STATE OF MICHIGAN

COURT OF APPEALS

RAMA MADUGULA,

Plaintiff/Counter-Defendant-Appellee,

v

BENJAMIN A. TAUB,

Defendant/Counter-Plaintiff-Appellant,

and

DATASPACE INC.,

Defendant,

and

ANDREW FLOWER,

Defendant.

UNPUBLISHED
October 25, 2012

No. 298425
Washtenaw Circuit Court
LC No. 08-000537-CK

Before: RONAYNE KRAUSE, P.J., AND BORRELLO, AND RIORDAN, JJ.

PER CURIAM.

Defendant, Benjamin A. Taub, appeals as of right from the trial court's order denying his motions for a new trial and JNOV and affirming the jury's verdict in favor of plaintiff, Rama Madugula. We affirm.

I. FACTUAL BACKGROUND

This case arises out of a dispute between shareholders in the close corporation, Dataspace Inc. Taub was the CEO, treasurer, and secretary of Dataspace. Madugula was hired as an independent contractor in 2002 and became the vice president of sales and business development. Madugula instructed that his checks be made payable to Midwest Business Associates, a company owned by his parents. After Taub filed a motion for summary disposition, the trial court dismissed Madugula's claims based on a violation of MCL 450.1541a,

fraud and misrepresentation, exemplary damages, appointment of receiver, and accounting. The only remaining claim is based on MCL 450.1489, minority shareholder oppression.

In 2004, Madugula purchased shares in Dataspace and became a 29 percent owner of the company. He also entered into a stockholders' agreement with Taub that included a supermajority provision, stating that 70 percent of outstanding stock must approve major corporate actions such as material changes in the nature of Dataspace's business, material changes in the compensation of the three shareholders, and any other action that would be materially adverse to the three shareholders. In regard to Dataspace's finances, only Taub and the officer manager had access to the accounting software. Despite requesting access, Madugula was only provided with excel spreadsheets that Taub created from the accounting software.

Despite the stockholders' agreement that 70 percent of the outstanding shares had to approve major corporate actions, that provision was ignored repeatedly. For example, in 2007, a decision was made that Dataspace would focus on the software development of Jail Data Management Software, named JPAS, which was a system designed help counties analyze jail populations. Lorrie Ann Geoffrey, Dataspace's director of marketing and sales, testified that Taub told her that he wanted to change the direction of Dataspace from consulting to promoting JPAS. According to Madugula, while he was aware of JPAS, there was no shareholder meeting regarding the development of JPAS.

In regard to Madugula's termination, Taub admitted that he did not have approval of 70 percent of the outstanding stock when he decided to cease providing Madugula with compensation, health benefits, an American Express card, and car payments. Taub believed he was protecting the company when terminating Madugula, as Madugula was performing poorly, was oblivious to the looming financial problems, and engaged in divisive behavior that was harming the company.

After a trial, the jury returned a verdict in favor of Madugula, finding that there was sufficient evidence of minority shareholder oppression. Taub filed a motion for judgment notwithstanding the verdict and new trial or remittitur. Taub argued that Madugula failed to present any evidence that he interfered with Madugula's interest as a shareholder and only presented evidence that Taub terminated Madugula. Taub also argued that Madugula was only an independent contractor, so the termination of employment language of the statute was inapplicable. In the alternate, Taub requested a new trial because MCL 450.1489 was equitable in nature and was not conducive to a jury trial. Taub requested that the court remit the verdict to the amount of economic damages awarded to Madugula. The trial court denied Taub's motions and he now appeals.

II. MINORITY SHAREHOLDER OPPRESSION

A. Standard of Review

Taub first argues that the trial court erred in denying his motion for a JNOV in regard to the lack of evidence of minority shareholder oppression. We review de novo the trial court's denial of a motion for a JNOV. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003). "In reviewing the decision on a motion for JNOV, this Court views the evidence and all legitimate inferences drawn from the evidence in the light most favorable to

the nonmoving party." *Zantel Mktg Agency v Whitesell Corp*, 265 Mich App 559, 568; 696 NW2d 735 (2005). "If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand." *Morinelli v Provident Life & Acc Ins Co*, 242 Mich App 255, 260-261; 617 NW2d 777 (2000).

B. Analysis

Michigan provides that a minority shareholder who is being oppressed may file a lawsuit. Pursuant to MCL 450.1489:

> (1) A shareholder may bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or willfully unfair and oppressive to the corporation or to the shareholder . . .
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> (3) As used in this section, "willfully unfair and oppressive conduct" means a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder. Willfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder. The term does not include conduct or actions that are permitted by an agreement, the articles of incorporation, the bylaws, or a consistently applied written corporate policy or procedure.

The only issue remaining in this litigation is whether Taub behaved in a manner that was willfully unfair and oppressive toward Madugula. This issue involves questions of statutory interpretation. The "primary goal" of statutory interpretation "is to discern the intent of the Legislature by first examining the plain language of the statute." *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). When the language is clear and unambiguous, "no further judicial construction is required or permitted, and the statute must be enforced as written." *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002) (internal quotations and citation omitted). Moreover, "[w]hen a statute specifically defines a given term, that definition alone controls." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007).

There was significant evidence of willfully unfair and oppressive conduct. MCL 450.1489(3) specifically defines "willfully unfair and oppressive conduct" as "a continuing course of conduct or a significant action or series of actions that substantially interferes with the interests of the shareholder as a shareholder." Shareholder interests typically include actions like "voting at shareholder's meetings, electing directors, adopting bylaws, amending charters, examining the corporate books, and receiving corporate dividends." *Franchino v Franchino*, 263 Mich App 172, 184; 687 NW2d 620 (2004). The evidence at trial indicates that Madugula was not afforded the opportunity to vote on material changes to Dataspace, such as the decision to alter the nature of Dataspace's business to software development. The evidence also

demonstrates that Madugula was not afforded the opportunity to examine the corporate books. While Taub provided Madugula with financial status information, this was only in the form of excel spreadsheets from Taub, without permitting Madugula to actually examine the corporate books or have access to the accounting software.

Further evidence of minority shareholder oppression is that Taub was violating the supermajority provision in the stockholders' agreement. The evidence at trial supports a conclusion that Taub unilaterally decided to direct Dataspace into the software development business and to reduce Madugula's salary to zero. Acting in this manner without the requisite 70 percent of shares, Taub violated the supermajority provision that prohibits material changes to the company or reduction of Madugula's compensation without the necessary supermajority of shares supporting the decision.

Taub, however, contends that the trial court's reliance on the supermajority provision was improper and was tantamount to a finding that a violation of the stockholders' agreement necessarily constitutes minority shareholder oppression. This misconstrues the trial court's statements as well as MCL 450.1489. The trial court did not formulate a blanket rule that any violation of the stockholders' agreement always constitutes minority shareholder oppression. Instead, the trial court relied on one provision in the stockholders agreement, namely, Taub's violation of the supermajority provision. Taub fails to cite any Michigan caselaw that states a supermajority provision must be ignored in a minority shareholder oppression claim. Likewise, nothing in MCL 450.1489 states that the stockholders' agreement has to be ignored in a minority shareholder oppression claim. Moreover, this supermajority provision is highly relevant in determining if Madugula's interests as a shareholder were substantially interfered with because this provision details what Madugula's interests and rights are. Thus, the trial court was not in error when relying on the stockholders' agreement. While Taub claims that such a decision permits Madugula to avoid the arbitration clause in the stockholders' agreement, this ignores the fact that the stockholders' agreement can be relevant evidence for separate causes of actions.

Lastly, MCL 450.1489 also provides that shareholder oppression may occur when there has been a termination of employment. MCL 450.1489(3) states that "[w]illfully unfair and oppressive conduct may include the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder." Thus, termination of employment may give rise to a cause of action under MCL 450.1489 when it disproportionately interferes with shareholder distributions or other shareholder interests.

Taub argues that there has been no termination of employment because Madugula was working for Midwest Business Associates and was not an employee of Dataspace. While Madugula requested that his paycheck be made out to Midwest Business Associates, a business owned by his parents, there is no evidence that Madugula was actually providing consulting services for Midwest Business Associates. Instead, the evidence established that Madugula was providing services directly to Dataspace. Moreover, "employment" is defined as the act of employing someone and to "employ" means "to engage the services of a . . . person." *Random House Webster's College Dictionary* (2005). Madugula was hired to provide services to Dataspace. Madugula also received regular compensation from Dataspace, health benefits, and a Dataspace email address. Considering that Dataspace was engaging the services of Madugula

and provided him with regular and substantial compensation, the termination of Madugula's services was a "termination of employment" in the context of MCL 450.1489. Furthermore, this termination disproportionately affected Madugula's interest as a shareholder because Madugula's compensation was reduced to zero and he was no longer involved in decisions on material issues such as the development of JPAS.

III. RIGHT TO BENCH TRIAL

A. Standard of Review

Lastly, defendant argues that the trial court erred when denying his motion for a new trial and remittitur based on his claims that he was entitled to a bench trial. We review for an abuse of discretion a trial court's decision regarding a motion for a new trial. *Morinelli*, 242 Mich App at 261. Likewise, "[t]his Court reviews a trial court's decision to deny a motion for remittitur for an abuse of discretion." *Diamond v Witherspoon*, 265 Mich App 673, 692; 696 NW2d 770 (2005). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

B. Analysis

Taub argues that, based on an unpublished opinion of this Court, Madugula did not have a right to a jury trial. Yet, as the trial court recognized, an unpublished opinion "has no precedential force." See *Nuculovic v Hill*, 287 Mich App 58, 68; 783 NW2d 124 (2010); see also MCR 7.215(C)(1). The trial court specifically mentioned that it had read the unpublished opinion but was not bound by it in determining that MCL 450.1489 allows for a jury trial. Taub fails to cite any binding precedent suggesting that the trial court's decision on this issue or its failure to follow an unpublished opinion constitutes an abuse of discretion. Therefore, the trial court's decision in not following the holding of an unpublished opinion was not outside the range of reasonable and principled outcomes. See *Barnett*, 478 Mich at 158.

IV. CONCLUSION

The trial court did not err in denying Taub's motion for a JNOV or new trial and remittitur because there was significant evidence of minority shareholder oppression. It also was not an abuse of discretion in not following an unpublished case in the context of MCL 450.1489. We affirm.

/s/ Michael J. Riordan