COURT OF APPEALS
DECISION
DATED AND FILED

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Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0434

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JAMES E. JAHNKE,

PLAINTIFF-RESPONDENT,

V.

DENNIS BROWN, C. MICHAEL LEHMAN, AND RICHARD ROWE,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Dane County: PATRICK J. FIEDLER, Judge. *Reversed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 EICH, J. Dennis Brown, C. Michael Lehman, and Richard Rowe were minority shareholders in a corporation owned and controlled by James E. Jahnke. They appeal from a summary judgment holding them liable for

Jahnke's personal guarantees of various corporate obligations to the Bank of Waunakee. The issue is whether two documents executed in connection with Jahnke's sale of his stock back to the corporation binds appellants to indemnify him for his liability on the guarantees. Our independent review of the record leads us to disagree with the result reached by the circuit court, and we therefore reverse the judgment.

¶2 In order to accomplish the stock sale, Jahnke and the corporation entered into a Stock Redemption Agreement containing a provision whereby the corporation agreed to indemnify Jahnke for the bank obligations:

> **6. Indemnification.** The Corporation agrees to indemnify, defend, and hold Seller harmless from and against any and all liabilities, claims, costs, commitments and expenses (including reasonable attorneys' fees) arising out of or resulting from (i) any liabilities and obligations of Seller expressly assumed by the Corporation under this Agreement, (ii) any services, sales or business operations carried on by the Corporation subsequent to the Closing, (iii) the Corporation's failure to perform any covenants or obligations of the Corporation under this Agreement, and (iv) breach of any of the Corporation's representations or warranties made in this Agreement.
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> **11. Release of Guarantee.** To the extent that Seller has personally guaranteed or pledged personal assets as collateral on any obligation of the Corporation, the Corporation shall use its best efforts to secure the release of the personal guarantees and/or liabilities, but if the Corporation is unable to do this, the Corporation and its shareholders shall, jointly and severally, indemnify the Seller for the liabilities. The corporation shall make reasonable efforts to pay off in a timely manner the liabilities that the shareholder may have personally guaranteed or pledged personal assets.

¶3 Following execution of the Stock Redemption Agreement, Brown, Lehman and Rowe signed a "Consent Resolution" which, after stating that they

were all shareholders of the corporation,[1] provided (among other things) as follows:

> **RESOLVED,** that the terms and conditions set forth in the Stock Redemption Agreement between James E. Jahnke and the corporation (the "Agreement") be, and the same hereby are, approved and adopted, a copy of which is attached hereto as Exhibit A and hereby made a part hereof and that said stock shall be redeemed by the corporation ….

¶4 The corporation eventually failed and the bank called in the outstanding obligations and looked to Jahnke for recovery under his guarantees. Jahnke then sued Brown, Lehman and Rowe claiming that, by signing the Consent Resolution, they had personally agreed to indemnify him for the guarantees. As indicated, the circuit court found in Jahnke's favor.

¶5 Interpretation of contracts is a question of law which we review *de novo*. *See* ***Koenings v. Joseph Schlitz Brewing Co.***, 126 Wis. 2d 349, 366, 377 N.W.2d 593 (1985).

¶6 There is no question that the appellants would not be personally liable to indemnify Jahnke under the Stock Redemption Agreement. That document is, by its plain terms, a contract between the corporation and Jahnke. Nor is there any question that, as a general rule, shareholders in a corporation "[are] not personally liable for the acts or debts of the corporation…" WIS. STAT. § 180.0622(2) (1997-98).[2] Among the limited exceptions to the rule is the

[1] Under WIS. STAT. § 180.0704 (1997-98), shareholders of a corporation may take any action that might otherwise require a meeting by signing a "consent" which, under the law, "has the effect of a meeting vote…."

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

provision that "a shareholder may become personally liable by his or her acts or conduct *other than as a shareholder*."[3] ***Id.*** (emphasis added).

¶7 The only document offered by Jahnke to establish appellants' personal liability in this case is, of course, the Consent Resolution. Consent resolutions are devices which permit shareholders to take any action "required or permitted by [the Wisconsin corporation law, WIS. STAT. ch. 180] to be taken at a shareholders' meeting" without actually having a meeting. WIS. STAT. § 180.0704(1). Under the statute, to be valid, such action "must be evidenced by one or more written consents describing the action taken, signed by the number of shareholders necessary to take the action … and delivered to the corporation for inclusion in the corporate records." Section 180.0704(2). As we have noted above, the signing and filing of the consent resolution by the shareholders has the effect of a vote taken at a shareholders' meeting. Section 180.0704(5).

¶8 A consent resolution is, then, a device contemplated by statute to obviate the need for shareholders to formally meet to conduct the corporation's business. The resolution in this case appears to be just such a document. It is entitled:

WINDOWS AND DOORS, INC., A WISCONSIN CORPORATION

UNANIMOUS WRITTEN CONSENT TO ACTION BY THE SHAREHOLDERS AND BOARD OF DIRECTORS

[3] Another exception is for debts of the corporation to its employees. WIS. STAT. § 180.0622(2)(b). That is plainly inapplicable here, as are cases dealing with "piercing the corporate veil," a doctrine which, in certain circumstances, can render shareholders liable for corporate debts. Jahnke does not argue these or any other exceptions to the general rule that may exist, are applicable to this case. Indeed, he does not even respond to appellants' discussion of the non-liability rule of § 180.0622(2)(a).

And it begins as follows:

> The undersigned, being all of the shareholders and all of the members of the board of directors of Windows and Doors, Inc., a Wisconsin corporation … do hereby waive notice … of the time, date, place and purpose of a meeting of the shareholders an board of directors of the corporation, and do hereby, pursuant to sections 180.0704 and 180.0821, Wis. Stats., unanimously take the following actions and adopt the following recitals and resolutions by signing their written consent hereto:

Various resolutions relating to the redemption of Jahnke's stock follow, including the adoption and approval of the Stock Redemption Agreement, the allocation of shares among the remaining shareholders, and the election of corporate officers and directors. The document concludes:

> The undersigned, being all of the shareholders and all of the members of the board of directors of the corporation, do hereby consent to all the actions described in the foregoing recitals and resolutions, and said actions and resolutions shall have the same force and effect as if taken at a duly constituted meeting of the shareholders and board of directors of the corporation.

The resolution was signed as follows:

WINDOWS AND DOORS, INC.,
A Wisconsin corporation

_____/s/_____
James E. Jahnke, Shareholder
and Director

_____/s/_____
Dennis Brown, Shareholder

/s/
C. Michael Lehman, Shareholder

/s/
Richard Rowe, Shareholder

We acknowledge that the Stock Redemption Agreement states at one point that if the corporation is unable to obtain a release of Jahnke's bank guarantees, "the Corporation and its shareholders shall, jointly and severally, indemnify [Jahnke] for the liabilities…"—and that the Consent Resolution adopts and incorporates that agreement. But we think more is required than appears in that resolution to render appellants personally liable to Jahnke.

¶9 By signing the Consent Resolution as shareholders, appellants are in the same position as if, at a duly convened meeting, they had voted (as shareholders) to "approve and adopt[]" the corporation's earlier execution of the Stock Redemption Agreement with Jahnke. And the fact that that agreement was "made a part" of the resolution does not change the fact that it was—just like a vote of the shareholders at a duly convened meeting—an action undertaken by the signors in their capacity as shareholders of the corporation. We acknowledge that part of the redemption agreement language incorporated into the Consent Resolution states that if the corporation is unable to secure releases of Jahnke's bank guarantees "the corporation and its shareholders" will jointly and severally indemnify him; but, again, we think something more is necessary in order to impose personal liability in this case. The Consent Resolution is what it says it is: an approval resolution; and there is nothing in its language or terms to suggest that, by signing it, Brown, Lehman and Rowe were acting "other than as … shareholder[s]" within the meaning of WIS. STAT. § 180.0622(2)(a) in order to

assume personal liability for Jahnke's guarantees. We think the statute controls and that appellants were not acting personally, but rather in their capacity as shareholders of the corporation, when they signed the resolution. We therefore reverse the circuit court's judgment.

By the Court.—Judgment reversed.

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