

Term 

NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

D.R.P. vs. W.F.C. & others.

←09-P-650→

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, D.R.P., [FN1] employee and minority shareholder in a corporation in which defendant W.F.C. was the sole director, majority shareholder, and president, brought a lawsuit in the Superior Court alleging, in essence, that he was the victim of a corporate 'freeze out.' A judge granted summary judgment for the defendants on the plaintiff's claims of breach of fiduciary duty, wrongful termination, fraudulent inducement, and breach of contract and denied his request for preliminary injunctive relief. The judge, further, granted defendant W.F.C.'s request that the plaintiff tender his shares in the corporation to W.F.C. according to the terms of a shareholder agreement. The plaintiff timely appealed.

We find no merit to the issues raised by the plaintiff and, accordingly, affirm the judgment.

Background. The plaintiff and W.F.C., who met while cadets at West Point, formed a company, which, with its affiliates, we shall refer to as HHI, [FN2] to acquire the assets of a financially troubled tool manufacturing business located in Millersburg, Pennsylvania, and Pittsfield, Massachusetts. W.F.C. was the majority shareholder and sole director of HHI, with authority to remove officers of HHI, and was also president of HHI, with authority to appoint, suspend, and discharge HHI employees. The plaintiff was a minority shareholder and HHI employee, with responsibility for operating the business operations located in Pittsfield.

Before the closing of the purchase of the tool manufacturing business, the parties agreed orally on the terms of a shareholder agreement, by which W.F.C. would own seventy percent of HHI and the plaintiff would own thirty percent of the company. The plaintiff's shares of the company would be vested over time, which, in this case, meant that he could be granted his stock up front, subject to a 'reverse vesting schedule and a buy-back provision' if his employment was terminated.

W.F.C. drafted a shareholders' agreement which he sent to the plaintiff on March 28, 2004, approximately six months after the deal closed, and on June 1, 2005, he e-mailed the plaintiff an amended draft of the shareholders' agreement. The plaintiff expressed certain concerns regarding the agreement and, on July 7, 2005, W.F.C. e-mailed the plaintiff a third draft of the agreement, which the plaintiff signed in mid-July. The parties agree that the shareholders' agreement accurately reflects the parties' earlier oral agreement. The agreement, effective as

of September 12, 2003, provides, in pertinent part, as follows:

'2. *Required Transfers.* Upon the occurrence of a Triggering Event (as hereinafter defined), [D.R.P.] shall sell and [W.F.C.] shall purchase the Shares of the Company in the manner and on the terms and conditions provided herein. . . . After the occurrence of a Triggering Event that requires [W.F.C.] to purchase shares . . . , any distributions (that accrue or are declared after such occurrence) with respect to such Shares shall be distributed to [W.F.C.] As used herein, 'Triggering Event' means the termination of [D.R.P.'s] employment . . . for any reason

'3. *Purchase Price and Terms; Settlement.*

a. *Purchase Price.* The purchase price for any Transferred Shares following a Triggering Event based upon the termination of [D.R.P.'s] employment . . . for any reason during the time periods set forth below will be calculated in accordance with the following chart'

The shareholders' agreement further provides, in section 5:

'If a Triggering Event [defined as 'the termination of [D.R.P.'s] employment . . . for any reason'] occurs for any reason at any time prior to the first anniversary of this Agreement, the Company shall pay to [D.R.P.] a severance payment equal to \$250,000'

Effective August 31, 2005, W.F.C. terminated the plaintiff's employment, and HHI offered to buy back the plaintiff's shares as specified in the shareholders' agreement.

1. *Wrongful termination and breach of contract claims.* The plaintiff contends that the motion judge erred in granting summary judgment on the plaintiff's wrongful termination and breach of contract claims because the triggering event language in the shareholders' agreement did not constitute a specific agreement for at-will employment, and did not memorialize an intention of the parties that the employment relationship was terminable at will. We disagree.

In the case of *DeVries v. Westgren*, 446 Pa. 205, 207-208 (1971)), [FN3] the Pennsylvania Supreme Court interpreted language in a buy-out clause in a shareholders' agreement containing language similar to the language in the 'Required Transfers' section of the shareholders' agreement at issue here and concluded that the unambiguous language in the agreement (termination 'for any reason whatsoever') left no question to decide on appeal as to the propriety of the discharge.

Moreover, in concluding that the plaintiff in the instant case was an at-will employee, the motion judge did not rely solely on the language of the shareholders' agreement. Rather, the judge ruled, properly, that the shareholders' agreement, when fairly read, together with the by-laws of HHI (which gave W.F.C., as president of HHI, the authority to discharge the plaintiff at any time), 'gave [W.F.C.] the right to do exactly what he did.'

2. *Breach of fiduciary claim.* We also agree that, since the termination of the plaintiff's employment with the company was not improper, the termination of his employment cannot be the basis of a breach of fiduciary claim. Compare *O'Farrell v. Steel City Piping Co.*, 266 Pa. Super. 219, 229-230, 231-233 (1978). The plaintiff has not produced in the summary judgment record any other evidence of actions by W.F.C. that provide the basis for a claim of breach of fiduciary duty. There is no evidence presented in the summary judgment record that W.F.C. used the corporate process to deny the plaintiff the right to participate in the corporation or to exclude him from his proper share of benefits accruing from the enterprise. See *Bair v. Purcell*, 500 F. Supp. 2d 468, 483-488 (M.D. Pa. 2007).

3. *Equitable counterclaims.* The plaintiff's final contention is that, with respect to W.F.C.'s counterclaim and motion for an order requiring the plaintiff to transfer his shares in HHI to

W.F.C., the plaintiff's affirmative defense of unclean hands presented questions of fact precluding summary judgment. See *Project Dev. Group, Inc. v. O.H. Materials Corp.*, 766 F. Supp. 1348, 1355-1356 (W.D. Pa. 1991). On a motion for summary judgment the evidence must be viewed in the light most favorable to the nonmoving party. See *Groman v. Township of Manalapan*, 47 F.3d 628, 633 (3d Cir. 1995). The doctrine of unclean hands requires that one seeking equity act fairly and without deceit as to the controversy in issue. This claim is essentially dependent upon the claim that the plaintiff was wrongfully terminated, and thus fails for the same reasons as that claim fails.

Judgment affirmed.

By the Court (Lenk, Graham & Brown, JJ.),

Entered: March 16, 2010.

FN1. Because the case was impounded, we do not use the names of the parties in this memorandum and order.

FN2. See note 1, *supra*.

FN3. The shareholders' agreement provides that the agreement 'shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania'

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