IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

OPINION IN SUPPORT OF ORDER OF JUNE 14, 2006,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

All parties appeal from this Court's Order of June 14, 2006, which denied all post-trial motions and entered judgment in favor of Plaintiffs but did not make any monetary award.[1]

In their Statements of Matters Complained of on Appeal,[2] Plaintiffs contend the Court erred in failing to set reasonable salaries, failing to award damages, and failing to award attorney's fees. The reasons for all of these actions may be found in this Court's Opinion in support of the Order denying Post-Trial Motions, dated June 14, 2006, and the Court will therefore simply rely on that opinion for purposes of the instant appeal.

Defendants raise numerous issues in their Statement of Matters Complained of on Appeal. The specific claims will be addressed seriatim.[3]

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1 The facts and issues presented at the non-jury trial in this matter are described in detail in this Court's Opinion in support of the Verdict, dated February 21, 2006.

2 The Court notes that none of the parties served their Statement on the Court and it therefore may very well be that the Superior Court will consider all issues waived. *See* Commonwealth v. Schofield, 888 A.2d 771 (Pa. 2005), and Schaefer v. Aames Capital Corp., 805 A.2d 534 (Pa. Super. 2002). Inasmuch as the parties have gone to considerable expense to obtain the Court's judgment, however, the Court will nevertheless address the issues raised in their Statements.

3 Several of the issues are stated in such a general fashion (e.g., "the Court erred as a matter of law in its interpretation and application of the business judgment rule") that the Court will simple rely on the previous opinions issued in this matter, rather than revisiting the matter.

First, Defendants claim the Court was without a factual or legal basis to consider together the vote for salaries and the vote to cease/lower production. The Court does not agree. As explained in the Opinion in support of the Order of June 14, 2006, the reasonableness of salaries necessarily depends on the amount of money a company makes. When directors vote to eliminate or cut a major portion of the company's income, that vote must be considered in determining whether their decision to vote themselves salaries was reasonable.

Next, Defendants contend the Court erred "when it compared the right of officers to receive salaries to the shareholders' right, if any, for disbursements, and then concluded, on that faulty premise, that such a comparison was material to a breach of fiduciary duty." The Court assumes Defendants are referring to the Court's statement, in its Opinion in support of the Verdict of February 21, 2006, that the directors' decision to pay themselves salaries as officers was self dealing "as the salaries, in combination with the decision to cease production, resulted in Defendants being the only ones to receive payment from DFI for 2003, to the exclusion of the other shareholders." Initially, it should be noted that the Court retracted this statement in the Opinion in support of the Order of June 14, 2006, as further review of the evidence showed that shareholders did receive a distribution for that year. Nevertheless, the Court disagrees with Defendants that such a comparison constitutes error. The duty of loyalty owed by a director to the corporation requires that he devote himself to corporate affairs with a view to promote the common interests and not only his own, and he cannot directly or indirectly utilize his position to obtain any personal profit or advantage other than that enjoyed by his fellow shareholders. Anchel v. Shea, 762 A.2d 346 (Pa. Super. 2000). If the vote to pay officers salaries had resulted in only the officers receiving a payment to the exclusion of the other shareholders, such would be relevant to a breach of the duty of loyalty, and thus a breach of fiduciary duty. In any event, the breach of fiduciary duty found in this matter was based on a finding of a breach of the duty of care, rather than a breach of the duty of loyalty.

Next, Defendants contend the Court erred in failing to account for the fact that Camerer and Jones voted in favor of producing 243 acres. Apparently Defendants are attempting to argue that since Camerer and Jones voted this way, the vote by the others cannot be viewed negatively. Defendants take this fact out of context. At the time of this vote, Taylor had already eliminated the opportunity of DFI to enter contracts with Crist and Greenaway, and

thus a vote to produce more than these 243 available acres would have made no sense. Moreover, it was the diversion of the opportunity to enter contracts with Crist and Greenaway that constituted Taylor's breach of fiduciary duty, not the vote to produce 243 acres. The fact that Camerer and Jones voted to produce 243 acres was not accounted for by the Court simply because it was not relevant to that breach of duty.

Next, Defendants contend the Court erred in concluding "that the officers' workload during the course of the year would diminish in the absence of or decrease of production." Nowhere in either opinion, however, did the Court make such a statement. The Court focused on the decrease in income, not any decrease in the workload. The Court is thus unable to address this issue further.

Next, Defendants contend the Court erred "when it concluded that paying officers' salaries is self-dealing because officers' salaries are expressly authorized by the DFI bylaws." As noted above, the Court retracted its finding of self-dealing but, in any event, it cannot seriously be argued that if directors voted to pay themselves the entire profit of a corporation, thereby eliminating any profit available for distribution to shareholders where there had been a history of large distributions to shareholders, it would not be self-dealing. While that is not what happened in this case, it does serve to highlight that just because salaries are authorized by the bylaws does not mean excessive salaries are authorized.

Next, Defendants contend the Court erred "when it failed to consider and apply the clear and unambiguous dictates of Chambers v. Beaver-Advance Corporation, 392 Pa. 481, 140 A.2d 808 (Pa. 1958). The shareholders ratified the directors' salary vote." The Court assumes Defendants are referring to the following language in Chambers:

> If the bonuses are, as in the instant case, for the current or prior calendar or fiscal year, and are fair and reasonable, and **if they are thereafter approved by a majority of the stockholders, the courts will not declare them to be illegal**.
>
> ….
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> In Pennsylvania the general rule is now well established, subject to the limitations hereinabove set forth, that **stockholders can ratify any action of the board of directors** which they themselves could have lawfully authorized.

Chambers v. Beaver-Advance Corporation, *supra*, 140 A.2d at 814 (emphasis added). What

Defendants overlook, however, is the following:

> It is also true that directors may not vote to themselves or to the officers of the corporation compensation which is excessive, unreasonable and out of proportion to the value of the services rendered, and, if any such payments are made, the court, upon protest of a minority shareholder, may examine into their propriety and reduce them if found to be exorbitant. ...

Id. at 813. Indeed, the language referenced by Defendants indicates that the bonuses under consideration in that case must be "fair and reasonable" and the actions of the board of directors which could be ratified by the stockholders must be those which the directors themselves could have "lawfully" authorized. The Court believes Chambers is of no help to Defendants in this matter.

Next Defendants contend the Court erred in granting Plaintiffs equitable relief when none was requested. If Defendants are referring to this Court's direction to the Board of Directors of DFI to revisit the salary issue, rather than simply awarding a sum certain, the Court does not see such as equitable relief. The Court is making an award of money, but the amount is to be determined by the Board of Directors, rather than the Court. Indeed, Plaintiffs admitted at trial that there was nothing preventing the Board from again setting salaries, even were the Court to invalidate the salary votes of February and April 2003. Rather than have Defendants reimburse the corporation for the salaries paid and then have the Board vote in other salaries and then have the corporation pay those out, it seems more efficient to simply vote on the salaries before reimbursement is made. The Court believes the relief granted herein is thus sufficiently related to the Plaintiffs' request to be appropriate.

Next, Defendants contend the Court erred in concluding the salaries were excessive and points to the fact that not all of the monies voted for were in fact paid. The Court accounted for this fact by requiring the reimbursement of any difference between what was actually paid and what will be determined to be reasonable at a subsequent meeting of the Board. As far as the conclusion of excessiveness, it is respectfully suggested that one need only compare the salaries to the 2003 gross profit to judge the fairness of the Court's conclusion.

Next, Defendants contend the Court erred in finding in favor of Plaintiffs "despite the lack of damages." The Court did not find a lack of damages, however. Defendants confuse the legal term "damages" with the common term "damage". The Court found "damage" to the

corporation, but could not, based on a lack of evidence, set an amount of "damages". Because there was "damage", the Court believes its finding of liability for breach of fiduciary duty to be well-founded.

Next, Defendants contend the Court erred in finding "improper motives" for Taylor's competition (through T.A. Seeds) with DPH and in imputing those same motives in finding a breach of fiduciary duty to DFI. While the Court believes its finding regarding Taylor's motives is supported by the record, it bears noting that the motive is actually of little moment, since the evidence made it clear that the decision to lure Crist and Greenaway away from DFI, for whatever reason, was made without consideration of the effect it would have on DFI, and thus constituted a breach of the duty of care.

Next, Defendants allege "Plaintiffs failed to prove causation with respect to the production vote." The Court assumes that Defendants are contending the Court erred in finding that the vote to stop/reduce production would have caused the company to lose money.[4] Since the history of the company showed that production was the major source of income, the Court fails to see how it could have found otherwise. Indeed, the subsequent financial statements showed the company did experience significantly reduced profits.[5] The Court thus does not believe it erred in this regard.

Finally, Defendants contend the Court erred "when it allowed the Plaintiffs to present evidence that reasonable officers' salaries should be $3,360 a year because of the content of a prior DFI board resolution." While the evidence may have been marginally relevant, such does not affect its admissibility. The Court agrees with Defendants that past practices of the company were not necessarily controlling, especially in light of the change in the financial picture for all concerned once Ted passed away. In light of the Court's refusal to set "reasonable salaries", however, it should seem clear to Defendants that the evidence about which they complain was not even considered. Therefore, while the Court does not believe it erred in admitting the evidence, any error would have been harmless.

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4 Since the production vote was relevant only to the salary issue, the focus was whether that vote made the salary vote unreasonable, and that would have depended on its effect on the company's profitability.

5 To the extent Defendant seek to place blame for the loss on the injunction entered by the federal court, it should be noted that had Defendants not taken the course they did, it is nearly certain there would have been no federal injunction, or at least not one that would have affected DFI.

In conclusion, it appears none of the issues raised herein has merit and the Court respectfully suggests its Order of June 14, 2006, be affirmed.

Dated: August 22, 2006

Respectfully Submitted,

Dudley N. Anderson, Judge

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