

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: SRC Holding, Inc., et al.,

Chapter 7

Debtor.

File Nos.: 02-40284-02-40286

Brian F. Leonard, as Trustee,

Adversary No.: 04-4117

Plaintiff,

vs.

AMENDED COMPLAINT

Spielo Manufacturing Inc.,

Defendant.

Brian F. Leonard, as Trustee, for his amended complaint against Defendant Spielo Manufacturing Inc. ("**Spielo**"), states and alleges as follows:

PARTIES

1. Plaintiff is the duly appointed, qualified, and acting Trustee of the bankruptcy estate of SRC Holding, Inc., SRC Investments, and Securities Resolution Corporation, f/k/a Miller & Schroeder, Inc., Miller & Schroeder Investments, Inc., and Miller & Schroeder Financial, Inc., Bankruptcy File Nos. 02-40284, 02-40285, and 02-40286, respectively.

2. Spielo is a corporation having its principal place of business at 654 Malefant Boulevard, P.O. Box 124, Moncton, New Brunswick, Canada.

JURISDICTION

3. This Court has jurisdiction over the issues under 28 U.S.C. § § 1334 and 157. This is a core proceeding. This Complaint arises under Minnesota law.

FACTUAL ALLEGATIONS

4. In 1994, Miller and Schroeder Financial, Inc. (now Securities Resolution Corporation) ("**MSF**") underwrote and sold a private placement of Spielo securities (the "**Private Placement**").

5. In connection with the Private Placement, MSF was granted 35,145 warrants to purchase stock of Spielo (the "**Warrants**"). The exercise price for 30,645 of the Warrants was \$9.00 per share. The exercise price for 4,500 of the Warrants was \$12.00 per share.

6. The Warrants were owned by MSF on January 22, 2002, the date MSF filed its petition under Title 11 of the United States Code. Accordingly, the Warrants became property of MSF's bankruptcy estate.

7. On or about December 6, 2002, Susan Hicks, the Chief Financial Officer of Spielo ("**Hicks**") telephoned the Plaintiff and explained that Spielo desired to purchase the Warrants at the price of \$1.50 per Warrant. During that telephone conversation, Hicks stated and represented as follows:

- a. That Spielo had 2,691,175 shares outstanding, and had a shareholder equity of \$14,556,563.00. Her statement as to shareholder equity was false or misleading, as the company was subsequently sold for substantially more than the her equity valuation would suggest;
- b. That Spielo had no intent, plans, or business strategy to sell its shares, and that no market for the company's shares or the Warrants existed. These representations were false or misleading, as Spielo was, upon information and belief, positioning itself for a sale or merger that would involve the

sale of shares to the acquiring company and allow Spielo shareholders, including Hicks and Spielo CEO Jon Manship (“Manship”), to sell their shares for significantly more than the exercise price of the warrants. Manship reportedly held more than ninety percent (90%) of the outstanding shares in Spielo. Several months after the Plaintiff sold his warrants, Spielo announced that it had agreed to be acquired by GTECH Holdings Corporation ("GTECH") via purchase of all outstanding Spielo stock;

- c. That the Warrants had no value because the book value of Spielo's shares was \$5.00 per share, less than the exercise prices for the Warrants. This statement was false or misleading, because the value of the shares was substantially more than \$5.00 per share as the subsequent sale to GTECH confirmed; and
- d. That Spielo's motive for purchasing the Warrants was simply to "clean up Spielo's balance sheet." This statement was false or misleading for the same reasons as set forth in paragraph 7(b) above.

Upon information and belief, moreover, Hicks, in discussions with other warrant holders and/or shareholders regarding purchasing their warrants and shares, proposed different reasons for the desirability of selling those shares and warrants than she proposed to the Plaintiff. Offering different reasons to different parties suggests that all of the reasons offered by Hicks were false or misleading.

- 8. Shortly before or after December 6, 2002, Hicks sent various financial statements

(the "**Financial Statements**") of Spielo to the Plaintiff, representing that such Financial Statements reflected the true value of Spielo and its shares. The Financial Statements were false or misleading for the same reasons as set forth in paragraph 7 above.

9. In reliance on the statements and representations of Hicks, and in reliance on the Financial Statements, the Plaintiff agreed to sell the Warrants to Spielo for \$1.50 per Warrant, and subsequently duly filed, and the Clerk's office served, a notice of sale to all creditors and ultimately an Order approving of the sale of the Warrants was issued.

10. The representations made by Hicks as stated above were false or misleading, the Financial Statements did not accurately reflect the value for the Spielo shares and were false or misleading, and Spielo's stated purpose for purchasing the Warrants to "clean up its balance sheet" was false or misleading

11. In part, Spielo's purpose for purchasing the Warrants was to benefit Spielo, its officers, directors, and shareholders, including Hicks and Manship, by reducing the outstanding shares and Warrants for the purpose of increasing the amount each shareholder would receive and otherwise facilitating a sale of its shares to a potential buyer, including GTECH. In fact, a few months later, Spielo and GTECH announced that GTECH had agreed to purchase Spielo. According to a November 7, 2003, GTECH news release posted at www.gtech.com:

GTECH Holdings Corporation (NYSE: GTK) today announced that it has entered into an agreement to acquire all of the shares of privately-held Spielo Manufacturing Inc., a leading provider of video lottery terminals (VLTs) and related products and services to the global gaming industry. The enterprise purchase price for Spielo is approximately US\$150 million, payable in cash. In addition, in the 18 months following the closing, Spielo shareholders are entitled to receive an earn-out amount of up to US\$35 million, based upon Spielo achieving certain VLT installation objectives in New York, giving the transaction a

potential total enterprise value of up to US\$185 million. The acquisition, which is contingent upon regulatory and gaming license approvals, and certain other closing conditions, is expected to be completed in the second quarter of GTECH's fiscal year 2005.

Based on Hick's representation as to the number of shares outstanding, the value of each share under the GTECH agreement is approximately \$68.74. The reduction in the number of shares, given the structure of the GTECH agreement, increases the price per share under that agreement.

12. Spielo knew, or had reason to know, that the value of the Warrants was far greater than \$1.50 per Warrant at the time Hicks made the foregoing statements and representations to Plaintiff and at the time the Financial Statements were sent to Plaintiff.

13. The Plaintiff relied on Hicks' representations in deciding to sell the Warrants to Spielo. If Spielo had not made its false and misleading representations, the Plaintiff would own the Warrants. Such Warrants were worth in excess of \$2,000,000, depending upon the total amount of shares outstanding. Based on Hick's representations as to the number of outstanding shares, the Warrants were worth at least \$2,086,062.30.

14. The Plaintiff has suffered damages of at least \$2,086,062.30, in an amount to be ultimately proved at trial, as a result of Spielo's fraudulent conduct.

COUNT I

MINNESOTA SECURITIES ACT

15. Plaintiff restates and realleges each of the allegations contained in the preceding paragraphs as if fully set forth herein.

16. Spielo violated Minnesota Statutes § 80A.01, et seq. because, as set forth in detail

in paragraphs 7 and 8 above, it employed devices, schemes, or artifices to defraud, made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or course of business that operated as a fraud or deceit upon Plaintiff in connection with the purchase of the Warrants.

17. Plaintiff suffered damages of at least \$2,086,062.30 as a proximate result of Spielo's false and fraudulent misrepresentations. Plaintiff is also entitled to recover his attorneys' fees, and all costs under M.S. 80A.23 (2).

COUNT II

FRAUD AND MISREPRESENTATION

18. Plaintiff restates and realleges each of the allegations contained in the preceding paragraphs as if fully set forth herein.

19. Spielo made representations to Plaintiff, as set forth in detail in paragraphs 7 and 8 above, including:

- (a) Stating that its motive for purchasing the Warrants was simply to "clean up its balance sheet," when its true motive was to facilitate a sale of its shares to GTECH or another third party at a great profit to Spielo's existing shareholders;
- (b) Stating that the Financial Statements accurately reflected the true value of Spielo's shares, when Spielo knew the actual value of its shares was far greater;
- (c) Stating that no market existed for the Warrants, when Spielo knew that the

Warrants had far greater value than \$1.50 per Warrant; and

- (d) Failing to inform Plaintiff that Spielo and its shareholders intended to sell the shares of Spielo to a third party.

20. The representations were false, concerned past and present material facts, were susceptible of knowledge, and Spielo knew the facts were false or asserted them of its own knowledge and intended that the Plaintiff would rely on such representations.

21. Plaintiff was induced to act and/or justifiably acted in reliance on Spielo's representations in selling the Warrants to Spielo.

22. Plaintiff has suffered damages in the amount of at least \$2,086,062.30, in an amount to be ultimately proved at trial, as direct and/or proximate cause of the misrepresentations of Spielo.

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff judgment against Spielo awarding Plaintiff damages in the amount of at least \$2,086,062.30, to be ultimately proved at trial, plus Plaintiff's attorneys' fees, interest, costs, disbursements, and expenses, and for such other and further relief as the Court deems just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: April 22, 2004

By /e/ Thomas C. Atmore
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CERTIFICATE OF SERVICE

Thomas C. Atmore, an attorney with Leonard, O'Brien, Spencer, Gale & Sayre, Ltd., licensed to practice law in this Court, with an office address of 100 South Fifth Street, Suite 2500, Minneapolis, Minnesota 55402, declares, under penalty of perjury, that on April 22, 2004, I he caused the following documents:

1. **AMENDED COMPLAINT**; and
2. **NOTICE OF ELECTRONIC FILING**;

to be delivered via facsimile and first class mail to the individuals and entities listed below:

Michael E. Keyes, Esq.
David E. Runck, Esq.
Oppenheimer Wolff & Donnelly, LLP
Plaza VII, Suite 3300
45 South Seventh Street
Minneapolis, MN 55402-1609

Dated: April 22, 2004

By /e/ Thomas C. Atmore

Thomas C. Atmore