

MOUNTAIN VIEW INVESTMENT V. SMITH

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**MOUNTAIN VIEW INVESTMENT
GROUP L.P.,**

Plaintiff-Appellant,
and

**JUDITH HOWARD, JOHN
CLOUTHIER, JOHN LINDBLOM,
individually and derivatively on
behalf of CREE MEADOWS
COUNTRY CLUB, INC.,**

Plaintiffs,

v.

**W. WAYNE SMITH in his capacity
as chairman of the board of directors
and president of CREE MEADOWS
COUNTRY CLUB, INC., and MICHAEL
SCHATTNER, NEIL GOODMAN,
EVAN LUCAS, JIM WALKER,
FRANK BUBSER and MIKE
MOHRHAUSER in their capacity
as members of the board of directors
of CREE MEADOWS COUNTRY
CLUB, INC.,**

Defendants-Appellees.

No. 30,389

COURT OF APPEALS OF NEW MEXICO

December 10, 2010

APPEAL FROM THE DISTRICT COURT OF LINCOLN COUNTY, Karen L. Parsons,
District Judge

COUNSEL

Tax Estate & Business Law, Ltd., Clinton W. Marrs, Albuquerque, NM, for Appellant

Charles E. Hawthorne, Ruidoso, NM, for Appellees Cree Meadows Country Club, Inc., W. Wayne Smith, Michael Schattner, Jim Walker, Neil Goodman, and Evan Lucas

JUDGES

JONATHAN B. SUTIN, Judge. WE CONCUR: CELIA FOY CASTILLO, Judge, ROBERT E. ROBLES, Judge

AUTHOR: JONATHAN B. SUTIN

MEMORANDUM OPINION

SUTIN, Judge.

Plaintiff Mountain View Investment Group, L.P. appeals from the district court's order dismissing its claims with prejudice. We issued a first notice of proposed summary disposition, proposing to affirm. Plaintiff filed a response to our notice. Persuaded that the district court's order of dismissal presents some concerns, we issued a second notice proposing to summarily remand. We have not received a response to our second notice. Therefore, we remand this case to the district court.

On appeal, Plaintiff has argued that the district court erred by dismissing its claims with prejudice rather than without prejudice. In district court, Plaintiff agreed that dismissal would be appropriate so long as it could raise a shareholder derivative suit in a separate action. It is not clear to us on what grounds the district court dismissed Plaintiff's case or what result the district court intended by dismissing the case with prejudice or even whether the dismissal with prejudice was a typographical error.

On the reasoning set forth in our second notice and in this opinion, we remand this case to the district court for the limited purpose of clarifying the basis for its order dismissing Plaintiff's case with prejudice. The district court shall enter a written order clarifying the basis for dismissal with prejudice or an order dismissing the case without prejudice, if appropriate, within sixty days of the date of this opinion. Plaintiff shall file a copy of the district court's order with the Clerk of the Court of Appeals within five days of its entry. Within thirty days of filing the copy of the district court's order with this Court, Plaintiff shall file a statement regarding whether it intends to proceed with this appeal and an amended docketing statement, if applicable.

IT IS SO ORDERED.

JONATHAN B. SUTIN, Judge

WE CONCUR:

CELIA FOY CASTILLO, Judge

ROBERT E. ROBLES, Judge