

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

For Publication

**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**R. SANDERS HICKEY, JAMES E.  
HICKEY, T.L DAWSON, TRACY C.  
ANDERSON, DOUGLAS A. FREELEY,  
THOMAS A. McKINNON, CHARLES F.  
JONES, and PETER V. PLATT**

Plaintiffs,

v.

**CYNTHIA S. COTTONE and  
JOSEPH R. COTTONE IN THEIR  
CAPACITIES AS ADMINISTRATORS  
OF THE ESTATE OF CHARLES J.  
COTTONE, and OCCIDENTAL  
TRADING, LTD.,**

Defendants.

**CIVIL ACTION NO. 99-0125**

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

THIS MATTER came on for hearing on Sept. 9, 2003, on Defendants' motion for reconsideration. Appearing were Richard W. Pierce for the Plaintiffs and Eric S. Smith for the Defendants. After carefully considering the pleadings and the arguments made during the hearing, the Court is prepared to rule. However, the Court will begin with a brief recitation of the relevant facts.

**FACTUAL BACKGROUND**

1. This matter originally concerned the final distribution of the assets of the CNMI corporation, Occidental Trading Ltd. (OTL). Both Plaintiffs and Defendants were shareholders in this corporation. OTL was incorporated sometime in 1993. It had ceased to have any meaningful business purpose by early in 1994, but was not dissolved until October 29, 1995, by action of the CNMI Corporate Registrar.
2. OTL's assets consist of 2.5 million shares of stock in Advanced Textile Corporation (ATC), a note

1 from the Georgia limited partnership, Peninsula L.P. I, executed November 7, 1994, in the amount  
2 of \$261,245, and trade debts from ATC totaling \$ 231,310.06.

3 3. At the time of the Court's May 30, 2003 order, ATC was in Chapter 11 bankruptcy, which would  
4 allow it to emerge as a viable entity. However, Defendants' counsel stated in court during the  
5 hearing on the instant matter, that ATC is now seeking Chapter 7 dissolution.

6 4. After hearing arguments and reviewing briefs and documentary evidence submitted by both sides,  
7 the Court determined that OTL's Articles of Incorporation require that holders of preferred shares  
8 must receive \$1 per share at dissolution, before holders of common shares would be entitled to any  
9 portion of OTL's assets. There were 1.164 million OTL preferred shares outstanding.

10 5. Prior to the Court's entry of a final distribution, there had been substantial dispute between the  
11 parties both as to whether holders of preferred shares should receive preferential treatment and as  
12 to who owned the common shares and in what amounts. However, there was no dispute  
13 concerning the ownership and distribution of the preferred shares.

14 6. Because the Court found that the value of OTL was considerably less than the \$1.164 million due  
15 to the holders of preferred shares, the Court concluded that the issue of who owned the common  
16 shares was moot and declined to issue a ruling on that question.

17 7. At no point in either its briefs or during oral argument conducted on March 11, 2003, did  
18 Defendants suggest that the Court should delay making a final distribution of OTL's assets pending  
19 the outcome of ATC's bankruptcy proceedings. Instead, Defendants simply argued that common  
20 and preferred shares should be treated equally and that the Court should agree with their  
21 contentions as to who owned common shares and in what amount.

## 22 CONCLUSIONS OF LAW

23 A motion for reconsideration is brought under Commonwealth Rule of Civil Procedure 59(e) and  
24 must generally be based on "an intervening change in controlling law, the availability of new evidence, or  
25 the need to correct a clear error or prevent manifest injustice." *Camacho v. J.C. Tenorio Enter., Inc.*,  
26 2 N.M.I. 407, 414 (1992). Defendants have not presented the Court with any new evidence or suggested  
27 any change in law, so the Court must assume that they are pursuing their motion under a "manifest injustice"  
28

1 theory. The error or injustice complained of here appears to be that the Court should not have entered a  
2 final distribution of OTL assets without first waiting for the conclusion of ATC's bankruptcy court  
3 proceedings.

4 Defendants argue in their two-page memorandum that the Court improperly assumed a particular  
5 value for ATC stock in deciding that the issue of common stock ownership was moot. In particular,  
6 Defendants point to the Court's conclusion in its May 30, 2003, order that "the parties estimated that  
7 ATC's repayment to creditors will be 15 cents to 17 cents on the dollar." *Hickey v. Cottone*, Civ. No.  
8 99-0125 (N.M.I. Super. Ct. May 30, 2003) (Order for Distribution of Assets of Occidental Trading, Ltd.  
9 at 2). They contend that they did not agree with this estimate, and contend that the Court usurped the  
10 power of the bankruptcy court by assigning such a value to the stock. They argue that instead, the Court  
11 should simply have made a factual determination as to whom the preferred and common shareholders were.

12 To begin, it is important to note that neither party initially objected to the Court entering a final  
13 distribution of OTL's assets. It was precisely what the Court was asked to do. Indeed, both Plaintiffs and  
14 Defendants submitted, to this Court, a proposed final distribution and neither suggested that the distribution  
15 should await the decision of the bankruptcy court with regard to ATC. To be fair to Defendants, the value  
16 of the ATC-related assets would have been irrelevant had this Court accepted their argument that common  
17 and preferred shares of OTL stock should receive equal treatment. Now Defendants seem to fault the  
18 Court for allegedly failing to foresee a possibility (that the value of the ATC-related assets might indeed be  
19 relevant) that they themselves did not foresee. In fact, after the Court properly found that OTL's preferred  
20 shareholders had a priority claim on the first \$1.164 million in OTL assets distributed, it recognized  
21 immediately that the value of OTL's ATC-related assets would be relevant. However, the Court also quite  
22 properly concluded that, whatever the value of these assets, the total value of OTL would not exceed  
23 \$1.164 million. Therefore, holders of common stock would not be entitled to any portion of OTL's assets.  
24 The question of who owns exactly how much of these completely worthless shares is clearly of no  
25 consequence.

26 However, Defendants suggest that the Court should determine ownership of the common shares  
27 if it thinks there is any possibility that the value of OTL's assets could exceed \$1.164 million. This is no  
28

1 simple matter, as deciding common stock ownership would involve extensive fact-finding. Even if decided,  
2 ownership of common shares would only be meaningful if the Court also either suspended distribution of  
3 OTL assets until final disposition of ATC's bankruptcy or awarded common shareholders some portion  
4 of the assets now. As to the former, Defendants have cited no statutory or case law suggesting that such  
5 a suspension is required and, in any case, Defendants did not object to issuing a final distribution of OTL  
6 assets until it became clear that the distribution would be unfavorable to them. As to the latter, this would  
7 require the Court to either assign a value to the ATC stock, something Defendants argues is currently  
8 impossible, or to disregard the clear language of the Articles of Incorporation by distributing assets to  
9 common shareholders before giving preferred shareholders par value. Neither is acceptable.

10 Of course, in the unlikely event that ATC's bankruptcy proceedings yield sufficient funds to  
11 increase the total value of OTL beyond the \$1.164 million threshold, the Court would entertain a motion  
12 for relief from the judgment or order under Commonwealth Rule of Civil Procedure 60(b).  
13 Defendants' argument that the Court erred by assigning a value to ATC stock of 15 -17 cents is also  
14 unsupported. In fact, in its opinion, the Court suggested only that ATC's total *repayment to its creditors*  
15 would likely be about "15 cents to 17 cents on the dollar." The Court made no estimate of the value of  
16 ATC stock. The 15-17 cent figure was first suggested by Mr. Pierce, counsel for Plaintiffs, during oral  
17 arguments. Later, during that same argument, counsel for Defendants stated, "I don't disagree with Mr.  
18 Pierce's belief that ATC is not worth a lot of money, and therefore, we may get 17 cents on the dollar.  
19 I do not know that, but I don't have any reason to dispute what he says."<sup>1</sup> These statements did not  
20 suggest to the Court a particular value for the various assets of OTL that were dependent on the value of  
21 ATC, nor did it suggest any particular value for the ATC stock itself. Rather, it suggested, as Defendants'  
22 counsel put it, that "ATC is not worth a lot of money."

23 However, even if the Court erred in treating counsel for the Defendants' statement as an admission,  
24 a review of the "Second Amended Disclosure Statement Describing Chapter 11 Plan" filed by ATC in  
25 federal bankruptcy court, reveals that ATC is in very bad financial shape. ATC currently has debts of more

---

26  
27 <sup>1</sup> The following is a quote taken from Plaintiff's opposition to the instant motion and supported by the sworn  
28 affidavit of Maria Rita A. Maravilla, who transcribed audio-tape excerpts of the March 11, 2003 motion hearing. A  
transcription made by an employee of the Court has identical language.

1 than \$3.5 million and current operating assets of only about \$467,000. *See* Second Amended Disclosure  
2 at 22-31. In addition, as of last year, (the most recent period for which data is available), ATC was  
3 operating at a loss. *Id* at 17. At first glance, therefore, it seems very unlikely that ATC could somehow  
4 generate for OTL the minimum of \$661,000 in common stock value that would be necessary to reach a  
5 total value of \$1.164 million.<sup>2</sup> Furthermore, the outlook for OTL is now even bleaker, because ATC has  
6 switched to Chapter 7 bankruptcy. The Second Amended Disclosure includes a table comparing the  
7 payouts to various classes of claimants if the Chapter 11 plan is followed and if Chapter 7 bankruptcy is  
8 pursued instead. *Id* at 32-33. This table reveals that under Chapter 7 bankruptcy, claimants in Class 7,  
9 which includes the trade debts owed to OTL, and Class 8, which consists of all holders of ATC common  
10 shares, will likely receive nothing at all.

11 To contradict this vast amount of documentary evidence, Defendants can only suggest that the  
12 liquidated value of ATC might reach \$2 million. Defendants have introduced no evidence to support this  
13 figure and it appears to be little more than speculation. In any case, even \$2 million would not be enough  
14 to satisfy ATC's current unsecured creditors, much less leave cash for distribution to shareholders. There  
15 is simply no good reason to believe that ATC common stock will ever have any substantial value or that  
16 the value of OTL's assets will ever approach \$1.164 million and the Court did not err or act unjustly in so  
17 concluding. Furthermore, because holders of common shares are not entitled to any distribution of OTL's  
18 assets until, and unless, the debt owed to preferred shareholders is satisfied, there is no reason for the Court  
19 to waste its time and resources in deciding who owns the common shares. Defendants motion for  
20 reconsideration must be and is DENIED.

21 SO ORDERED this 22nd day of September 2003.

22  
23  
24 /s/  
25 JUAN T. LIZAMA, Associate Judge

26 \_\_\_\_\_  
27 <sup>2</sup> This figure was reached by subtracting the face value of the note from Peninsula, \$261,245, and the nominal  
28 value of outstanding accounts receivable from ATC, \$231,310, from the \$1.164 million due to preferred shareholders. In  
fact, it is very unlikely that OTL will receive full payment from ATC.