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SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-4018-08T14018-08T1

GEORGE J. GEORGIADIS,

Plaintiff-Respondent,

V.

EMANUEL GEORGIADIS and

GEOMAN CORPORATION, a New

Jersey Corporation d/b/a

ECHO QUEEN DINER,

Defendants-Appellants.

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Argued January 12, 2010 - Decided

Before Judges Fuentes, Gilroy and Simonelli.

On appeal from the Superior Court of New Jersey, Chancery Division, Union County, Docket No. C-136-05.

James J. Shrager argued the cause for appellants (Norris, McLaughlin & Marcus, P.A., attorneys; Mr. Shrager and Annmarie Simeone, on the brief).

Jill Sara Carlson argued the cause for respondent (Cohn, Bracaglia & Gropper, attorneys; Ms. Carlson and Ned M. Cohn, on the brief).

PER CURIAM

Defendants Emanuel Georgiadis (defendant) and Geoman Corporation (Geoman), d/b/a Echo Queen Diner (the diner), appeal from the March 20, 2009 Chancery Division order confirming the sale of the diner to Thrilos Realty, LLC, and from the April 1, 2009 order denying their motion for an order granting defendant the right to purchase the interest of plaintiff George J. Georgiadis in Geoman. We affirm.

Plaintiff and defendant are brothers and sole shareholders of Geoman, whose assets consist of the diner and the property on which it is situated in Mountainside. Although the parties once co-managed the diner, defendant had operated it

« Citation Data

exclusively since 1990, when plaintiff left to operate a diner in Connecticut. Following the sale of the Connecticut diner in 1999, defendant rebuked plaintiff's request to return to work at the diner.

On March 15, 2005, plaintiff filed a complaint, alleging that he was an oppressed minority shareholder pursuant to N.J.S.A. 14A:12-7, and that Geoman was irreconcilably deadlocked. Plaintiff sought to dissolve the corporation, sell its assets and distribute the proceeds between him and his brother.

Defendant alleged in a counterclaim that he owned two-thirds of Geoman's stock, and he sought equitable adjustments for an $836,000 promissory note the corporation allegedly issued to him in lieu of wages, and for repayment of a $30,000 loan to the corporation, which was used to pay corporate expenses.

After a bench trial, on March 29, 2007, the trial judge issued a written decision, concluding that the parties were equal shareholders in Geoman, plaintiff was an oppressed minority shareholder, and defendant was not entitled to equitable adjustments. By order of April 20, 2007, the judge ordered that

> If within ninety days of the date of this order a buy out by defendant of plaintiff's shares of stock in [Geoman] is not agreed on by the parties, [Geoman] shall be dissolved and the court shall appoint a receiver to effect the sale of the corporate assets and distribute the proceeds of the sale of those assets fifty percent (50%) to plaintiff . . . and fifty percent (50%) to defendant[.]

Defendants appealed. We affirmed in an unpublished opinion. Georgiadis v. Georgiadis, No. A-5136-06 (App. Div. Apr. 30, 2008).

By order of November 5, 2007, the judge dissolved Geoman and appointed a receiver to effect the sale of the corporation and distribute the proceeds equally between the parties. On February 5, 2008, the judge ordered the receiver to "immediately" effect a sale of Geoman's assets and distribute the proceeds equally between the parties. The judge also permitted defendant to "remain in possession and operate the diner while a buyer is sought with the consent of the receiver."

« Citation Data

On November 19, 2008, Thrilos Realty submitted a contract to purchase the diner and property for $1,350,000. On March 5, 2009, the receiver filed a motion to confirm the contract and to permit him to proceed with the sale and distribute the proceeds to the parties. A week later, defendant offered to purchase plaintiff's interest in Geoman for $412,255. After plaintiff rejected the offer, defendant filed a cross-motion for an order granting him the right to purchase plaintiff's interest in Geoman "for the amount plaintiff would receive if a sale to a third party was consummated, with all applicable deductions taken therefrom, including the $30,000 representing cash loans . . . made to the corporation."

On March 20, 2009, the court granted the receiver's motion, concluding as follows:

> There was . . . an attempt in 2007 to prevent the kind of issue that we have before us now but the court did address it then, recognized that . . . the defendant, had been the operator of the . . . business and that because of his status, might want to consider remaining in possession, remaining operating the business.
>
> So rather than direct an immediate sale and an immediate appointment of a receiver, the court allowed . . . the defendant, an opportunity to purchase the property. I think as I said the case went to the Appellate Division, the decision of the court was affirmed and the right to purchase under the court['s] order was never exercised.
>
> What is before the court now is the receiver's application to approve a contract to finally bring to a conclusion that which was ordered back two (2) years ago, and the defendant now at this very late hour comes forward seeking to exercise a long-expired option.
>
> And as the receiver observed, reopened the litigation since just the act of filing this cross-motion, expressing the desire to buy has caused a . . . number of issues to come out. The plaintiff is not in accord with the defendant's proposal and not in accord with adjustments that would need to be made, financial arrangements are not solidified. This just invites further litigation in a matter that is long over.
>
> The court has ruled on this issue. I don't see that there's any reason at this late date to . . . revisit it.

On April 1, 2009, the court denied defendant's motion to compel plaintiff to sell defendant his interest in Geoman. This appeal followed.

On appeal, defendants argue that the judge improperly failed to exercise his power to shape an equitable remedy that would allow defendant to purchase plaintiff's

« Citation Data

interest in Geoman. Alternatively, defendant contends that the judge abused his discretion in failing to grant him set-offs for the $836,000 note, the $30,000 loan, and various operating expenses defendant allegedly paid since the November 5, 2007 order.

We have considered defendants' contentions in light of the record and applicable law and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). However, we make the following comments.

In April 2007, the judge fashioned an equitable remedy by permitting defendant to purchase plaintiff's interest in Geoman. Defendant did not avail himself of that opportunity. Defendant points to no authority requiring the judge to grant him a second opportunity.

Defendants' prior appeal resolved the equitable adjustments defendant now seeks as set-offs. Issues determined on the merits in a prior appeal cannot be re-litigated in a later appeal of the same case, even if of constitutional dimension. State v. Cusick, 116 N.J. Super. 482, 485 (App. Div. 1971).

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Affirmed.

(continued)

June 21, 2010

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION

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