IN THE COURT OF APPEALS OF IOWA

No. 8-272 / 97-0707

FRED BUCHWITZ and GARY BUCHWITZ,

Plaintiffs-Appellees,

FILED

JUL 31 1998

CLERK SUPREME COURT

vs.

KENNETH ERICKSON, JON BURGESS, and EBB FOODS, INC.,

Defendants-Appellants.

Appeal from the Iowa District Court for Marshall County, Carl E. Baker, Judge.

Defendants, a corporation and its directors, appeal from the district court's ruling requiring them to purchase the minority shareholders' stock of plaintiffs. **AFFIRMED IN PART AND REVERSED IN PART.**

Sharon Soorholtz Greer of Cartwright Druker & Ryden, Marshalltown, and Kevin M. O'Hare of Johnson, Sudenga, Latham & Peglow, Marshalltown, for appellants.

Kevin R. Hitchins of Grimes, Buck, Schoell & Beach, Marshalltown, for appellees.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

PER CURIAM.

Defendants-appellants Kenneth Erickson, Jon Burgess, and EBB Foods, Inc. appeal from a judgment requiring they purchase the minority shares of plaintiffs-appellees Fred Buchwitz and Gary Buchwitz in EBB Foods, Inc. We affirm in part and reverse in part.

Plaintiffs Fred Buchwitz and Gary Buchwitz each owned five percent of the outstanding share of stock in EBB Foods, Inc., an Iowa corporation incorporated October 17, 1984. Plaintiffs sued defendants contending there was: (1) a wrongful distribution of assets; (2) the directors breached a fiduciary duty; and (3) the officers breached a standard of conduct. Plaintiffs asked for various forms of relief, including dissolution of the corporation.

The trial court denied plaintiffs' request for dissolution of the corporation, finding defendants Erickson, Burgess, or EBB Foods, Inc. should purchase plaintiffs' shares for $33,750.

We review for errors at law. *Davis-Eisenhart Mktg. Co. v. Baysden*, 539 N.W.2d 140, 141 (Iowa 1995).

EBB Foods, Inc. was formed to operate a Bonanza restaurant in Marshalltown. Defendants Erickson and Burgess, as well as Ernest Bachmeier, were majority stockholders as well as officers and directors.

Plaintiffs, hired to manage the restaurant, received ten percent of defendant EBB Foods, Inc.'s stock which they continued to own when suit was brought.

Plaintiffs ceased managing the restaurant in 1995.

The business of the corporation was carried on with little or no attention to requirements for meetings and notice. Without notice to plaintiffs, the corporation in 1987 purchased Bachmeier's interest. This purchase increased plaintiffs' interest to fifteen percent, yet plaintiffs' dividend percentage was not increased. Additionally, while the majority stockholders received dividends monthly, plaintiffs received dividends annually. After plaintiffs ceased management, decisions as to management fees for defendants Erickson and Burgess, advancements for remodeling, and other corporate business was carried on without any notice or reporting to plaintiffs. Defendants Erickson and Burgess retain management responsibilities and ownership of stock with their spouses.

Defendants Erickson and Burgess contend they were only directors, having transferred shares they originally owned to their wives in March of 1995. Plaintiffs contend defendants Erickson and Burgess owned eighty-five percent of the shares of EBB Foods, Inc., and Burgess testified he was an owner. Plaintiffs further contend any alleged transfer was not valid because it was not done in compliance with the articles of incorporation.

We agree with defendants Erickson and Burgess on this issue and reverse the judgment requiring either or both of them to purchase the stock.

Defendant EBB Foods, Inc. contends it should not be required to purchase plaintiffs' shares, and the business judgment rule protects its actions.

The business judgment rule is the standard by which the conduct of corporate directors is measured. It is codified in Iowa Code section 490.830. *See Hanrahan v. Kruidenier*, 473 N.W.2d 184, 186 (Iowa 1991).

The rule, whose purpose is to limit second guessing of corporate directors, applies to challenges to most corporate decisions except those challenging self-dealing. *Id.*; *Cookies Food Prods., Inc. v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 453 (Iowa 1988). Where directors engage in self-dealing, they must establish the transactions were fair to the corporation. *Hanrahan*, 473 N.W.2d at 186.

The record supports a finding the directors did not properly allocate dividends among plaintiffs and other stockholders (their wives) or pay dividends in accord with established policies for the other stockholders (their wives). Defendants Erickson and Burgess have failed to show these actions are fair to the stockholders.

This court has held statutory authority allowing the district court to liquidate allows it to fashion other relief. *Sauer v. Moffitt*, 363 N.W.2d 269, 275 (Iowa App. 1984). Iowa Code section 490.1430 allows a district court to liquidate a corporation. The district court order requiring EBB Foods, Inc. to buy plaintiffs' stock is appropriate equitable relief. We affirm on this issue.

Costs on appeal are taxed one-half to plaintiffs and one-half to defendant EBB Foods, Inc.

AFFIRMED IN PART AND REVERSED IN PART.