



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

LOUIS D. PAOLINO, Jr., :
Plaintiff, :
 :
vs. : No.: 4462-VCL
 :
MACE SECURITY INTERNATIONAL, INC., :
Defendant. :

FIRST AMENDED COMPLAINT

Plaintiff, Louis D. Paolino, Jr. (hereinafter “Louis Paolino”), by and through his attorneys, Balick & Balick, L.L.C. hereby files this First Amended Complaint¹ against defendant Mace Security International, Inc. (hereinafter referred to as “Defendant”) seeking a summary adjudication pursuant to Section 145(k) of the Delaware General Corporation Law for: (a) indemnification against all litigation expenses, including attorney’s fees, incurred in his defense of the counterclaims asserted against him by the Defendant in the underlying action by reason of the fact that he was a director and officer of the Defendant; (b) advancement of litigation costs and fees, (c) reimbursement of all expenses, including attorney’s fees, he has incurred in prosecuting his rights in the instant enforcement action; (d) the payment of any judgments, fines or penalties that may be entered against Louis Paolino in the underlying litigation, and in support thereof avers as follows:

THE PARTIES

1. Louis Paolino is an adult individual and resident of the State of Florida and former Chief Executive Officer and Chairman of the Board of Directors of Defendant.

¹ Pursuant to Court of Chancery Rule 15, amendment here is permitted where no responsive pleading has yet been filed.

2. Defendant is a corporation, organized and existing under the laws of the State of Delaware, with a principal place of business in Horsham, Pennsylvania and is engaged in the trade and business of manufacturing and offering for sale personal defense and electronic surveillance products marketed under the brand name “mace” as well as digital media marketing and e-commerce segments.

JURISDICTION

3. Pursuant to Title 8, Section 111(b) of the Delaware Code, this Court has jurisdiction over the Defendant to interpret, apply or enforce the provisions of its bylaws.

4. Pursuant to Title 8, Section 145(k) of the Delaware General Corporation Code, this Court is vested with exclusive jurisdiction to determine Louis Paolino’s rights to, and Defendant’s obligations of indemnification for litigation expenses including attorneys’ fees, advancement of fees and costs, and the reimbursement of all expenses and any judgments, fines and/or penalties which Louis Paolino may reasonably incur in his defense of the claims asserted against him by the Defendant, and which he reasonably incurs in this enforcement action, in accordance with the provisions of the Defendant’s Bylaws.

FACTUAL BACKGROUND AND UNDERLYING ACTION

5. Louis Paolino served for approximately nine (9) years as Chief Executive Officer (“CEO”) and Chairman of the Board of Directors (“Chairman”) of Defendant from his appointment in 1999 until he was discharged on May 20, 2008 in violation of his employment contract (the “Employment Contract”). Louis Paolino’s Employment Contract with the Defendant was to continue in full force and effect until August 2009. Section 7 of the Employment Contract provides that, in the event of early termination, Louis Paolino is to receive severance payment plus accrued

salary with an approximate value of \$3,918,120.00. A true and correct copy of the Employment Contract is attached hereto, made part hereof and marked Exhibit "A".

6. On or about June 6, 2008, Louis Paolino filed a Demand for Arbitration titled *Louis D. Paolino, Jr. v. Mace Security International, Inc.* with the American Arbitration Association, Case No.: 14 116 Y 00901 08, against Defendant to recover damages caused by Defendant's breach of the Employment Contract (the "Underlying Action"). A true and correct copy of Louis Paolino's Demand for Arbitration is attached hereto, made a part hereof and marked Exhibit "B".

7. On or about July 11, 2008, Defendant filed an Answer and Counterclaim to Louis Paolino's Demand for Arbitration. A true and correct copy of Defendant's Answer and Counterclaim to Louis Paolino's Demand for Arbitration is attached hereto, made part hereof and marked Exhibit "C".

8. Defendant's counterclaims allege that during Louis Paolino's tenure as Defendant's CEO and Chairman, he:

a. breached contractual, statutory, and common law duties owed to Defendant, its Board of Directors and its shareholders by:

1. refusing, as CEO, to follow the direction of Defendant's Board of Directors;

2. refusing to properly inform and/or seek approval of Defendant's Board of Directors for actions taken, as CEO, or under CEO's direction;

3. refusing to comply with Defendant's corporate governance principles and bylaws;

4. refusing to reduce corporate overhead and expense as directed by Defendant's Board of Directors;

5. inappropriately interfering with the Defendant's Board of Directors' investigation of matters involving Defendant's operations; and,

b. breached contractual, fiduciary and statutory obligations owed to the Defendant, its Board of Directors and its shareholders by engaging in a course of misconduct, malfeasance and self-dealing, including Louis Paolino's:

1. willful refusal as CEO to manage the Defendant;

2. abandonment of his oversight and supervisory responsibilities as the Defendant's CEO;

3. misappropriation of the Defendant's property;

4. conducting personal activities and business on the Defendant's time and expense; and,

5. the placement of relatives, personal friends and personal business associates on the Defendant's payroll.

9. Louis Paolino has incurred, and continues to incur, ongoing and continuous attorneys' fees, costs and expenses in his defense of the Defendant's counterclaims in the Underlying Action.

10. Louis Paolino has repeatedly sent letters to the Defendant demanding that the Defendant perform its indemnification obligation in accordance with the Defendant's Bylaws. True and correct copies of the letters sent by Louis Paolino to Defendant dated December 5, 2008 and February 25, 2009, together with return receipts dated December 8, 2008 and February

27, 2009 respectively, are attached hereto, made part hereof and collectively marked Exhibit “D”.

11. To date, Defendant has failed and refused to honor its indemnification duties and obligations under the Defendant’s ByLaws and in fact by letter from its general counsel dated March 11, 2009 has denied Louis Paolino’s request for indemnification. Counsel’s letter is attached hereto, made part hereof and collectively marked Exhibit “E”.

12. On March 26, 2009, Mr. Paolino’s counsel sent another letter to Mace demanding indemnification and advancement and this time included Mr. Paolino’s undertaking to repay any amounts advanced in the event he was found not to be entitled to indemnification. A true and correct copy of the March 26, 2009 letter is attached hereto, made part hereof and marked Exhibit “F”. As of the date of this filing, more than thirty days have passed and no response has been received.

OBLIGATIONS OF DEFENDANT AS SET FORTH IN ITS BYLAWS

A. INDEMNIFICATION OBLIGATION

13. At all relevant times herein, Article 6 of the Defendant’s Amended and Restated Bylaws dated October 16, 2007 (hereinafter referred to as “Bylaws”) provide for the indemnification of directors and officers. A true and correct copy of Defendant’s Amended and Restated Bylaws dated October 16, 2007 are attached hereto, made part hereof and marked Exhibit “G”.

14. Specifically, Article 6, Section 6.01 of the Defendant’s Bylaws requires the Defendant to indemnify directors and officers against all expense, liability and loss resulting from their involvement in any legal proceedings, as follows:

Indemnification. Each person who was or is made a party or is threatened to be made a party or is involved in any action, suit or proceeding, whether civil,

criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the Corporation or is or was serving at the request of the Corporation as a director or officer (or person performing similar function), employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorney’s fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators: provided, however, that except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

See Exhibit G at pages 8-9 attached hereto.

15. Section 6.01 of the Defendant’s Bylaws imposes a *mandatory* obligation upon the Defendant to indemnify directors and officers against “all expenses, liability and loss (including attorney’s fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement) reasonably incurred or suffered by such person” if they are involved in any legal proceedings “by reason of the fact that he or she...was a director or officer...whether the basis of such proceeding is alleged action in an official capacity as a director [or] officer...or any other capacity while serving as a director [or] officer.” *Id.*

16. Louis Paolino is a party in a current civil suit and is being sued for damages by the Defendant in the amount of \$1,000,000 for his alleged actions or inactions in his capacity as director and officer of the Defendant. Exhibit C.

17. Louis Paolino has incurred, and continues to incur expenses, liability and loss, including attorneys' fees and costs in defending the aforementioned allegations all of which occurred during and by reason of the fact of his employment as Chairman and CEO of the Defendant, therefore he is entitled to *mandatory* indemnification by the Defendant for defense of the counterclaims in the Underlying Action.

18. In the event of an adverse judgment against Louis Paolino, pursuant to Section 6.01 of the Defendant's Bylaws, the Defendant is solely obligated to pay any judgment against Louis Paolino. Exhibit G.

B. ADVANCEMENT OBLIGATION

19. Pursuant to Section 6.02 of the Defendant's Bylaws, Louis Paolino is entitled to advancement of "expenses incurred in defending" the counterclaims in the Underlying Action, "including, without limitation, attorneys' fees, expert fees and all costs of litigation." See page 10 of Exhibit G. Section 6.02 further provides, in relevant part:

Subject to the tender to the Corporation of any undertaking then required under the Delaware Corporate Law with respect to the repayment amounts of any amounts advanced, any such expenses, including, without limitation attorneys' fees, expert fees and all costs of litigation, *shall be automatically and promptly* upon tender by the director, officer, or employee, as applicable, of a demand therefore.

Id. (emphasis supplied)

20. As set forth above, Mr. Paolino's undertaking was provided by letter March 26, 2009. Exhibit F. Section 6.03 of the Defendant's ByLaws provides:

Procedure. If a claim under this Article 6 is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim . . .

See page 10 of Exhibit G.

More than thirty days have elapsed since the undertaking without a response, and without advancement.

C. REIMBURSEMENT OBLIGATION

21. Pursuant to Section 6.03 of the Defendant's Bylaws, Louis Paolino is entitled to indemnification and is also provided a remedy to recover the cost of prosecuting his indemnification rights as a result of the Defendant's failure to indemnify Louis Paolino or pay his indemnification claims:

Procedure. If a claim under this Article 6 is not paid in full by the Corporation within thirty days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim.

See page 9 of Exhibit G attached hereto.

22. Pursuant to Section 6.03 of the Defendant's Bylaws, Louis Paolino has the right to bring suit against the Defendant to recover his unpaid claims and, if successful, Louis Paolino is entitled to be reimbursed for the entire cost and expense, including his attorney's fees, of prosecuting his right to indemnification against the Defendant in the instant case. See page 9 of Exhibit G hereto.

23. More than thirty (30) days have elapsed since Louis Paolino's written demands for indemnification, advancement and reimbursement were received and rejected by Defendant

making Louis Paolino's claims for indemnification, advancement and reimbursement ripe for summary determination by this Court.

COUNT I – DECLARATORY JUDGMENT

24. Louis Paolino incorporates by reference the allegations set forth in paragraphs 1 through 23, inclusive, of his First Amended Complaint as though the same had been set forth more fully at length herein.

25. There exists an actual controversy between the Louis Paolino and the Defendant, the outcome of which will affect the rights of the parties.

26. Pursuant to Defendant's Bylaws and Delaware law, Louis Paolino is entitled to indemnification, including attorneys fees and expert fees, and expenses he has incurred, and will incur, including any judgment or settlement and interest thereon, in the defense of the counterclaims against him in the Underlying Action.

27. Pursuant to Defendant's Bylaws and Delaware law, Louis Paolino is entitled to advancement of litigation costs, including, without limitation, attorneys' fees and expert fees, and expenses he has incurred, and will incur, including any judgment or settlement and interest thereon, in the defense of the counterclaims against him in the Underlying Action.

28. Pursuant to the Defendant's Bylaws and Delaware law, Louis Paolino is entitled to reimbursement of his attorneys' fees, expert fees, costs and other expenses incurred in prosecuting his rights in the instant case.

29. Louis Paolino has met all conditions precedent to his entitlement and right to indemnification, advancement, and reimbursement.

30. Defendant has failed and refused to perform its indemnification and advancement obligations.

31. As a result, this Court should enter an Order: (a) declaring Louis Paolino's entitlement to indemnification against all of his fees, including attorneys' fees, costs and other expenses incurred in defending the counterclaims in the Underlying Action as well as any judgments, fines or penalties; (b) ordering Defendant to advance litigation costs; (c) declaring Louis Paolino's entitlement to reimbursement of all of his fees, including attorneys' fees, costs and other expenses incurred in prosecuting his rights in the instant action; and (d) directing defendant Mace Security International, Inc. to pay those sums set forth in subsections (a), (b) and (c) hereof, including attorneys' fees, costs, judgments fines or penalties and other expenses on behalf of Louis Paolino together with prejudgment and post-judgment interest.

WHEREFORE, plaintiff Louis D. Paolino, Jr. most respectfully requests that this Honorable Court enter its order:

1. Declaring that Louis D. Paolino, Jr. is entitled to: (a) indemnification against all expenses, including attorney's fees, costs and expenses, now and as required for his continuing defense of the Underlying Action including any judgment, settlements, fines and/or penalties; and (b) advancement of litigation costs; and (c) indemnification and reimbursement for his attorney's fees, costs and other expenses in prosecuting his rights in the instant case; and

2. Enter judgment in Louis Paolino's favor and against defendant Mace Security International, Inc. for all fees and expenses, plus prejudgment and post-judgment interest on such fees and expenses, incurred in defending the Underlying Action to its conclusion, including appeals;

3. Order defendant Mace Security International, Inc. to timely advance, upon demand therefore, all future expenses in defending the Underlying Action, and all appeals as necessary;

4. Enter judgment in Louis Paolino's favor against defendant Mace Security International, Inc. for all attorney's fees and other expenses, plus prejudgment and post-judgment interest on such fees and expenses, he has incurred in prosecuting his rights in the instant case; and

5. Such further relief as this Court deems equitable and appropriate.

Respectfully submitted,

BALICK & BALICK, P.C.

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