

STATE OF MICHIGAN
COURT OF APPEALS

ERNEST O. PROKOS,

Plaintiff-Counterdefendant-
Appellant,

v

JOHN ROUMANIS and MEDITERRANO, INC.,

Defendants-Counterplaintiffs-
Appellees.

UNPUBLISHED

January 15, 2002

No. 226846

Washtenaw Circuit Court

LC No. 97-009286-CB

Before: Fitzgerald, P.J., and Bandstra and K. F. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the order denying his motions for an extension of discovery and for a new trial or an amended judgment. We affirm.

Plaintiff, as a minority shareholder of defendant corporation Mediterrano, Inc.,¹ brought suit seeking to inspect the corporation's books and records, MCL 450.1487, to obtain an accounting, MCL 600.3605, to remove defendant Roumanis from his positions within the corporation and to appoint a receiver, MCL 450.1514, to compel Roumanis to sell his shares of stock to plaintiff, MCL 450.1489, and injunctive relief protecting his interest in the corporation. Before trial, plaintiff sought to extend the period of discovery from the stipulated period of six months to one year. The trial court denied the motion, finding that plaintiff had ample time to conduct discovery but failed to do so. Following plaintiff's presentation of his case during a bench trial, the trial court granted Roumanis' motion for involuntary dismissal under MCR 2.504. The trial court found that plaintiff presented no evidence of corporate oppression resulting from Roumanis' actions that warranted dissolution of the corporation. Moreover, the trial court opined that plaintiff was involved with or at least aware of Roumanis' scheme to take money from the corporation. The trial court also found that plaintiff had breached his fiduciary duty to the corporation by competing against it by assisting another restaurant. The trial court ruled that plaintiff's equitable claims were, therefore, barred by the doctrine of clean hands and dismissed the claims. The trial court subsequently denied plaintiff's motion for a new trial or to amend the judgment.

¹ Mediterrano is a restaurant.

Plaintiff first argues that the trial court abused its discretion by denying plaintiff's motion for an extension of time for discovery without adequately considering the circumstances of the case. We disagree.

The grant or denial of discovery is within the trial judge's discretion. *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998). In ruling on a discovery motion, the trial court should consider whether the granting or extension of discovery will facilitate rather than impede the litigation. *Masters v Highland Park*, 97 Mich App 56, 60; 294 NW2d 246 (1980). The court should also consider the timeliness of the request, the duration of the litigation, and possible prejudice to the litigants. *Id.*

At a scheduling conference at the commencement of litigation, the parties stipulated to a six-month period for discovery. In ruling on plaintiff's motion to extend discovery, the trial found that plaintiff had ample opportunity to obtain the audit and that any prejudice suffered by plaintiff was the result of plaintiff's failure to seek discovery during the stipulated discovery period. In addition, plaintiff did not dispute Roumanis' assertion that the financial information was offered to plaintiff on at least two occasions. To protect plaintiffs from any potential prejudice, the trial court suggested that, if it deemed it necessary to have an independent expert to provide "an independent judgment" to the court, presumably related to either the allegation of self-dealing or to the value of the corporation, it would do so at that time. We find no abuse of discretion in the trial court's denial of the motion to extend discovery.

Plaintiff next argues that the trial court erred by denying his motion for a new trial because the trial court's dismissal of the action was based on mistakes of fact and an error of law. MCR 2.611(A)(1)(a) and (g). Essentially, plaintiff contends that the trial court's findings that (1) no oppression of the corporation that would warrant relief was established and (2) that plaintiff was aware of, if not complicit in, Roumanis' taking of cash from the corporation, were "mistakes of fact." However, no evidence was admitted that would suggest that the corporation was in any way deteriorating or likely to fail as a result of any acts of defendant. See, e.g., *Barnett v Int'l Tennis Corp*, 80 Mich App 396, 417; 263 NW2d 908 (1978) (the ultimate test of oppression is whether corporate ruin will ultimately follow continuation of present management). In addition, significant evidence relating to the day-to-day running of the business supports the finding that plaintiff either took money from the corporation or, at least, knew that defendant did. Accordingly, we find no clear error in the trial court's factual findings.

Finally, plaintiff argues that a new trial should have been granted because of mistakes of law in the trial court's application of the clean hands doctrine. Where equity is involved, this Court's standard of review is de novo, and we will not reverse unless the trial court's findings were clearly erroneous or this Court concludes that it would have reached a different result had it occupied the lower court's position. *Schmude Oil v Omar Operating Co*, 184 Mich App 574, 583; 458 NW2d 659 (1990). In granting the motion for an involuntary dismissal, the trial court ruled that, because of the equitable nature of the relief sought, the clean hands doctrine barred plaintiff's desired relief.

The clean hands doctrine is a doctrine to be invoked by the court in its discretion to protect the integrity of the court. *Stachnik v Winkel*, 394 Mich 375, 386; 230 NW2d 529 (1975). To invoke the clean hands doctrine:

“one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor.” [*Id.*, quoting *Precision Instrument Mfg Co v Automotive Maintenance Machinery Co*, 324 US 806; 65 S Ct 993; 89 L Ed 1381 (1944).]

In illustrating what actions of a plaintiff would serve to bar equitable relief, the Court stated that “if there are *any indications of overreaching or unfairness* on his part, the court will refuse to entertain his case, and turn him over to the usual remedies” *Stachnik, supra* at 387.

The testimony at trial supports the court’s finding that plaintiff did not have clean hands. As stated above, the evidence supports the trial court’s finding that plaintiff participated in the scheme to take money from the corporation. This evidence of unfairness on plaintiff’s part justifies application of the clean hands doctrine.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly