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2019 IL App (3d) 170713-U

Order filed May 30, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

|  |   |                               |
|--|---|-------------------------------|
| MARIA ISABEL VIZCARRA,                 | ) | Appeal from the Circuit Court |
|  | ) | of the 12th Judicial Circuit, |
|  | ) | Will County, Illinois.        |
| Plaintiff-Appellee,                    | ) |                               |
|  | ) |                               |
| v.                                     | ) | Appeal No. 3-17-0713          |
|  | ) | Circuit No. 11-MR-622         |
| LMR HOME HEALTHCARE, INC., an Illinois | ) |                               |
| Corporation, EDUARDO C. RANCHERO       | ) |                               |
| and LOLITA M. RANCHERO,                | ) |                               |
|  | ) | The Honorable                 |
|  | ) | Roger D. Rickmon,             |
| Defendants-Appellants.                 | ) | Judge, Presiding.             |

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* In a minority shareholder complaint, the trial court did not err in: (1) denying the majority shareholders' affirmative defense of statute of limitations; and (2) denying defendants' counterclaim for breach of fiduciary duty.

¶ 2 The plaintiff, Maria Isabel Vizcarra, is a minority shareholder of LMR Home Healthcare, Inc. (LMR), an Illinois non-publicly traded corporation incorporated pursuant to the Illinois Business Corporation Act of 1983 (BCA). 805 ILCS 5/1.01 *et seq.* (West 2010). At the time

LMR was incorporated, and at all times subsequent, Vizcarra held 33.3% of the shares in LMR. The defendants, Eduardo Rancho and Lolita Rancho, husband and wife, each owned 33.3% of the shares of LMR.

¶ 3 On July 8, 2011, Vizcarra filed a four-count complaint seeking various remedies under the BCA. The complaint was dismissed without prejudice. Vizcarra filed an amended complaint on July 31, 2012. The Rancheros raised numerous affirmative defenses and counterclaims. Following extensive motion practice, a bench trial was held on May 19, 2017. The trial court issued a written order finding that, at the time the complaint was filed and all times subsequent, Vizcarra was a current minority shareholder entitled to relief under section 12.56(b)(11) of the BCA. 805 ILCS 5/12.56(b)(11) (West 2010). The court ordered LMR and the Rancheros to purchase Vizcarra's shares at a court-determined fair market value of \$206,653.12. The Rancheros filed a post-trial motion seeking a specific ruling on: (1) their fifth affirmative defense, a claim that Vizcarra's cause of action was barred under the general five-year statute of limitations found at section 13-205 of the Illinois Code of Civil Procedure (Code). 735 ILCS 5/13-205 (West 2010); and (2) their counterclaim that Vizcarra was not entitled to relief under the BCA because she was in breach of her fiduciary duty to LMR and the Rancheros. On September 21, 2017, the trial court entered an order denying the post-trial motion, finding there was "no basis in law or fact in defendants' affirmative defenses or counterclaim." The Rancheros appealed the denial of the post-trial motion to this court.

¶ 4

#### BACKGROUND

¶ 5 In early 2003, the Rancheros sought Vizcarra's help in setting up a for-profit home healthcare agency. Vizcarra already owned her own agency and had several years of experience in the home healthcare industry. The parties agreed that each of the three individuals would

become a 1/3 owner in the corporation that became LMR. A pre-organization subscription agreement was executed indicating that LMR would issue 340 shares to Eduardo Ranchoero, 330 shares to Lolita Ranchoero, and 330 shares to Vizcarra. Each owner paid in \$11,550 for their shares, with Eduardo paying slightly more for 10 additional shares. LMR was incorporated on May 2, 2003, with Lolita as president and Eduardo as corporate secretary. Vizcarra testified that the subscription agreement provided that she was to have been named as corporate secretary, a fact that the Rancheros did not deny.

¶ 6 During the period from May 2003 through September 2004, Vizcarra trained and instructed the Rancheros on the regulatory and clinical aspects of the home healthcare business. In September 2004, LMR received its Medicare provider certification.

¶ 7 On or about October 7, 2004, shortly after LMR received its Medicare certification, Lolita hand delivered a letter to Vizcarra offering to purchase her shares in LMR for \$12,000. A personal check drawn on the Ranchoero's account and payable to Vizcarra for \$12,000 was included with the purchase letter. Vizcarra declined to sell her shares.

¶ 8 Vizcarra testified that after she rejected the October 2004 offer, she received no further communication from LMR or the Rancheros. She testified that, on advice of her counsel, pursuant to her rights under the BCA as a minority shareholder, she sent formal requests to inspect the books and records of LMR on October 15, 2007, and November 9, 2007. Both of these formal requests were denied. On April 8, 2008, she sent another formal request to the Rancheros demanding to examine the corporate books and records pursuant to the BCA. That request was also rejected.

¶ 9 Vizcarra further testified that, on April 25, 2011, her counsel made a request pursuant section 7.75(e) of the BCA for a current balance sheet and profit/loss statement for LMR, and to

examine all corporate books and records pursuant to section 7.75(b) of the BCA. 805 ILCS 5/7.75 (b), (e) (West 2010). Counsel for LMR and the Rancheros responded by denying that Vizcarra was a shareholder of LMR. Vizcarra's counsel responded with proof of her stock ownership, including copies of the Rancheros' two previous unsuccessful attempts to purchase Vizcarra's shares.

¶ 10 On July 8, 2011, Vizcarra filed the original complaint in this matter. A second amended complaint, generally tracking the original complaint, was filed the following year. Trial testimony from the Rancheros established that LMR never paid dividends to any shareholder. Their testimony further established that the Rancheros had caused LMR to loan them and other entities under their control over \$1,700,000 from 2007 through 2011. These loans were never documented and there was no evidence that any repayments had been made. The Rancheros further acknowledged several purchases by LMR, including a \$66,000 Lexus and a \$50,000 BMW. They also acknowledged that, without informing Vizcarra, LMR transferred 25% ownership to Kevin Ranchero, the Rancheros' son. The Rancheros admitted that Kevin had paid no compensation for the shares purportedly transferred to him.

¶ 11 At trial, the Rancheros took the position that their offer to purchase delivered on October 4, 2007, effectively terminated Vizcarra's ownership interest in LMR. The Rancheros argued that, after that date, Vizcarra was no longer a shareholder with rights under the BCA. The trial court rejected the argument that Vizcarra's ownership in LMR was terminated by a simple offer to purchase her shares. The court held that, pursuant to the BCA, Vizcarra remained an owner of her shares until such time as those shares had been properly purchased pursuant to section 12.56(b)(11) of the BCA. 805 ILCS 5/12.56(b)(11) (West 2010). Based on financial documentation provided during pre-trial proceedings, the court determined that Vizcarra's

oppressed shares in LMR had a value of \$206,653.14. Pursuant to the BCA, the court ordered LMR and the Rancheros to purchase Vizcarra's shares for that amount. The Rancheros filed a post-trial motion asking the trial court to reconsider its ruling because the ruling did not expressly address their affirmative defense or counterclaim. The trial court denied the post-trial motion, stating that the affirmative defense and counterclaim "had no basis in fact or law." The Rancheros brought this appeal maintaining that the trial court's ruling on the post-trial motion was erroneous. For the following reasons, we affirm the trial court's ruling.

¶ 12

## ANALYSIS

¶ 13

### I. Statute of Limitations Applicable to Section 12.56(b)(11) of the BCA

¶ 14

On appeal, the Rancheros first maintain that the trial court erroneously rejected their affirmative defense that Vizcarra's petition for relief under section 12.56(b)(11) of the BCA (805 ILCS 5/12.56(b)(11) (West 2010)) was time barred by the five-year general statute of limitations found in section 13-205 of the Code of Civil Procedure (735 ILCS 5/13-205 (West 2010)), which provides, in relevant part, that: "all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (West 2010). The Rancheros cite no authority for the proposition that minority shareholder rights under the BCA are subject to section 13-205 of the Code, other than the general proposition of law that shares of stock in a corporation are personal property. See *Price Flavoring Extract Co. v. Lindheimer*, 368 Ill. 450, 453 (1938).

¶ 15

Vizcarra maintains that the trial court was correct in finding that count II of her complaint successfully pled a cause of action for "shareholder oppression" and, as a current shareholder seeking relief under section 12.56(b)(11) of the BCA, her action was timely under the express provision of the BCA providing relief to current minority shareholders. In the alternative, she

argues that, even if a shareholder oppression action is subject to the five-year limitation, her petition, filed on July 8, 2011, would be timely if the Rancheros engaged in any oppressive actions after July 8, 2006. Vizcarra points to several actions that the trial court found to be oppressive that occurred in the time period between July 8, 2006, and July 8, 2011.

¶ 16 Where the question at issue is what particular statute of limitations applies to a cause of action, the issue presents a pure question of law subject to *de novo* review. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 350 (2002).

¶ 17 The Rancheros' argument that that the general five-year statute of limitations applies in the instant matter is based on their assumption that a cause of action arose on October 7, 2004, when Lolita hand delivered a written offer to purchase Vizcarra's shares for \$12,000. The assumption that a limitation period for an action under section 12.56(b)(11) of the BCA began to run on the date that the majority shareholders tendered an offer to purchase the minority shareholders shares at a price unilaterally stated in the offer is contrary to the provisions of the BCA that expressly state that:

"(a) In an action by a shareholder in a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the Circuit Court may order one or more of the remedies listed in subsection (b) if it is established that:

\* \* \*

(3) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive,

or fraudulent with respect to the petitioning shareholder whether in his or her capacity as shareholder, director, or officer; \*\*\*.

\*\*\*

(b) The relief which the court may order in an action under subsection (a) includes but is not limited to the following:

\* \* \*

(11) The purchase by the corporation or one or more other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair market value and on the terms determined under subsection (e);

\*\*\*

(c) The remedies set forth in subsection (b) shall not be exclusive of other legal or equitable remedies which the court may impose." 805 ILCS 5/12.56(a), (b), and (c) (West 2010).

¶ 18 Giving the wording of the BCA its plain meaning, the clear intent of the legislature was to give a minority oppressed shareholder the ability to seek court action to force the majority to purchase his or her shares at fair market value. To do so, the plaintiff/petitioner would need to plead and prove that he or she was: (1) "a shareholder" in a non-publicly traded Illinois corporation; and (2) that those in control of the corporation "have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent with respect to the petitioning shareholder." Thus, the temporal aspects of a timely petition under section 12.56 of the BCA are: (1) that the petitioner be "a shareholder," *i.e.*, own shares in the corporation *at the time the petition is filed*; and (2) that those in control *have, are, or will* act in a manner that is oppressive to the petitioning

shareholder. A normal reading of the BCA clearly shows a legislative intent that a current shareholder may seek an order where there is a past, current, or future oppression of his or her rights under the BCA. Therefore, a petition seeking relief under sections 12.56(a) and (b) of the BCA is timely if the petitioner satisfies those two requirements. An oppressed shareholder in a close corporation may seek any judicial remedy, including dissolution of the corporation, at any time while the oppression continues. See *Gidwitz v. Lanzit Corrugated Box Co.*, 20 Ill. 2d 208, 220 (1960) ("when oppression is positively shown, the oppressed are entitled to the protection of law").

¶ 19 A plain reading of the relevant provisions of the BCA lead to our conclusion that Vizcarra's petition for relief under section 12.56(b)(11) was timely filed. The Rancheros' reference to their offer letter on October 7, 2004, as the date triggering Vizcarra's rights under the BCA is a classic "red herring." While that date may have triggered the time for filing a different legal or equitable cause of action, the fact remains that, regarding Vizcarra's oppressed shareholder action, the five-year general statute of limitations under the Code had no impact on her cause of action. The trial court correctly denied the Rancheros' affirmative defense asserting the statute of limitations.

¶ 20 II. Counterclaim for Breach of Fiduciary Duty

¶ 21 The Rancheros filed a counterclaim against Vizcarra seeking \$1,400,000 for her alleged breach of a fiduciary duty to them and LMR. The Rancheros argued that Vizcarra owed a fiduciary duty as a shareholder to "participate in the business activities of the corporation." Following an evidentiary hearing, the trial court denied the counterclaim, finding that there was "no basis in fact or law" to support the counterclaim.



¶ 22 Where the trial court has rendered a verdict on a claim following a full evidentiary hearing, a reviewing court will overturn the trial court's ruling only where the findings were against the manifest weight of the evidence. *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 373 (2004). A finding is against the manifest weight of the evidence where the court's ruling is unreasonable, arbitrary, not based upon the evidence, or where the opposite conclusion is clearly apparent. *In re Estate of Savio*, 388 Ill. App. 3d 242, 247 (2009).

¶ 23 The relevant inquiry here is whether Vizcarra owed a fiduciary duty to the closely held corporation, and if so, whether the evidence established that she breached that duty. In Illinois, shareholders in a closely held corporation owe a fiduciary duty of loyalty to the corporation and fellow shareholders in a manner similar to those of partners in a partnership. *Illinois Rockford Corp. v. Kulp*, 41 Ill. 2d 215, 222 (1968); *Anest v. Audino*, 332 Ill. App. 3d 468, 476 (2002); *Hagshenas v. Gaylord*, 199 Ill. App. 3d 60, 69 (1990). However, even though a minority shareholder owes a fiduciary duty of loyalty to a closely held corporation, that duty is limited or extinguished where the facts establish that the minority shareholder has no "ability to hinder, influence, or control" the corporation. *Dowell v. Bitner*, 273 Ill. App. 3d 681, 690 (1995). Ultimately, the question of whether a duty exists is a question of law subject to a *de novo* standard of review. *Ditsworth v. Kankakee Terrace Partnership*, 298 Ill. App. 3d 544, 545 (1998).

¶ 24 Here, the facts in evidence support the trial court's implicit determination that the Rancheros, as majority shareholders and *de facto* operators of the business, shutout Vizcarra from all aspects of the business operations. Moreover, the facts in evidence established that Vizcarra did provide her best efforts and loyalty to LMR from the time the corporation was established in May 2003 through October 2004, when LMR received its Medicare certification.

The record further established that, once the Medicare certification was secured, the Rancheros denied Vizcarra any further influence or control over the business. Additionally, the record established that the Rancheros took several actions designed to prevent Vizcarra from actively participating in the business, such as denying her access to the corporation's financial records.

¶ 25           Based on the trial court's factual findings that (1) the Rancheros acted in bad faith in their dealing with Vizcarra after October 2004 and (2) Vizcarra had no influence or control over the business (and thus owed no fiduciary duty to the corporation or the majority shareholders) its decision was not contrary to law. Moreover, even if Vizcarra could be said to owe a fiduciary duty to LMR or the Rancheros, the trial court's finding that she did not breach her duty is not against the manifest weight of the evidence. The counterclaim alleged that Vizcarra breached her fiduciary duty by not using her "best efforts" to advance the interests of the business after October 2004. In addition to failing to present facts to support that allegation, the record established that *any* efforts Vizcarra could have put forth to benefit the business were completely frustrated by actions of the Rancheros in denying her access to or participation in the daily operations of the business. Thus, the trial court properly denied the counterclaim for breach of fiduciary duty.

#### CONCLUSION

¶ 26           The judgment of the circuit court of Will County is affirmed.

¶ 27           Affirmed.