FILED
MAR 20 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHARLES WATSON,)

Plaintiff-Appellant,) Filed March 20, 1984

vs.)

LAMSON AMERICAN HOMES, INC.,) 4-34
83-978

Defendant-Appellee.)

Appeal from the Iowa District Court for Mahaska County - Richard Vogel, Judge.

Plaintiff, a former stockholder, director, and officer of defendant-corporation, appeals from the district court decision dismissing his suit to force the corporation to buy his stock under a buy-back agreement. AFFIRMED.

James Q. Blomgren of Clements, Blomgren & Pothoven, Oskaloosa, Iowa, for plaintiff-appellant.

Garold F. Heslinga of Heslinga & Heslinga, Oskaloosa, Iowa, for defendant-apellee.

Considered by Oxberger, C.J , and Donielson and Hayden, JJ.

Plaintiff, a former stockholder, director, and officer of defendant-corporation, appeals from the district court decision dismissing his suit to force the corporation to buy his stock under a buy-back agreement. We affirm.

On February 28, 1977, plaintiff, Charles Watson, and Larry Naylor entered into an agreement with the defendant and its sole shareholder, Margaret Lamson, under which Watson and Naylor would purchase the corporation's shares. Watson and Naylor purchased outright six shares of stock for $30,000. The agreement provided that the remaining thirty-nine shares would be held in an escrow account and would be delivered to the purchasers when the final installment of the $180,000 purchase price was paid. In order to protect Mrs. Lamson's interest, the agreement further provided that the purchaser would "not assign or transfer his stock in said corporation . . ." and that the corporation's working capital should not fall below $30,000 and its net worth should not fall below zero. In return, Mrs. Lamson promised to resign the office she held in the corporation and covenanted not to compete with the corporation in the mobile home sales business.

On March 1, 1977, Watson, Naylor, and Leroy Rouw, all shareholders, entered into an agreement obligating each shareholder to sell and the corporation to buy the shares of a shareholder wishing to dispose of his stock. Shortly thereafter, a five-for-one stock split was issued raising the number of escrowed shares to 195 and the number of shares purchased outright to thirty. Of these thirty shares Watson received eleven, Naylor sixteen, and Rouw three shares.

In February of 1980, Watson terminated his employment with the corporation although he continued to compile the corporation's financial reports until August of that year. In a certified letter dated June 27, 1980, he notified the other shareholders of his intention to sell his stock and tendered his shares to the corporation. The letter stated in part:

> My calculations reveal the book value of the corporation as of May 30, 1980, to be twenty-four thousand two hundred fifty-four dollars ($24,254.00). Therefore, pursuant to the terms and provisions of the agreement, the purchase price of my eleven shares of stock is twenty-three thousand five hundred fifty-nine and 80/100 dollars ($23,559.80).

The balance sheets, as prepared by Watson, indicate a net working capital of $56,651 as of May 31, 1980. The balance sheet for June 30, 1980, shows a net working capital of $25,614 and a liability of $23,560 due Watson for his stock. Watson did not actually receive payment.

On July 24 Mrs. Lamson sent a notice of forfeiture of the February agreement to the corporation, Watson, and Naylor. The grounds for the forfeiture were the failure to make the June and July payments on the promissory note and the fall of the net working capital below $30,000. When the defaults were not cured within thirty days, Mrs. Lamson was tendered the escrowed shares.

Watson then filed the present suit to compel the corporation to purchase his shares. The trial court determined that the terms of the March agreement between the shareholders were in violation of the February contract with Mrs. Lamson. The court also found that the enforcement of the buy-back provisions would greatly diminish Mrs. Lamson's equity in the escrowed shares. The court ordered Watson's petition to be dismissed and his shares to be re-issued or transferred back to him.

Our review of this ordinary action at law is on assigned error. Iowa R. App. P. 4.

Directors and officers of a corporation occupy a fiduciary position as to the corporation and its shareholders. Rowen v. LeMars Mutual Insurance Co. of Iowa, 282 N.W.2d 639, 650 (Iowa 1979); Holi-Rest, Inc. v. Treloar, 217 N.W.2d 517, 525 (Iowa 1974); Holden v. Construction Machinery Co., 202 N.W.2d 348, 358 (Iowa 1972). They are required to act at all times in utmost good faith and must exercise their powers for the sole benefit of the corporation and its shareholders,

never for their personal gain. Holden v. Construction Machinery Co., 202 N.W.2d at 358. Transactions of corporate officers and directors with the corporation are permissible, but they are scanned by the courts with skepticism and with the closest scrutiny. Des Moines Bank and Trust Co. v. George M. Bechtel and Co., 243 Iowa 1007, 1081, 51 N.W.2d 174, 216 (1952).

The February stock purchase agreement clearly provides that Watson and Naylor could not transfer their stock in the corporation without being in default of the agreement. It also provides for default if the net working capital fell below $30,000. Watson's attempt to sell his shares to the corporation caused the net working capital to fall below $30,000 as shown by the June 30, 1980 balance sheet. Furthermore, the clear thrust of the February contract was to protect Mrs. Lamson's interest in the corporation until she was paid for her shares. We do not believe that a fiduciary can compel the corporation to honor a buy-back agreement for his benefit which violates the provisions of a prior contract to which the corporation was a party. Watson as a fiduciary with full knowledge of the financial position of the corporation may not force the corporation to buy his shares to the financial detriment of Mrs. Lamson. He is under a duty to impartially refrain from pursuing his own personal best interest.

The final issue raised concerns a sanction of $180 assessed against Mrs. Lamson for her failure to appear for the taking of her deposition. The district court ordered this amount to be paid but did not include the order in its final ruling. Counsel for the defendant indicated at trial that he was willing to pay the sum. To the extent that the sanction has not already been paid, we order that it be paid at once.

AFFIRMED.