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Dip Stik dream dries up in fight over bankruptcy

By PAUL MACOMBER
of the Mail Tribune

The company that introduced the Dip Stik to the Rogue River has filed a bankruptcy action amid a struggle over control.

Bill Bednar, one of the original three partners, and former president Terry Whitlock both claim to be chairman of Water Sports Inc. Each fired the other.

Whitlock sued for $1 million, plus back wages and commissions of $78,115. His companion, Linda DiBlasi, fired the same day, sought pay and commissions totaling $14,869. The suit was shelved when the company filed a Chapter 11 bankruptcy in May.

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>
> — Caroline Wade, bankruptcy attorney

Whitlock has challenged the bankruptcy, saying it was filed only to prevent him from winning the lawsuit. He backs up his motion to dismiss with 400 pages of documents, many of which, says Bednar, Whitlock stole from the corporate office in the middle of the night.

Whitlock contends it was rightfully his office, that Bednar improperly locked him out.

"This is a classic example, a textbook case, of what can go wrong in a small business," said Michael Neyt, a Medford banker who was one of three founders of the company.

It all started about five years ago. Neyt, Grants Pass banker Dorian Corliss and Bednar, a Medford investment adviser, were enjoying a trip down the Rogue River when they came up with the notion of using telescoping tubes to make a syringe-like squirt gun. The tubes, which fill quickly and squirt up to 70 feet, quickly became popular recreational weaponry among rafters.

They formed a partnership to manufacture and market the squirters and later incorporated as Water Sports.

The trio marketed the product as the Dip Stik before they discovered a similar name was trademarked.

In 1992, Corliss decided he wanted to sell his interest. Bednar bought the one-third interest with $170,000 he'd borrowed from Faye Madison of Roseburg.

Neyt concluded he didn't want to be a minority shareholder, so he agreed to sell his shares back to the company for $50,000. He also took a 5 percent royalty on the sale value of units produced.

At about this time, Neyt recalls, Terry Whitlock came down from Portland, presented himself to the trio and said, "I'm here to steal your company."

Neyt said Whitlock had apparently seen an NBC news clip of the Dip Stik and had developed a copy he called the Stream Machine. Whitlock told the partners their easiest option would be to bring him into the company — or else he'd go into business against it.

"After he walked out, I said, 'Do you really want this guy working for your company?' " Neyt said. "Anyway, I advised (Bednar) to spell everything out and get it in writing."

Whitlock was hired as president, in charge of marketing and sales, and offered 25 percent of the company.

The Dip Stik was fabricated from white PVC pipe and the Stream Machine was dressed up with bright colors and a pistol grip

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Dip Stik

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handle.

Sales grew from $582,371 in fiscal 1992 to $1.5 million in the next year.

Neyt said both Bednar and Whitlock were promoters with big ambitions. While Neyt and Corliss perceived Dip Stiks as a sporting goods item with a limited market on "party rivers," the others pushed to mass market it as a toy through Wal-Mart and other big discount stores.

They were producing on the promise of the market instead of on actual demand, he said, and they ran up heavy debts.

"Bednar and Whitlock were both salesmen and they went crazy on salaries and their expenses were way out of line," said Caroline Wade, a Eugene bankruptcy attorney who filed the Chapter 11 action for Water Sports. "A company that was small and profitable became unprofitable."

Whitlock said his ambitious sales projections were on target until floods hit the Midwest last spring.

"That was our Waterloo," he said. "I came back from a trip and told (Bednar) to halt production, but he wouldn't do it ... They overproduced 600,000 pieces."

He also blamed Bednar for spending several hundred thousand dollars on high-speed production equipment which has never been used.

At that point, Whitlock attempted to seize control of the company.

Neyt said that neither Bednar nor Whitlock had any restraints on their authority, adding, "Whitlock had the stronger personality and he took over."

But Bednar, who was still formally chairman of Water Sports, did not submit to Whitlock's move and fired him Oct. 6, alleging breach of contract: an attempt to use the company's trade secrets to compete against Water Sports.

Details are in a deposition by Charles Newcomer, president of Northwest Precision Plastics, Grants Pass. Newcomer says he met Whitlock and DiBlasi in the summer of 1993 at the Brewery Restaurant.

Whitlock, he said, was dissatisfied with his position at Water Sports and planned to offer Bednar an ultimatum that Whitlock be allowed to take over the company or he'd quit and start a competing business. He then proposed to enter a marketing agreement with Northwest Precision Plastics for a new company.

Newcomer says he rejected the proposal, and the meeting "deteriorated to the point of hostility with accusations and threats by Mr. Whitlock."

Whitlock says he met with Newcomer to discuss overbilling by the company, which manufactured the squirters.

(Northwest Precision Plastics has also filed a separate Chapter 11 bankruptcy action.)

On Oct. 6, Bednar also fired DiBlasi, Whitlock's companion, who was working as a sales manager.

Whitlock says he was fired because he refused to sign a corporate check to pay a personal debt of Bednar's.

While Whitlock was contesting the control of the company, he was also challenging to be majority stockholder.

Whitlock concluded his 2,800 shares represent 56 percent of the company. Duke has 2,000 and the balance — 200 shares — belong to Bednar.

Bednar responds that Whitlock paid nothing for his stock and controls no shares.

Whitlock reconstituted a board of directors with himself as chairman and DiBlasi as secretary-treasurer. He fired Bednar and Corliss, who was no longer a stockholder, but was a director and employed as chief financial officer.

Whitlock broke into the company's office the night of May 16 and took home equipment and records. He accused the others of a conspiracy and said the records substantiate his position.

The bankruptcy action was filed May 18, two days after Whitlock raided the office.

Whitlock contends the company filed bankruptcy only because he was getting close to winning the Jackson County lawsuit.

In the Jackson County case, Whitlock says Bednar misrepresented the value of the company when Whitlock joined it, saying the assets totaled $800,000 instead of less than $100,000.

He said Bednar conspired with Neyt and Corliss to pay themselves large sums of money as royalties.

> "Bill has nobody to blame but himself for the failure of Water Sports. He was an employee while he was the owner and he'd take off at 3 o'clock three days a week to play golf."
>
> **— Michael Neyt, Company founder**

Neyt filed as a creditor in the bankruptcy, claiming $130,919 in royalties. Corliss was owed $34,576 in royalties and Bednar claimed $35,104.

Whitlock said the company was borrowing heavily from John Duke, who was awarded 2,000 shares of stock in Water Sports. He challenges the bankruptcy filing that alleges the John Duke Trust is owed $1.5 million. Whitlock says that's a capital contribution and not a loan.

In a meeting of creditors held Friday, Corliss said Duke paid $400,000 for the stock in addition to an estimated $1.8 million in loans. He and Bednar say figures are estimates because Whitlock took the records.

Whitlock also challenges a claim against the company for $202,000 from Faye Madison, saying that's Bednar's personal debt, borrowed to buy out Corliss.

Whitlock contends they conspired to load the company with debt, deflect litigation with the Chapter 11 suit, convert to a Chapter 7 liquidation and buy the assets of the company back under a different name for an estimated $120,000.

Whitlock said he obtained records outlining such a strategy, which he included among exhibits. Documents in his motion to dismiss the bankruptcy theorized the successor company would be headed by John Duke, the largest creditor.

The Jackson County lawsuit names Bednar and his wife, Riki, and Water Sports Inc. as defendants.

The principals also dispute trademark and patent rights.

Bednar contends the rights belong to the company; Whitlock said Bednar forged papers assigning his rights to the company.

In a recent Bankruptcy Court hearing Judge Albert Radcliffe ruled that the parties should hang onto their existing assets and continue to operate for now.

Whitlock said he's exhausted his funds pursuing the lawsuit. He and DiBlasi have moved to Syosset, N.Y., to raise money to carry on.

A Bankruptcy Court hearing to sort out the stock ownership is scheduled Aug. 10.

Bednar continues to operate Water Sports. It remains in business, marketing Dip Stiks and Stream Machines. He's collecting a $4,000 monthly salary; Corliss was being paid $7,500 a month as chief financial officer until this month, they said at the hearing.

Bednar said the company still markets the original Dip Stik under that name, under a royalties agreement with the trademark's owner.

While the inventory is on the books at its manufactured cost of just $475,000, Bednar says if it can be sold, the company can cover its liabilities. He said the company sold about one-fourth of the inventory for some $500,000 so far.

"Bill has nobody to blame but himself for the failure of Water Sports," Neyt concludes. "He was an employee while he was the owner and he'd take off at 3 o'clock three days a week to play golf. Every noon he'd be playing racquetball. While the company is faltering, Bill buys a new car and goes on expensive vacations.

"... This was a good little business that would have provided steady income for a lot of years if he'd just let it grow."