

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK (COMMERCIAL DIVISION)

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MARK E. DINGLE, individually and on :
behalf of XTENIT INC. and all other :
shareholders similarly situated :
:

Index No.
06/603277
IAS Part 49

Plaintiff,

**AMENDED
COMPLAINT**

-against-

XTENIT, INC. and BRIAN MCFADDEN,

FILED

FEB 22 2007

Defendants.
-----x

**NEW YORK
COUNTY CLERK'S OFFICE**

Plaintiff, Mark E. Dingle ("Plaintiff"), by and through his attorneys, Cardillo & Corbett, for his amended complaint, pursuant to the Court's order entered on February 8, 2007, alleges upon information and belief, as follows:

1. Plaintiff is a natural person and resident of the County of New York, and State of New York, and was and still is a stockholder of 1,500,000 shares of defendant XTENIT, INC. ("XTENIT").

2. Defendant, XTENIT was and is a corporation duly organized and existing pursuant to the laws of the State of New York, with an office and place of business at 110 West 40th Street, New York, New York 10018.

3. Defendant, Brian McFadden ("McFadden") is a natural person, a resident of the County of Queens, and State of New York, and the President, Chief Executive Officer and a

director of XTENIT.

4. Plaintiff brings this action as a stockholder of XTENIT on behalf of himself and all other shareholders of XTENIT similarly situated and in the right of XTENIT.

DERIVATIVE ACTIONS

AS AND FOR A
FIRST CAUSE OF ACTION

5. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 4 of this complaint with the same force and effect as if fully set forth herein.

6. On or about June 1, 2001, Plaintiff accepted a position with XTENIT as Chief Operating Officer. As XTENIT was then a new company, it was agreed that Plaintiff would initially forego cash compensation and instead, Plaintiff would be compensated by receiving a 15% equity interest in the form of 1,500,000 common shares of XTENIT, which would fully vest in Plaintiff at the end of one year of employment.

7. Plaintiff was employed by XTENIT for over one year and on or about June 1, 2002 received 1,500,000 shares of XTENIT stock. This stock grant represented 15% of the 10,000,000 shares issued and outstanding of XTENIT.

8. At all times herein relevant, Defendant McFadden owned a majority of shares issued and outstanding of XTENIT.

9. As a director and Chief Executive Officer of

XTENIT, McFadden was a fiduciary with respect to the affairs of the corporation and the interests of Plaintiff in it, and had the duty (a) to administer the affairs of XTENIT skillfully, fairly, diligently, carefully and honestly; (b) to act solely in the interest of XTENIT and its shareholders and not in his personal interests; (c) to safeguard and protect XTENIT's assets and property; (d) not to waste or acquire for himself any assets or property of XTENIT; (e) not to favor his own interest illegally or improperly in the management of the affairs, property and assets of XTENIT; (f) not to act deliberately in a manner which injures Plaintiff as a shareholder of XTENIT; (g) not to acquire illegally for himself any assets or property of XTENIT; (h) to keep honest, accurate and correct accounts of all of XTENIT's affairs, business and transactions; and (i) to perform diligently and faithfully all of the duties devolving upon him as an officer and director of XTENIT; and the Plaintiff relied upon him to conduct himself in accordance with those duties.

10. As the majority shareholder of XTENIT, defendant McFadden also owed a fiduciary duty to Plaintiff, and any other shareholders of XTENIT, as minority shareholders of XTENIT.

11. On or about October 12, 2004, the directors of XTENIT adopted a resolution authorizing the corporation to increase the number of common shares authorized from 10,000,000 shares to 500,000,000 shares.

12. According to the resolution, the "extra shares will be awarded to current officers of the Corporation and future employees". No provision was made therein for existing shareholders of XTENIT, such as Plaintiff.

13. By increasing the stock of the corporation and awarding it to current officers, Plaintiff's interest in XTENIT went from 15% to less than 1%, while defendant McFadden increased his interest in the corporation at the expense of Plaintiff.

14. Such action of XTENIT and its directors and officers was taken without a substantial business purpose and for the sole reason of diluting the shares of Plaintiff, and any other similarly situated minority shareholders, by increasing the proportionate ownership interests of defendant McFadden.

15. Defendants did not give Plaintiff notice of the adoption of the resolution authorizing the increase in common shares, either in advance of the actions or afterwards, and otherwise concealed such actions from Plaintiff.

16. The increase in number of common shares authorized and issued pursuant to the aforesaid resolution should be rescinded, and the stock so issued cancelled, with same to be deemed effective as from the time defendants originally acquired the stock, so as to restore Plaintiff and defendants to the positions they should occupy had the shares

of XTENIT not been so increased in the manner described above in contravention of Plaintiff's rights.

17. In the circumstances, no demand has been made on the board of directors of XTENIT to bring an action for relief appropriate to the facts alleged, inasmuch as defendant McFadden, participated and is responsible for the acts complained of, dominated and controlled XTENIT. A demand upon the board of directors would therefore be a vain and futile act.

18. Plaintiff has no adequate remedy at law.

AS AND FOR A
SECOND CAUSE OF ACTION

19. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 18 of this complaint with the same force and effect as if fully set forth herein.

20. Since his acquisition of the stock pursuant to the resolution described above, defendant McFadden has been wrongfully and unjustly enriched by receipt of benefits deriving from the ownership of the stock.

21. By reason of defendant McFadden's wrongful acts and conduct he should be made to account for all benefits received from this improper increase in his stockholdings, and for judgment against him in an amount equal to the value of all benefits wrongfully received by virtue of such stock transfer and ownership, together with interest.

22. Plaintiff has no adequate remedy at law.

AS AND FOR A
THIRD CAUSE OF ACTION

23. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 22 of this complaint with the same force and effect as if fully set forth herein.

24. The foregoing constitutes self-dealing, the misuse of positions and authority within the corporation, breach of trust and the breach of the fiduciary duties owed by defendant McFadden to Plaintiff and to XTENIT, all to the damage of XTENIT, for which defendant McFadden is liable, in an amount to be determined at trial.

INDIVIDUAL ACTIONS

AS AND FOR A
FOURTH CAUSE OF ACTION

25. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 24 of this complaint with the same force and effect as if fully set forth herein.

26. On June 8, 2001, XTENIT entered into an employment agreement with Plaintiff, whereby XTENIT employed Plaintiff as its Chief Operating Officer.

27. The agreement provided that XTENIT would pay Plaintiff the reasonable value of his services in stock of XTENIT.

28. The Plaintiff accepted the employment whereupon he was employed by XTENIT as its Chief Operating Officer for over one year.

29. Although Plaintiff was initially paid the 15% equity interest in XTENIT as required under the agreement, defendants subsequently canceled this payment by reducing Plaintiff's equity interest to less than 1%.

30. Although Plaintiff has demanded payment of his compensation of stock as agreed upon in the employment agreement, XTENIT has failed and refused to make payment as required.

31. The reasonable value of the services performed by the Plaintiff for XTENIT is no less than \$100,000, or such greater sum as shall be proven at trial, no part of which has been paid.

AS AND FOR A
FIFTH CAUSE OF ACTION

32. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 31 of this complaint with the same force and effect as if fully set forth herein.

33. Defendants' reduction in the stockholdings of Plaintiff after Plaintiff's performance of services for XTENIT, results in XTENIT being unjustly enriched.

34. By virtue of the acts complained of, XTENIT has

been unjustly enriched in the amount of \$100,000, or such greater amount as shall be proven at trial, for which Plaintiff claims damages.

WHEREFORE, Plaintiff on his own behalf and for the benefit of XTENIT and its stockholders, demands judgment as follows:

a) On the first cause of action, that the increase in number of common shares authorized and issued be rescinded, and the stock so issued cancelled, with same to be deemed effective as of the time of its transfer.

b) On the second causes of action, that defendant McFadden be ordered to account and to be held liable to XTENIT in an amount equal to the value of the benefits derived from the stock from the time of its issuance until the date of judgment, together with interest.

c) On the third cause of action, for damages in an amount to be determined at trial.

d) On the fourth cause of action, for breach of employment agreement for damages no less than \$100,000, or such greater sum as shall be proven at trial.

e) On the fifth cause of action, for unjust enrichment for damages no less than \$100,000, or such greater sum as shall be proven at trial.

f) Requiring defendants to pay Plaintiff's reasonable expenses for the prosecution of this action,

including reasonable attorney's fees and accounting fees,
together with the costs and disbursements of this action.

g) For such other and further relief as this Court
may deem just and proper.

Dated: New York, New York
February 21, 2007

CARDILLO & CORBETT
Attorneys for Plaintiff

By: 

James P. Rau
29 Broadway
New York, New York 10006
212-344-0464

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK (COMMERCIAL DIVISION)

-----X
MARK E. DINGLE, individually and on :
behalf of XTENIT INC. and all other :
shareholders similarly situated :

Plaintiff, :

-against- :

XTENIT, INC. and BRIAN MCFADDEN, :

Defendants. :

Index No. 06/603277
IAS Part 49

AFFIDAVIT
OF SERVICE

-----X
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

I, Lucille Fundaro, being duly sworn, say.

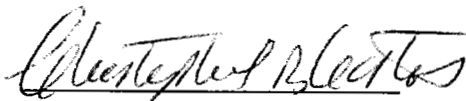
I am not a party to the action, am over 18 years of age and reside at 784 Tysens Lane, Staten Island, New York 10306.

On February 22, 2007, I served the within AMENDED COMPLAINT by depositing a true copy thereof in a post-paid envelope, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

DILMAGHANI LAW FIRM
106 Central Park South, Suite 8D
New York, NY 10019


Lucille Fundaro

Sworn to before me on this
22nd day of February, 2007


Notary Public

CHRISTOPHIL B. COSTAS
Notary Public, State of New York
No. 31-0773693
Qualified in New York County
Commission Expires April 30, 2007

PLEASE take notice that the within is a (certified) true copy of a ~~document~~ duly entered in the office of the Clerk of the within named court on ~~the 22nd day of June 2006~~

Dated, **JUN 22 2006**
CARDILLO & CORBETT
Yours, etc.

Attorneys for
Office and Post Office Address
29 Broadway
NEW YORK, N.Y. 10006

To
Attorney(s) for

NOTICE OF SETTLEMENT

PLEASE take notice that an order of which the within is a true copy will be presented for settlement to the Hon.

One of the judges of the within named Court, at

on _____
at _____
Dated, _____ M.

Yours, etc.
CARDILLO & CORBETT
Attorneys for

Office and Post Office Address
29 Broadway
NEW YORK, N.Y. 10006

To
Attorney(s) for

Index No. 06/603277 Year
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK (COMMERCIAL DIVISION)
MARK E. DINGLE, individually
and on behalf of XTENIT, INC.
and all other shareholders
similarly situated
Plaintiff,
-against-
XTENIT, INC. and BRIAN MCFADDEN,
Defendants.

AMENDED COMPLAINT

Signature (Rule 130-1.1-a)

Print name beneath

CARDILLO & CORBETT
Attorneys for Plaintiff

Office and Post Office Address, Telephone
29 Broadway
NEW YORK, N.Y. 10006
212-344-0464

To
Attorney(s) for
Service of a copy of the within is hereby admitted.
Dated, _____

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Certification By Attorney certify that the within has been compared by me with the original and found to be a true and complete copy.
 Attorney's Affirmation state that I am the attorney(s) of record for action; I have read the foregoing the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those I believe it to be true. The reason this verification is made by me and not by

Check Applicable Box

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, being duly sworn, depose and say: I am

Individual Verification in the action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.
 Corporate Verification the of a corporation and a party in the within action; I have read the and know the contents thereof; and the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The reason this verification is made by me because the above party is a corporation and I am an officer thereof.

Check Applicable Box

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

(If more than one box is checked—indicate after names type of)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

On

I served the within

Service By Mail by mailing a copy to each of the following persons at the last known address set forth after each name below.
 Personal Service on Individual by delivering a true copy of each personally to each person named below at the address indicated. I knew each person to be the person mentioned and described in said papers as a party therein:
 Service by Electronic Means by transmitting a copy to the following persons by FAX at the telephone number set forth after each name below at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by copy to the address set forth after each name.
 Overnight Delivery Service by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name below.

Check Applicable Box