

What to Do When You Suspect Falsified Documents by Majority Shareholders

Article By:

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When you, the minority shareholder, are involved in business divorce litigation, the facts may be on your side to prove wrongdoing by the majority shareholders. But what happens when the true facts – what can be proven – become skewed because those in charge falsify or even fabricate documents?

When a document is falsified – often including a fabricated signature – it may seem that the fabricator has somehow gained an advantage. And it may seem to the one seeing their name on a document they never signed (and that previously never existed) that they are now at a disadvantage. But it often does not work out that way – not in the long run, anyway. More often than not, the truth comes out.

When someone fabricates a document, it is extremely difficult for them to know whether facts exist that will reveal the fraud. There could be contradictory documents showing that the “new” document can’t possibly be real. It is sometimes difficult to keep track of what documents may expose the lie. There could be documents previously submitted to a third party (such as a bank) that undercut their version of reality. Their own emails may betray their scheme. Or, the document may simply be too difficult to believe, because the person engaging in the fraud simply isn’t good at it. The point is, such tactics rarely work; the truth is often exposed.

Now, as the minority shareholder who believes that documents you have received are fraudulent, the issue is - what to do about it. Falsified documents can have severe ramifications. As the plaintiff in shareholder dispute litigation, you can use the fraud committed by the majority to prove they are liars, possibly destroying every aspect of their defense in the process. Sometimes creating fraudulent documents can constitute a crime. Documents forged to take monies away from a minority shareholder can be seen as **theft by deception**, which is a felony in New Jersey. Often, the majority shareholder who has resorted to fraudulent documents will realize that he has gotten himself in too deep. What was intended as a ruse to make the minority shareholder “go away” now can make him lose a business divorce litigation *and* might even land him in jail. If a judge sees that a crime has been committed, the judge, if presiding in New Jersey, has an *obligation* to report the crime to the authorities.

Sometimes, though, the best move is not to wait for the court to act, but to report the crime yourself. If the Court knows the majority shareholder has been indicted, or is at least under criminal

investigation, that could potentially impact the litigation. Also, the knowledge that a criminal investigation is underway will often spook a defendant into asserting his Fifth Amendment right to refuse to answer questions in the litigation – which can, and often is, held against you in a civil proceeding.

The bottom line is, if the majority shareholder finally shares information, but you believe it has been falsified, all may not be lost. In fact, just the opposite may be true – it may be the biggest mistake your business partner has ever made.

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