SUPREME JUDICIAL COURT OF MASSACHUSETTS

Selmark Associates, Inc. v. Ehrlich

467 Mass. 525 (2014) · Decided March 14, 2014

SUMMARY

The Massachusetts Supreme Judicial Court reviewed cross-appeals arising from disputes among shareholders and directors of closely held corporations. The court affirmed verdicts concerning breaches of fiduciary duty, upheld Ehrlich’s breach of contract claim based on a conversion agreement, vacated the contractual damages award for a new trial, and held that Ehrlich was not entitled to relief under G. L. c. 93A.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Botsford, J.
JURISDICTION	Massachusetts
DECIDED	March 14, 2014
DISPOSITION	vacated
PROCEDURAL POSTURE	Cross-appeals from a Superior Court jury judgment involving breach-of-fiduciary-duty, breach-of-contract, and Massachusetts General Laws chapter 93A claims. The Supreme Judicial Court granted Ehrlich's application for direct appellate review.
STANDARD OF REVIEW	For judgment notwithstanding the verdict, whether anywhere in the evidence, from whatever source derived, any combination of circumstances could support a reasonable inference in favor of the opposing party. Jury instructions are reviewed as a whole for fairness, clarity, adequacy, and correctness. The form of special verdict questions is reviewed for abuse of discretion. A refusal to issue an injunction is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published, precedential opinion of the Massachusetts Supreme Judicial Court
PARTIES	Selmark Associates, Inc., Marathon Sales, Ltd., Elofson v. Evan Ehrlich

TOPICS

fiduciary duty · corporate governance · breach of contract · damages · consumer protection

PRACTICE AREAS

corporate law · contracts · employment law · remedies · consumer protection · appellate procedure

QUESTIONS PRESENTED

1. Whether contractual agreements governing the parties' relationship displaced fiduciary duties owed among shareholders and directors of a close corporation.
2. Whether sufficient evidence supported the jury's finding that Selmark and Elofson breached fiduciary duties to Ehrlich by terminating his employment.
3. Whether sufficient evidence supported the jury's finding that Selmark and Elofson breached the conversion agreement by denying Ehrlich conversion rights.
4. Whether the jury's $1,537,163 contract-damages award was supported by the evidence or impermissibly duplicative.
5. Whether Ehrlich's termination or alleged freeze-out extinguished his fiduciary duties to Marathon and permitted him to compete with or solicit Marathon's principals.
6. Whether Massachusetts General Laws chapter 93A applied to disputes arising from the parties' employment and shareholder relationships.
7. Whether the jury instructions, special verdict questions, and posttrial injunctive relief constituted reversible error.

HOLDINGS

1. A contract displaces fiduciary duties only when it clearly and entirely governs the challenged conduct and expressly indicates a departure from the otherwise applicable fiduciary obligations. The parties' agreements did not entirely govern Ehrlich's employment rights after the employment agreement expired and before conversion of his Marathon stock, so fiduciary principles remained applicable.
2. The evidence supported the jury's finding that Selmark and Elofson breached the duty of utmost good faith and loyalty owed to Ehrlich as a minority shareholder of Marathon by terminating him under the circumstances presented.
3. The challenge to the $221,408 fiduciary-duty damages award was waived because the appellants asserted error without sufficient legal argument explaining the alleged defect.
4. The evidence supported the jury's finding that Ehrlich acquired the stock and payment rights necessary to exercise conversion and that Selmark breached the conversion agreement by refusing to permit conversion.
5. The $1,537,163 contract-damages award could not stand because its basis was speculative and it potentially included impermissible double recovery for the value of Ehrlich's ownership interest. The award was reversed and the case remanded for a new trial limited to contractual damages.

6. The conversion agreement could support consequential damages for future lost income, including a six-year projection, if proved with reasonable certainty and properly reduced for mitigation; uncertainty in amount alone did not bar recovery.
7. A shareholder's alleged freeze-out or wrongful termination does not, as a matter of law, extinguish the shareholder's continuing fiduciary duties to the close corporation or authorize solicitation of the corporation's principals.
8. Chapter 93A did not apply because the dispute arose from the parties' employment and shareholder relationships within a common business venture rather than from a qualifying commercial transaction.
9. The jury instructions, considered as a whole, adequately stated the applicable law, and the special verdict questions did not create reversible confusion. The trial judge did not abuse discretion in the form of the questions.

KEY QUOTATIONS

> *"When the challenged conduct at issue in a case is clearly contemplated by the terms of the parties' written agreements, we have declined to find liability for breach of fiduciary duty."* (537-538)

> *"To supplant the otherwise applicable fiduciary duties of parties in a close corporation, the terms of a contract must clearly and expressly indicate a departure from those obligations."* (538-539)

> *"Allowing a party who has suffered harm within a close corporation to seek retribution by disregarding its own duties has no basis in our laws and would undermine fundamental and long-standing fiduciary principles that are essential to corporate governance."* (552-553)

FACTUAL BACKGROUND

Selmark and Marathon were closely held Massachusetts corporations whose owners negotiated written agreements providing for Ehrlich's gradual acquisition of Marathon stock and a possible conversion of that interest into a minority interest in Selmark. Ehrlich's employment agreement with Marathon expired in 2002, but he continued working as a successful salesperson and minority shareholder. After Ehrlich announced that he intended to complete payments for his Marathon shares and become eligible for conversion, Elofson terminated him without warning, and Selmark asserted that it had cured an alleged payment default that prevented conversion. Ehrlich later joined a competitor and solicited Marathon principals, including one that moved its business to the competitor.

PROCEDURAL HISTORY

Selmark and Marathon sued Ehrlich for breach of fiduciary duty after he solicited Marathon principals for a competing company. Ehrlich asserted thirteen counterclaims against Selmark, Marathon, and David Elofson. A jury found Ehrlich liable for breach of fiduciary duty and awarded Selmark and Marathon $240,000; it found Selmark and Elofson liable for breach of contract, breach of fiduciary duty, and chapter 93A violations, awarding Ehrlich $1,537,163, $221,408, and $221,408, respectively. The trial judge doubled the chapter 93A damages and awarded fees and costs. After posttrial motions were denied, the parties cross-appealed.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The case is remanded to the Superior Court for further proceedings consistent with the opinion, including a new trial limited to the amount of contractual damages. The judgment in favor of Selmark and Marathon on their breach-of-fiduciary-duty claim is affirmed; the judgment in favor of Ehrlich on his breach-of-fiduciary-duty counterclaim is affirmed; the contract-liability determination is affirmed but the contract-damages award is vacated; and the chapter 93A judgment in favor of Ehrlich is reversed and the counterclaim dismissed.

CASES CITED

- Donahue v. Rodd Electrotype Co. of New England, Inc., 367 Mass. 578, 587, 593 (1975)
- Blank v. Chelmsford Ob/Gyn, P.C., 420 Mass. 404, 408 (1995)
- Chokel v. Genzyme Corp., 449 Mass. 272, 278 (2007)
- Merriam v. Demoulas Super Mkts., Inc., 464 Mass. 721, 727-728 & n.14 (2013)
- Pointer v. Castellani, 455 Mass. 537, 550, 553-554 (2009)
- King v. Driscoll, 418 Mass. 576, 586 (1994), S.C., 424 Mass. 1 (1996)
- Bank v. Thermo Elemental Inc., 451 Mass. 638, 651 (2008)
- Masingill v. EMC Corp., 449 Mass. 532, 543 (2007)
- O'Brien v. Pearson, 449 Mass. 377, 383, 385 (2007)
- Turnpike Motors, Inc. v. Newbury Group, Inc., 413 Mass. 119, 121 (1992)
- Kellogg v. Board of Registration in Medicine, 461 Mass. 1001, 1003 (2011)
- Maillet v. ATF-Davidson Co., 407 Mass. 185, 194 (1990)
- Quinn Bros. v. Wecker, 414 Mass. 815, 817 (1993)
- Laurin v. DeCarolis Construction Co., 372 Mass. 688, 691 (1977)
- Salvas v. Wal-Mart Stores, Inc., 452 Mass. 337, 374 (2008)
- Blake v. Commissioner of Correction, 403 Mass. 764, 767 (1988)
- Commonwealth v. Johnson Insulation, 425 Mass. 650, 668 (1997)
- doCanto v. Ametek, Inc., 361 Mass. 776, 787 (1975)
- Agoos Leather Cos. v. American & Foreign Ins. Co., 342 Mass. 603, 608 (1961)
- Stuart v. Brookline, 412 Mass. 251, 256-257 (1992)
- Boothbay v. Texon, Inc., 414 Mass. 468, 475 (1993)
- Polaroid Corp. v. Travelers Indemnity Co., 414 Mass. 747, 762 (1993)
- Conway v. Electro Switch Corp., 402 Mass. 385, 386, 390 (1988)
- Haddad v. Wal-Mart Stores, Inc. (No. 1), 455 Mass. 91, 102 (2009)
- Szalla v. Locke, 421 Mass. 448, 451-452 (1995)
- Milliken & Co. v. Duro Textiles, LLC, 451 Mass. 547, 563 (2008)

- Linkage Corp. v. Trustees of Boston University, 425 Mass. 1, 23 n.33 (1997), cert. denied, 522 U.S. 1015 (1997)
- Psy-Ed Corp. v. Klein, 459 Mass. 697, 719 (2011)
- Zimmerman v. Bogoff, 402 Mass. 650, 662-663 (1988)
- J Bar H, Inc. v. Johnson, 822 P.2d 849, 861 (Wyo. 1991)
- Rexford Rand Corp. v. Ancel, 58 F.3d 1215, 1220-1221 (7th Cir. 1995)
- Voss Engineering, Inc. v. Voss Industries, Inc., 481 N.E.2d 63 (Ill. App. 1985)
- Zottu v. Electronic Heating Corp., 334 Mass. 442, 445 (1956)
- Lipchitz v. Raytheon Co., 434 Mass. 493, 507 (2001)
- Comey v. Hill, 387 Mass. 11, 17 (1982)
- Kobayashi v. Orion Ventures, Inc., 42 Mass. App. Ct. 492, 503 (1997)
- Rotkiewicz v. Sadowsky, 431 Mass. 748, 751 (2000)
- Draghetti v. Chmielewski, 416 Mass. 808, 818 (1994)
- Solimene v. B. Grauel & Co., KG, 399 Mass. 790, 802 (1987)
- Mahoney v. Gooch, 246 Mass. 567, 571 (1923)