IN THE COURT OF APPEALS OF IOWA

No. 3-219 / 91-1211

FILED
AUG 06 1993
CLERK SUPREME COURT
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MAURICE P. ROACH,

Appellant/Cross-Appellee,

vs.

IOWA ENGINEERED PROCESSES, INC.,

Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Buchanan County, William G. Klotzbach, Judge.

The plaintiff appeals the district court's ruling dismissing his action seeking to compel the defendant to issue additional shares of its stock to the plaintiff. **AFFIRMED.**

Robert J. Hearity, Oelwein, and Barton Schwieger, Waterloo, for appellant.

Larry Cohrt of Swisher & Cohrt, Waterloo, for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

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DONIELSON, P.J.

The plaintiff, Maurice Roach, was one of the incorporators of defendant Iowa Engineered Processes, Inc. which developed and utilized a process for deburring metal parts. The plaintiff was a majority owner of the defendant until 1986 when new owners were brought into the business for additional capitalization. The defendant claims that at an informal and unreported board of directors meeting on May 28, 1985, the board authorized the issuance of 1300 shares of additional stock in the defendant to the plaintiff for cash advanced by the plaintiff. One of the board of directors was never given notice of the meeting as required by the defendant's bylaws. On July 30, 1985, a reported meeting of the board of directors was held at which 1300 shares of the defendant's stock were authorized to be issued to the plaintiff. The plaintiff claims that the stock was for services the plaintiff rendered to the defendant.

In 1986, the plaintiff had serious disagreements with the defendant corporation. In 1987, the plaintiff commenced a lawsuit against the defendant seeking to recover actual cash advanced by the plaintiff to the defendant. The lawsuit was settled. The defendant claims that the settlement was to cover all obligations the defendant owed the plaintiff. In 1988, the plaintiff commenced a second lawsuit seeking an additional 1300 shares of stock claiming that the stock authorized by the

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July 1985 meeting was never issued to him. The defendant filed an answer generally denying the allegations.

In April 1990, the first trial of this case was terminated by the need to appoint new counsel for the defendant. In November 1990, the defendant sought to amend its answer to allege, in part, that the plaintiff was barred by laches or estoppel from seeking issuance of additional shares of stock because he did not raise the claim until the filing of the second lawsuit. The defendant asserted that the failure to assert the claim earlier misled new investors in the defendant corporation.

On the day the trial commenced, the district court allowed the defendant to amend its answer. At the trial, the parties presented evidence supporting their various claims. At the close of the plaintiff's case, the defendant moved to dismiss on the basis that the defendant's bylaws had not been followed concerning the notice requirements for the board of director's meeting on May 28, 1985, rendering the meeting invalid, that there was a lack of evidence to show consideration for the issuance of the additional 1300 shares to the plaintiff, and that there was no credible evidence that would support his claim for the issuance of the additional 1300 shares in the defendant.

The district court reserved ruling on the motion. At the conclusion of the defendant's case, the court granted the motion to dismiss on the grounds urged in the motion

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and on the additional ground that the plaintiff had split his cause of action by earlier suing the defendant on a promissory note at the time when the present cause of action also existed.

On May 21, 1991, the plaintiff filed a motion to enlarge and motion for new trial raising issues asserted on appeal. On July 1, 1991, the district court denied the motions.

On July 30, 1991, the plaintiff filed a notice of appeal. On August 5, 1991, the defendant filed a notice of cross-appeal, although it appears that the defendant has raised no cross-appeal issues.

Appellant argues that the trial court erred in sustaining Appellee's motion to dismiss. We review decrees entered in equity actions de novo. Israel v. Farmers Mut. Ins. Ass'n of Iowa, 339 N.W.2d 143, 146 (Iowa 1983). We give weight to the findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). We will affirm the trial court decree if it can be supported on the bases relied upon by the trial court or "if there is a proper basis for the decree . . . even though the reasons for affirming are different than those upon which the trial court relied." Israel v. Farmers Mut. Ins. Ass'n of Iowa, 339 N.W.2d at 146.

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The trial court sustained the motion to dismiss on three grounds. The court found that "the only evidence of the May 28, 1985, meeting shows that the bylaws were not followed . . . and that the corporation was not authorized on May 28, 1985, to take any action." The court also found that no credible evidence of consideration to support the issues of stock had been offered. Finally, the court found that appellant split his cause of action and was estopped, therefore, from asserting his claim.

Having reviewed the record carefully we find scant evidence that a meeting occurred on May 28, 1985. Assuming without deciding that the meeting occurred, no valid corporate actions could result because the record clearly shows that the corporate bylaws were not followed. Director Hurley received no written notice of the meeting, did not waive attending the meeting, and did not attend the meeting. Thus the board was not authorized to issue any stock.

The record also shows that appellant gave no indication in his dealings with the corporation or others that he claimed to own any shares issued at a May 28, 1985, meeting. Rather, his dealings are consistent with his being owed and having received only the shares authorized at the July 30, 1985, meeting.

Since either of these findings is sufficient to support the motion to dismiss, we need not reach the other issues concerning the motion to dismiss raised by appellant. We

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also do not need to reach the issue of appellee's amended answer since we find sufficient evidence in the record to dismiss the case. We have considered all issues necessary to decide the present appeal and find no reason to disturb the judgment of the trial court.

AFFIRMED.