IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| WILLIAM R. CAMERER, JR. and NORMA DOEBLER CAMERER, on behalf of Doebler Farmland, Inc., and individually, Plaintiffs | : | NO. 04-00,557 |
| vs. | : | CIVIL ACTION |
| DOEBLER FARMLAND, INC., a Pennsylvania Corporation, TAYLOR DOEBLER, III, MELANIE DOEBLER, PATRICE DOEBLER and CHRISTOPHER J. McCRACKEN, Defendants | : | Post-Trial Motions |

## ***OPINION AND ORDER***

Before the Court are the post-trial motions filed by all parties in response to this Court's Verdict following a non-jury trial, entered February 21, 2006. All motions were filed March 6, 2006, and argument thereon was heard May 19, 2006.[1]

After five days of trial, a verdict was entered in favor of Plaintiffs on both counts of the Complaint. The Court determined that Defendant Taylor A. Doebler, III, breached his fiduciary duty to DFI when he arranged for Crist and Greenaway to become consignment growers, and that Defendants breached their fiduciary duty to DFI when they voted to pay themselves officers' salaries. The Court found a lack of proof with respect to the first issue, however, and therefore did not award damages. With respect to the salary issue, the Court directed the DFI directors to revisit the matter, and the officers to reimburse the corporation, if appropriate. All defendants take issue with the Court's findings, and Plaintiffs take issue with the lack of an award of damages.

First, Defendants Melanie Doebler, Patrice Doebler, and Christopher McCracken contend the Court erred in viewing their decision to pay themselves officers' salaries in conjunction with their decision to cease production that year. They insist the two issues have

[1] The motion filed by Doebler Farmland, Inc. simply indicates that the corporation joins in and adopts the post-trial motions filed by the other defendants; no further issues are raised therein. Accordingly, that motion will not be addressed further.

nothing to do with each other. While they may have not considered them together at the time, such lack of foresight serves to underscore the lack of a rational basis for the decision, and thus supports the finding of a breach of the duty of care. As Taylor Doebler himself testified regarding the decision to pay salaries, "I wanted to know how we actually go about trying to figure out what salaries should be for the corporation, and so I did discuss it with an accountant. He said, this is where you guys should be *comparative to other corporations making the amount of money that we made.*" N.T., December 5, 2005 at p. 70 (emphasis added). Thus, while the salaries may have been appropriate based on the past history of the company which showed an average net income of about $272,000 per year for the previous five years, in light of the decision to have no production, which had provided an average of over $232,000 gross profit[2] per year over the previous five years, or even the decision to in effect cut production in half, even the $75,000 in salaries voted in April 2003 is clearly excessive, let alone the $100,000 in salaries voted in February 2003.

With respect to the Court's conclusion that Defendants breached their duty of loyalty in voting themselves salaries, the Court retracts its statement that Defendants were the only ones to receive payment from DFI for 2003 as the evidence did show that there was a profit realized that year, of $73,988, and that there was a distribution to shareholders for that year. Such does not negate the finding Defendants breached their duty of care, however, even considering the application of the business judgment rule, for the Court still believes the salaries were voted without consideration of the consequences and thus without a rational belief they were serving the best interests of the company.

Next, Defendant Taylor Doebler contends the Court erred in finding he breached his duty of loyalty when he arranged for Crist and Greenaway to become consignment growers, again arguing, as he did at trial, that there could be no self-dealing in having Crist and Greenaway produce for his company, T.A. Seeds, rather than for DFI because T.A. Seeds paid the same amounts to Crist and Greenaway as it would have paid to DFI. While the profit of T.A. Seeds may not have been affected, it is clear to the Court that Taylor benefited personally from his actions as he was able to accomplish his goal of exacting revenge on those who had

[2] Seed sales of $1,052,441 less cost of goods sold of $820,186.

harmed him. As Taylor's actions also served to harm DFI, such clearly constituted a breach of the duty of loyalty.

Defendant Taylor Doebler also takes umbrage with the Court's viewing "the explanation that DPH was 'unstable' as simply an excuse offered after the fact." Defendant points to the testimony of all defendants regarding their concerns about the stability of DPH having been discussed at the time the production decision was made, in support of his argument that the Court's view is incorrect. The "after the fact" to which the Court was referring, however, meant after Taylor arranged with Crist and Greenaway to become consignment growers, the action for which Taylor is being held accountable, not after the "no production" decision, which served only to complement Taylor's previous breach of fiduciary duty. Defendants may very well have offered the instability reason at the time of the "no production" decision, but by that time, the damage had been done.

In Plaintiffs' motion, the Court is asked to award damages in spite of the lack of reasonably certain proof of such. As noted in the opinion issued in support of the verdict, Plaintiffs are entitled to have Taylor reimburse DFI for the loss attributable to his actions in arranging for Crist and Greenaway to become consignment growers and not enter contracts with DFI in 2003. The amount of damages should thus be based on Crist's and Greenaway's production in 2003, considering the cost of such as well as the revenue which could have been realized by DFI had the usual arrangements continued in effect. There was no evidence respecting any of these figures, however. The evidence of a general profit margin and the revenue realized in past years under different circumstances is simply too subject to variation as to be helpful.

Next, Plaintiffs ask the Court to set the officers' salaries rather than have the directors do so. Inasmuch as Plaintiffs presented no evidence of what reasonable salaries would be in this instance, the Court declines this request.

Plaintiffs also urge the Court to award punitive damages "based on defendants' bad faith motives in breaching the duty of loyalty owed to the corporation." A claim for punitive damages has not heretofore been raised, however, and will, therefore, not be addressed now.

Next, Plaintiffs seek to be reimbursed for the attorneys' fees and costs incurred in bringing and prosecuting the instant action, referring the Court to the "common fund doctrine." While such a claim may be possible in the instant case, the Court does not believe that it may be raised in a post-trial motion. Rather, a petition for attorneys' fees should be filed, thus providing an opportunity to argue and prove the appropriateness and/or amount of such an award. See Couy v. Nardei Enterprises, 587 A.2d 345 (Pa. Super. 1991) (appellees, plaintiffs in the trial court, "filed an *ancillary* motion requesting reimbursement of counsel fees")(emphasis added), and Trustees v. Greenough, 105 U.S. 527 (1882) ("Vose, the complainant, bore the whole burden of this litigation, and advanced most of the expenses which were necessary for the purpose of rendering it effective and successful. In 1875 he *filed a petition*, setting forth these advances and the efforts made by him, and prayed an allowance out of the fund for his expenses and services.")(emphasis added).

Finally, Plaintiffs seek to have Defendants reimburse DFI for attorneys' fees and expenses advanced by the corporation for the instant litigation, arguing that indemnification, although authorized in certain circumstances, is not justified here, where defendants have been adjudged liable to the corporation. Again, this matter was not raised in the Complaint, and no hearing on the matter has been held. Unfortunately for Plaintiffs, it appears a separate derivative action must be filed, involving as it does a claim that the directors of the corporation have acted outside their authority, to the detriment of the corporation.[3]

## ***ORDER***

AND NOW, this 14th day of June 2006, for the foregoing reasons, the post-trial motions filed by all parties are hereby DENIED. In accordance with the Verdict entered February 21, 2006, judgment is hereby entered in favor of Plaintiffs and against (1) Defendant Taylor A. Doebler, III, with respect to Count I of the Complaint, and (2) the individual defendants with respect to Count II of the Complaint. The Board's decision of April 4, 2003, to award the

[3] Plaintiffs also could have amended the original complaint to include this cause of action once the measure was taken.

salaries enumerated in the minutes of the meeting of that date shall be rescinded. Within thirty (30) days of this date, the Board shall either enter a further resolution authorizing the payment of reasonable salaries, or inform Plaintiffs' counsel that no further action on the matter will be taken. Within sixty (60) days of the date of either the further resolution or the letter indicating none will be passed, Defendants shall reimburse the corporation for salaries paid in excess of those authorized, or if none have been authorized, then for all salaries paid since April 2003.

With respect to Count II, no monetary award can be made for the reasons previously given.

BY THE COURT,

Dudley N. Anderson, Judge

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