

Exhibit 2

Order of Dismissal

Maloof v. BT Commercial Corp.,
Case No. 06-01378, USDC, NDO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM MALOOF,)	
)	Case No. 1:06-CV-01378
Plaintiff,)	
)	
v.)	Judge Ann Aldrich
)	
BT COMMERCIAL CORPORATION, et al.,)	
)	
Defendants.)	<u>MEMORANDUM AND ORDER</u>
)	
)	

Before the court is defendants’ (the “Banks”) motion to dismiss plaintiff William Maloof’s (“Maloo”) complaint for failure to state a claim upon which relief may be granted [Docket No. 15]. For the following reasons, the Banks’ motion is granted, Maloo’s claims are dismissed with prejudice, and the case is dismissed.

Maloo’s complaint in the instant case details four claims under the Racketeer Influenced Corrupt Organization Act (“RICO”), 18 U.S.C. § 1964, *et seq.* against the Banks, for their alleged conduct concerning Maloo’s businesses. Maloo makes numerous allegations against the Banks, but the sum of them is that the Banks’ actions allegedly reduced the value of Maloo’s businesses, resulting in damage to the equity owned by Maloo in those businesses. In their motion to dismiss, the Banks raise several arguments as to why Maloo’s claims should be dismissed for failure to state a claim, but one is sufficient to dispose of all of the claims.

In analyzing a motion to dismiss filed under Federal Rule of Civil Procedure 12(b)(6), a court “must construe the complaint in the light most favorable to the plaintiff, accept all factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief.” *Andrews v. State of Ohio*, 104 F.3d 803, 806

(6th Cir. 1997) (quoting *In re DeLorean Motor Co.*, 991 F.2d 1236, 1240 (6th Cir. 1993)). The weight of the evidence and the credibility of witnesses generally are not factors to be considered when resolving a motion to dismiss; rather, a court “should deny the motion unless it is clear that the plaintiff can prove no set of facts in support of her claim that would entitle her to relief.” *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995) (citations omitted).

As the Banks point out, it is black-letter law that an action to redress injuries to a corporation cannot be maintained by a shareholder, such as Maloof, in his own name; that shareholder lacks standing to bring the claims. *Frank v. D’Ambrosi*, 4 F.3d 1378, 1385 (6th Cir. 1993). Maloof concedes this point, but argues that an exception exists that applies to this case. Pl.’s Br. in Opp’n, at 19-20 [Docket No. 26] (citing *Anza v. Ideal Steel Supply Corp.*, 126 S.Ct. 1991 (2006)).

However, *Anza* announces no such exception, and does not apply to the facts of this case. In other words, even if the court construes the complaint in the light most favorable to Maloof, he undoubtedly cannot prove any set of facts entitling him to relief because, as a matter of law, he lacks the standing to assert claims for loss of value or diminution of assets of his businesses. Therefore, the court must grant the motion to dismiss and dismiss all of Maloof’s claims with prejudice.

For the foregoing reasons, the Banks’ motion to dismiss [Docket No. 15] is granted. All of Maloof’s claims are dismissed with prejudice, and the case is dismissed in its entirety.

This order is final and appealable.

IT IS SO ORDERED.

s/Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: February 13, 2007