



1 but denying plaintiff's motion as to defendants' good faith  
2 defense. Judge Hargrove concluded that defendants had put forth  
3 sufficient "competing evidence" that the issue of good faith was  
4 a "classic triable" one.

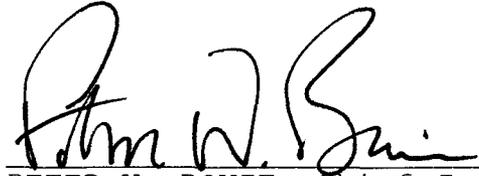
5 Plaintiff did not give up. Rather, after pursuing  
6 alternative avenues of resolution, plaintiff moved again for  
7 summary judgment on defendants' good faith defense. After  
8 extensive briefing and oral argument the Court took the matter  
9 under submission. Since then, the Court has returned time and  
10 again to the deposition transcripts and other documents submitted  
11 by the parties. Moreover, the Court has in mind that there  
12 probably is no additional information which would be brought out  
13 at trial. Nevertheless, the Court concludes that it cannot grant  
14 summary judgment on the present record.

15 In the Court's view, it is a very close question, made so by  
16 defendants' relative inaction about the Whitfield allegations  
17 even though those allegations revealed Whitfield's knowledge of  
18 the side deal defendants had with the debtor which was not  
19 generally know. To simply accept representations that Whitfield  
20 was a disgruntled former employee when Whitfield revealed his  
21 level of knowledge about the dealings between defendants and CMC  
22 is very troublesome to the Court. But, as Judge Hargrove noted,  
23 good faith is an inherently factually intensive determination,  
24 and the Court is unwilling to find its absence based upon the  
25 disputed facts of the present record, in effect, as a matter of  
26 law.

1           Accordingly, plaintiff's pending motion for summary judgment  
2 must be, and hereby is denied.

3           IT IS SO ORDERED.

4           DATED:   MAY 26 2009  



PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court

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