

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2006-017292

04/02/2007

HONORABLE KRISTIN HOFFMAN

CLERK OF THE COURT  
D. Glab  
Deputy

SUSAN A ALOFS

ED HENDRICKS SR.

v.

JOHN W ALOFS II, et al.

LUIS F RAMIREZ

MINUTE ENTRY

The Court took this matter under advisement after oral argument on Defendant's Rule 12(b)(1) Motion to Dismiss. The Court has considered the pleadings and the argument of counsel.

Because some matters outside the pleadings were presented to the Court, it treats the motion as one for summary judgment.

Plaintiff agrees that value of the business and the terms of the sale of her interest in the business were determined by the arbitrator and cannot be relitigated in this action. In Counts 1-4, she alleges breach of fiduciary duty, breach of contract, breach of the implied covenant of good faith and fair dealing and intentional interference with business relationships and seeks damages for alleged breaches of the property settlement agreement, interference with relationships with customers, interference with her efforts to sell ROI to a third party and for diminution of the value of the company caused by acts of the Defendant. Defendant argues that the claims in Counts 1-4 were determined by the arbitrator and that those claims must be dismissed.

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The Court finds that some allegations in the complaint go to matters not related to the value of the business or the terms of sale of the business. In addition, the Court finds that there are genuine issues of material fact about whether Arbitrator Skelly merely established the value of the business based on the actual numbers presented to him at the time of the arbitration hearing as is suggested in the transcript of the January 6, 2006, proceedings what evidence was presented to or considered by Arbitrator Skelly in reaching his decision, and whether Plaintiff's exclusive remedy for interference with sale of the business to a third party was with arbitrator Skelly in the arbitration proceeding.

IT IS ORDERED denying the Defendants' 12(b)(1) Motion to Dismiss.