claiming that the Company is in jeopardy of immediate harm if Mr. Sharpe's employment is not reinstated or an appropriate third party appointed by the Court to serve as CEO until a replacement is hired. Specifically, Plaintiffs argue that the Company will be unable to satisfy Mr. Sharpe's severance package, if his termination is adjudged "without cause" pursuant to the Employment Agreement. Additionally, they claim that Mr. Kellett is not fit to manage the Company as interim CEO while United Sciences seeks a replacement.

"An interlocutory injunction is a device to keep the parties in order to prevent one from hurting the other whilst their respective rights are under adjudication... There must be some vital necessity for the injunction so that one of the parties will not be damaged and left without adequate remedy." Chambers v. Peach County, 268 Ga. 672 (1997). It is "error to grant an injunction when the party seeking it has an adequate remedy at law." Allen v. Hub Cap Heaven, Inc., 225 Ga. App. 533 (1997).

The Court fails to find sufficient grounds to exercise the extraordinary intervention that Plaintiffs seek here. Although Plaintiffs show that Mr. Sharpe is a talented and popular CEO, the record lacks evidence that United Sciences is in imminent danger without his reinstatement. While interim CEO Mr. Kellett may be an unscrupulous individual with little to offer in the way of management experience, there must be a drastic threat to persuade the Court to second-guess a company's business decision on an emergency basis with a very limited record. Moreover, the

harm identified by Plaintiffs is almost exclusively susceptible to a monetary remedy.


Accordingly, Plaintiffs' motion is **DENIED**.

Next, Defendants move the Court to compel arbitration and dismiss this case. The Executive Employment Agreement between Mr. Sharpe and United Sciences provides:

It is expressly acknowledged and agreed that the decision as to whether "Cause" exists for termination of the employment relationship by the Company...is delegated to the Board determination via a super majority vote of at least seventy-five percent (75%) of the Board members. If Executive disagrees with the decision reached by the Board, the dispute can be appealed by the Executive to an independent arbitration for a final and irreversible decision.

Defendants ask the Court to find, based on the above language, that the instant dispute is subject to mandatory arbitration. However, the plain language of the Executive Employment Agreement does not support this interpretation. Because such clauses oust the courts of jurisdiction, arbitration clauses should be strictly construed. See Pinnacle Const. Co., Inc. v. Osborne, 218 Ga. App. 366 (1995). Accordingly, the Court reads the above language to merely permit Plaintiffs to seek arbitration, not force Plaintiffs to arbitration as the exclusive means of review of the Board's decision. Accordingly, Defendants' motion is **DENIED**.

SO ORDERED this 26 day of February, 2014.



JOHN J. GOGER
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Attorneys for Plaintiffs	Attorneys for Defendants
<p data-bbox="203 468 646 499"><i>Attorneys for United Sciences LLC</i></p> <p data-bbox="203 541 646 961">Jason W. Graham T. Brandon Welch Kaitlyn A. Dalton GRAHAM & JENSEN, LLP 17 Executive Park Drive, Suite 115 Atlanta, Georgia 30329 Tel: (404) 842-9380 Fax: (678) 904-3110 jgraham@grahamjensen.com bwelch@grahamjensen.com kdalton@grahamjensen.com</p> <p data-bbox="203 1003 610 1035"><i>Attorneys for Wess Eric Sharpe</i></p> <p data-bbox="203 1077 646 1308">Rob Schenk SCHENK SMITH LLC 17 Executive Park Drive, Suite 115 Atlanta, Georgia 30329 Tel: (404) 835-9975 Email: rob@schenksmith.com</p>	<p data-bbox="833 468 1451 573"><i>Attorneys for Defendants Suamuel B. Kellett, Jr., Karol Hatzilias, George Hatzilias, Craig Jones, Clay Tippins, and Artoush Ohania</i></p> <p data-bbox="833 625 1344 930">Ronan P. Doherty BONDURANT, MIXCON & ELMORE, LLP 3900 One Atlantic Center 1201 W. Peachtree Street, N.E. Atlanta, GA 30309 Tel: (404) 881-4100 Fax: (404) 881-4111 Doherty@bmelaw.com</p> <p data-bbox="833 972 1360 1308">Gerard G. Pecht Eliot Fielding Turner FULBRIGHT & JARWORSKI LLP 1301 McKinney Street, Suite 5100 Houston, TX 77010 Tel: (713) 651-5151 Fax: (713) 651-5246 Gerard.pecht@nortonrosefulbright.com Eliot.turner@nortonrosefulbright.com</p>