

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

ANDREW D. SAUERS and	:	Equity
CHILITECH INTERNET	:	
SOLUTIONS, INC., a Pennsylvania	:	
Corporation,	:	
Plaintiffs	:	
	:	
v.	:	No. 06-01,491
	:	
STEPHEN A. MATTIE, MARY M.	:	
KITCHEN, and RUSSELL W. TWIGG,	:	
Defendants	:	

OPINION and ORDER

This case involves the plaintiffs' request for an injunction to prevent the defendants from acting on behalf of the corporation, Chilitech, Inc. On July 24, 2006, this court issued a Special Injunction. On July 27, 2006, after a discussion with all interested parties and their attorneys, it was agreed the Special Injunction would remain in full force and effect, and some other matters relating to the operation of the business were stipulated to, pending a hearing and a final order in the matter. Hearings were held on September 18, 2006 and September 19, 2006. After consideration of the evidence and relevant caselaw, the court will issue a permanent injunction for the following reasons.

Findings of Fact

Chilitech, Inc. is a Pennsylvania corporation. At the time of the incident in question, Chilitech's Board of Directors was composed of three people: Andrew Sauers, Stephen Mattie, and Mary Kitchen. Andrew Sauers was the majority stockholder.

On July 12, 2006, a Board of Directors meeting was held. At the start of the meeting, Mr. Mattie made a motion to remove Mr. Sauers as President and Director. Mary Kitchen seconded the motion. A vote was then taken, and the motion was

carried.¹ Mr. Mattie and Ms. Kitchen then demanded that Mr. Sauers leave the meeting immediately, without any opportunity for further discussion on the matter. They told him to give them his passwords and keys, and to take nothing with him. They threatened him with legal action if he did not comply. Mr. Sauers requested that corporate counsel be called to consult on the matter, but Mr. Mattie and Ms. Kitchen would not do so. Mr. Sauers left shortly afterward.²

After Mr. Sauers left, Mr. Mattie and Ms. Kitchen discussed Russell Twigg's interest in purchasing treasury stock, and voted to sell him the remaining treasury stock, which they believed was about 69,000 shares, at a minimum price of \$200,000. On July 17, 2006, an Agreement for Sale of Stock was executed purporting to transfer 69,000 shares to Mr. Twigg. The Agreement was signed by Mr. Twigg, along with Mr. Mattie and Ms. Kitchen as Directors, and Jeffrey Johns as President.

DISCUSSION

The purpose of an injunction is to preserve the status quo as it exists or previously existed until the merits of the controversy can be fully heard and determined, and to prevent a party from gaining any advantage by its own wrongful act. It is a temporary remedy, granted until the dispute can be completely resolved based upon the merits. Appeal of Little Britain Township from Decision of the Zoning Hearing Board of Little Britain Township Lancaster County, 651 A.2d 606 (Pa. Commw. 1994). To obtain a preliminary injunction, the moving party must demonstrate that: (1) The injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages, (2) Greater injury would result from refusing an

¹ Although the minutes of the meeting state Mr. Sauers was removed as President, all individuals present at the meeting testified that Mr. Mattie and Ms. Kitchen intended to remove Mr. Sauers as President and Director.

² It is noted that the testimony was fairly consistent regarding the demand to leave. To the extent the testimony differs, the court finds Mr. Sauers' testimony to be the more credible.

injunction than from granting it, and that issuance of an injunction will not substantially harm other interested parties in the proceedings, (3) An injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct, (4) The moving party is likely to prevail on the merits, (5) The injunction is reasonably suited to abate the offending activity, and (6) The injunction will not adversely affect the public interest.

The merits of the case turns upon the legality of the actions of Mr. Mattie and Ms. Kitchen at the July 12, 2006 Board of Directors meeting. The testimony was unequivocal that Mr. Mattie and Ms. Kitchen fully intended to remove Mr. Sauers as both President and Director. However, while the Board of Directors has the power to remove a corporation president, it does not have the power to remove a director. Directors can be removed only by a vote of the shareholders of a corporation. 15 Pa.C.S. §1726(a).³ Thus Mr. Mattie and Ms. Kitchen had no right to demand that Mr. Sauers leave the meeting.

The testimony of Mr. Mattie, Ms. Kitchen and Mr. Sauers all confirmed that Mr. Sauers was told to leave the meeting in very strong terms, and was also told to turn in his passwords and keys. While he was not forcibly removed from the meeting in a physical fashion, he was threatened with legal action if he remained. Under these circumstances, the court finds that Mr. Sauers was illegally removed from the meeting. Thus, all actions taken at the meeting after his removal were invalid. Specifically, the stock purchase by Mr. Twigg must be declared invalid.

The case of Stone v. American Lacquer Solvents Company, 417 Pa. 417, 345 A.2d 174 (Pa. 1975) is particularly instructive. In that case, the corporation had adopted a Resolution providing that in the event of the death of Director Harold E. Stone prior to

³ This can be changed by a provision of the corporation's bylaws, but no such provision is present here. The statute also allows for removal of a director in some very limited circumstances, none of which apply here.

his wife, the corporation was to pay his wife a \$8000 pension annually. After a marital dispute, Mr. Stone contacted his son-in-law Robert Shaw, President of the corporation, and told him he wanted the provision rescinded. Mr. Stone subsequently signed and personally delivered a letter to Mr. Shaw stating he wanted the pension provision rescinded. A special meeting of the Board of Directors was convened. Five of the seven members of the Board attended, and voted unanimously to rescind the Resolution. Stone was not notified of the meeting, and did not attend. Stone subsequently died, and his widow brought an action in equity.

The Supreme Court declared the rescission void, because Stone was not notified of the meeting. The court stated that a meeting held without notice to some or any of the directors and in their absence is illegal, and action taken at such a meeting, although by a majority of the directors, is invalid absent ratification or estoppel. The court stated,

As a general rule, the directors of a corporation may bind a corporation only when they act at a legal meeting of the board. . . . If they purport to act at a meeting which is not a legal meeting, their action is not that of the corporation, and the corporation, absent ratification or acquiescence, is not bound.

(Citations omitted.)

The Supreme Court rejected the trial court's reasoning that Stone's letter constituted a waiver of notice of the meeting, and that no purpose would have been served by his presence at the meeting, since the other directors were merely acceding to Stone's wishes. The Supreme Court stated,

This analysis overlooks the rationale for the salutary rule that all directors receive notice of special meetings. That rationale is that 'each member of a corporate body has the right of consultation with the others, and has the right to be heard upon all questions considered, and it is presumed that if the absent members had been present they might have dissented, and their arguments might have convinced the majority of the unwisdom of their proposed action and thus have produced a different result.' We agree with this rationale.

Citing Holcombe v. Trenton White City Co., 80 N.J.Eq. 122, 82 A.618 (1912), *aff'd*, without opinion, 82 N.J.Eq. 364, 91 A.1069 (1913).

In the case before this court, although all three of Chilitech's directors were notified of the special meeting, and all three directors attended initially, Mr. Sauers was improperly evicted from the meeting. Therefore, the meeting held in Mr. Sauers' absence was not a legal meeting of the board, and the action taken—namely, the decision to sell treasury stock to Mr. Twigg—was not the action of the corporation. Thus the purported sale of stock to Mr. Twigg is void.

The court cannot accept the defendants' argument that Mr. Sauers' presence at the meeting would have been useless since he would surely have been outvoted. As the Supreme Court found in Stone, supra, such a presumption is improper. Quite the opposite, it must be presumed that had Mr. Sauers been given the opportunity to participate in the meeting, he might have changed the minds of the other directors. For these reasons, the court concludes that Mr. Sauers is likely to prevail on the merits of the case.

As to the other elements of the injunction, the court concludes that these too are met. First, the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. The harm here is loss of corporate power and control. If the sale of stock to Mr. Twigg is not invalidated, Mr. Twigg will become the majority shareholder and will be able to direct the future of the corporation, which is at a critical transitional stage.

The court also finds that greater injury would result from refusing an injunction than from granting it, and that issuance of an injunction will not substantially harm other interested parties in the proceedings. Mr. Sauers has built his life around Chilitech, whereas Mr. Twigg's interest, as well as the interest of Ms. Kitchen and Mr. Mattie, are primarily financial interests, which can be adequately compensated by money damages.

Next, the injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. In this case, the injunction will

return the parties to the position each one occupied prior to the exclusion of Mr. Sauers from the July 12, 2006 meeting.

And finally, the injunction is reasonably suited to abate the offending activity of excluding Mr. Sauers from the meeting, and the injunction will not adversely affect the public interest.

ORDER

AND NOW, this 26th day of September, 2006, for the reasons stated in the foregoing opinion, it is hereby ordered as follows:

1. All actions taken by Mr. Mattie and Ms. Kitchen, as directors of Chilitech, Inc., subsequent to the eviction of Mr. Sauers from the Board of Directors meeting on July 12, 2006, are declared null and void.
2. The Agreement for Sale of Stock to Russell Twig, executed on July 17, 2006, is declared null and void.
3. The Modification of Note to Russell W. Twigg, executed on July 17, 2006, is declared null and void.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
David Smith, Esq.
Joseph Orso, Esq.
Gary Weber, Esq., Lycoming Reporter