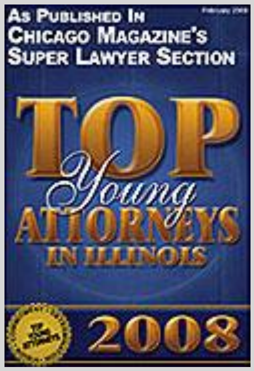
THE FISHING LINE

The Fish Law Firm P.C. (July 2008)



David Fish was named an "Illinois Rising Star" in the areas of:

1. Business/Corporate Law
2. Business Litigation
3. Class Action Law

Fish was selected for this honor by Super Lawyers magazine which conducted surveys of other lawyers who were asked to nominate the best attorneys, age 40 or under, that they have personally observed in action – whether as opposing counsel or co-counsel or through other firsthand courtroom observation.

Illinois Civil Procedure

LexisNexis

LexisNexis recently selected David Fish to assist in drafting forms for lawyers to use in the Illinois circuit courts. For more information about this publication, click here

LEGAL UPDATE:

PARTNERS BEHAVING BADLY; LESSONS FROM RECENT MINORITY SHAREHOLDER OPPRESSION CASE | WILLIAMS V. STANFORD

Many minority shareholders have devoted years to helping to build a company-- only to learn that their legal rights are often very limited. The laws of many states provide minority owners with certain statutory rights, such as the right to receive a fair price for their ownership interest. But what is a minority owner to do when a majority shareholder becomes heavy handed?

Common tactics that majority shareholders use to force minority shareholders out of a company include:
(1) Cooking the company's books to financially benefit the majority shareholder-- to the minority shareholder's detriment;
(2) Bad-mouthing the minority shareholder to company employees;
(3) Firing the minority shareholder from his or her job at the company;
(4) Refusing to share financial information with the minority shareholder;
(5) Changing the locks on the door to deny the minority shareholder access to the company`s facilities; and
(6) Starting a competing company--and then siphoning business secretly to the new business to avoid sharing profits.

A recent case from Florida illustrates the length that courts will sometimes go to to protect oppressed minority shareholders. In Williams v. Stanford, 977 So.2d 722 (1st Dist. 2008), two brothers (the "Williams Brothers") owned 30% of a carpentry company called B&S. Their partner, John Stanford, owned the other 70% of B&S and-- along with Stanford's wife-- served as B&S's Board of Directors.

The Williams Brothers began to get suspicious about Mr. Stanford's management of B&S's finances, since B&S revenues were increasing--but profitability was decreasing. The Williams Brothers demanded to see B&S's financial records. In response, Mr. Stanford fired the Williams Brothers.

Intellectual Property Podcast

David Fish was interviewed on ThoughtShapers about how to protect intellectual property on the Internet. [Click here to listen to the interview.]()
Visit us [www.fishlawfirm.com]()

Lessons from the Williams case:

(1) Prior to having disputes-- and preferably at the start of a business relationship-- business partners should discuss and memorialize their future expectations. Should employee shareholders receive employment agreements to protect them against termination? Should the parties agree on a buy-out formula in the event they want to get a divorce? Who should make corporate decisions? By laying out expectations before disputes arise, business owners can focus on what they do best: making money.

(2) Business partners (like Mr. Stanford and the Williams Brothers) owe special legal duties (often a fiduciary duty) to each other. Usurping corporate opportunities and not sharing information can lead to protracted litigation.

(3) When business partners want a corporate divorce, there are proper ways to go about doing it.

There was good reason Mr. Stanford did not want the Williams Brothers to see B&S's financial records. Mr. Stanford and his wife had allegedly charged numerous personal expenses to B&S's credit card (including charges totaling approximately $48,000 to a popular home-shopping network), and had used B&S funds to build a 3,200-square-foot home for themselves and to improve property belonging to Mr. Stanford's father.

The Williams Brother then demanded that B&S's Board of Directors vote to sue the Stanfords. But, since the Board of Directors was Mr. and Mrs. Stanford, they (not surprisingly) refused. The Williams Brothers then filed a shareholder-derivative action on behalf of B&S, naming the Stanfords as defendants.

Mr. Stanford then resigned from B&S--after all, why would he want to work for the benefit of the Williams Brothers, who were still shareholders? Despite his resignation, Mr. Stanford continued to take a paycheck from B&S.

But, Mr. Stanford apparently did not want to waste his business relationships, so (with the help of lawyers) he decided to form a new company called Stanford & Son (not to be confused with Redd Foxx's "Sanford & Son"). Mr. Stanford then proceeded to cause a "merger" by transferring B&S's assets to Stanford & Son in exchange for Stanford & Sons agreeing to assume B&S's liabilities. Mr. Stanford then offered to purchase each of the Williams Brothers' stock for $25,000 and informed them of their statutory appraisal rights.

Stanford & Son maintained the same location, the same telephone number, and the same staff, equipment, and vehicles as previously used by B&S.

The Williams Brothers sued for: (I) breaches of fiduciary duty by the Stanfords, stemming from their alleged personal use of corporate assets and corporate funds; (II) breaches of fiduciary duty by the Stanfords in conjunction with their transfer of B&S's assets to Stanford & Son; (III) breaches of common law duty of loyalty by the Stanfords; and (IV) trade name infringement by the Stanfords, stemming from the use of B&S's trade name by Stanford & Son, among other claims.

The main issue before the court was a statutory issue under Florida law—whether Florida's "appraisal rights" statute prevented the Williams Brothers from obtaining judicial scrutiny of the transfer of B&S assets from B&S to Stanford & Son, a company Mr. Stanford created with the admitted intention of withdrawing from the business relationship with the Williams Brothers. Under Florida law, a shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, under certain circumstances. Appraisal must determine the "fair value" of the dissenting shareholder's shares.

In most cases, the statute denominates appraisal as a dissenting shareholder's exclusive remedy. However, the Williams Brothers argued that they were entitled to more than just the "fair value" of their shares due to the corporate malfeasance described above. The court agreed. The court

Being heavy handed, however, will often backfire.

relied upon Delaware precedent that appraisal would be an inadequate remedy for dissenting minority shareholders who alleged that corporate directors and officers manipulated the timing of a merger to artificially depress the cash-out price that minority stockholders would be paid for their shares post-merger.

The court found that the Williams Brothers were not limited to their appraisal rights. The court relied upon evidence that Mr. Stanford secretively transferred B&S assets to a newly created company with the intention of effectuating a squeeze-out of the Williams Brothers.

There are many lessons to be learned from the Williams case as set forth to the left of this Legal Update.

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