

Tomran, Inc. v. William B. Passano, Jr., et al, Case No.: 24-C-02-002561, 2003 MDBT 3 (Circuit Court for Baltimore City)(December 30, 2002)(per Albert J. Matricciani, Jr.)

Plaintiff Tomran, Inc. asserted that it owned 4,800 American depository shares in Allied Irish Banks (“AIB”) and demanded that the chairman of AIB and the chairman of Allfirst Financial, Inc., take immediate action to recover losses from currency trading done by John Rusnak, an employee of Allfirst. Thereafter, Tomran filed a derivative action on behalf of AIB with respect to the foreign currency trading losses. Tomran was permitted to file an amended complaint styled as a “triple derivative” action on behalf of Allfirst by a shareholder, stating actions in negligence and gross negligence, and asking for a declaratory judgment and an injunction. Defendants filed a motion to dismiss.

Holding: Motion to dismiss granted. Tomran lacked standing to bring the action.

Synopsis: Defendants asserted that the “internal affairs doctrine” was a complete bar to the action. The court held that although the internal affairs doctrine remains viable in Maryland, in the case at hand it would not be applied: the internal affairs doctrine has evolved into a conflict of laws issue, which entails a *forum non conveniens* analysis which favored the plaintiff.

With respect to the choice of law, the court held that the law of the place of incorporation – Ireland – governs the rights and responsibilities of the parties with respect to its internal operations. Thus, the Court applied Irish law in determining the sustainability of Tomran’s claims.

Invoking sections 10-501 and 10-502 of the Courts and Judicial Proceedings Article, the Court called upon counsel to aid it in obtaining information on the laws of Ireland, England, and the Commonwealth countries, including affidavit statements from members of the English and Irish bars.

Applying the law of Ireland as it exists today, without predicting what that law may state in the future, the court found no support for the asserted right of a beneficial owner such as Tomran to bring a derivative action against AIB. Thus, Tomran lacked standing.

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