

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

THE WAYNE L. RYAN REVOCABLE TRUST, CAROL RYAN, as trustee for the Wayne L. Ryan Revocable Trust, and DR. WAYNE L. RYAN, an individual,

Plaintiffs,

v.

CONSTANCE "CONNIE" RYAN and STRECK, INC.,

Defendants.

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OPINION AND ORDER

On February 22, 2018, the above-captioned matter came on for hearing on Plaintiffs' Motion for Leave to File an Amended Complaint pursuant to Neb. Rev. Stat. § 6-1115(a). Plaintiffs appeared by counsel, Richard Winters, Kamron Hasan, and Tannaz Kouhpainezhad. Defendants appeared by counsel, Lawrence Welch, Victoria Buter, and Tom Dahlk. Plaintiffs were granted one week to submit a brief in support of their position. Defendants were granted one week thereafter to provide a responsive brief. At the conclusion of the hearing, and once all briefs were received by the parties, the matter was deemed submitted, taken under advisement and now comes on for decision.

Plaintiffs filed their Complaint in this matter on October 30, 2014, alleging causes of action for I) Shareholder Oppression, and II) Breach of Fiduciary Duty. Essentially, it is Plaintiffs' contention that Defendant Ryan engaged in shareholder oppression of the Trust, as a shareholder of Defendant Streck, and breached her fiduciary duty in doing so. Plaintiffs pray for relief in a number of different ways, including the dissolution of Defendant Streck and that Dr. Ryan's stock be purchased by Defendant Ryan and/or Defendant Streck or that Defendant Ryan's stock be purchased by Dr. Ryan.

Defendant Ryan and Defendant Streck each filed their respective Answers on December 15, 2014, wherein they denied each and every material allegation contained therein. They each also alleged several affirmative defenses.

At this juncture, Plaintiffs have requested Leave to File an Amended Complaint wherein they seek to add two counts – Counts V and VI – for oppression and for breach of fiduciary duty against Defendant Ryan and the other Streck Directors. In support of said causes of action, Plaintiffs assert that Defendant Ryan and certain members of Streck’s Board of Directors, engaged in oppressive acts against Plaintiffs which included the following:

- (i) Failure to pay dividends to Plaintiffs (in a break with past practice);
- (ii) Payment of dividends to Connie Ryan in the form of a “bonus”;
- (iii) Creation of subcommittees of the Board of Directors in violation of Streck’s by-laws and to improperly exclude Dr. Ryan’s board representative from those subcommittees;
- (iv) Refusing to provide Dr. Ryan with information about Streck’s operations or finances other than what has been obtained through discovery in this litigation;
- (v) Refusing to permit legitimate business issues from being discussed at annual shareholder meetings; and
- (vi) Repeatedly refusing to provide audited financial statements at shareholder meetings.

Defendants assert that the aforementioned allegations challenge the validity of the Election that has already been made, and attempts to change the relief requested in the original Complaint. Moreover, Defendants argue that the Amended Complaint seeks to inject new claims in the litigation, which is contrary to Neb. Rev. Stat. § 21-20,166, which provides for a mandatory stay of all proceedings in this matter except for the issue relating to the determination of the fair value of the shares of Streck stock owned by the Wayne Ryan Revocable Trust.

With respect to amended pleadings, Neb. Ct. R. Pldg. § 6-1115(a) provides in relevant part:

- (a) **Amendments.** A party may amend the party’s pleading once as a matter of course before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, the party may amend it within 30 days after it is served. Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party, and *leave shall be freely given when justice so requires...*

(*Emphasis added*). The Nebraska Supreme Court, in State v. Mata, 280 Neb. 849, 790 N.W.2d 716 (2010), looked to federal decisions to interpret the federal counterpart of Neb. Ct. R. Pldg. § 6-1115(a):

We review the district court’s decision refusing to grant leave to amend under such circumstances for abuse of discretion. However, § 6-1115(a) also states that “leave shall be freely given when justice so requires.” Because Nebraska’s current notice pleading rules are modeled after the Federal Rules of Civil Procedure, we look to federal decisions

for guidance. Federal courts interpreting this provision have explained that the liberal pleading philosophy of the federal rules limits a district court's discretion to deny leave to amend. A district court's denial of leave to amend pleadings is appropriate only in those limited circumstances in which undue delay, bad faith on the part of the moving party, futility of the amendment, or unfair prejudice to the nonmoving party can be demonstrated.

The applicable statute governing this litigation, Neb. Rev. Stat. § 21-20,166, expressly mandates that the proceedings should be stayed upon application of any party once an Election to purchase Plaintiffs' shares is made if the parties have not been able to agree on fair value. This Court granted a request to stay the proceedings by way of Order dated April 28, 2015. Moreover, Plaintiffs previously attempted to amend the Complaint to assert at least some of the same claims regarding the validity of the Election. Said motion was denied. The Court now finds that, at this juncture, Plaintiffs' request for Leave to File an Amended Complaint must also be denied. The Court is cognizant of the unique facts and circumstances involved in this case, and is aware that the parties seek to avoid additional litigation and the costs associated therewith. It is the Court's belief, however, that allowing Plaintiffs to file an Amended Complaint will expand the scope of the current litigation, which as required by statute, has been stayed as to all issues except as to the issue of the fair value of the shares owned by the Wayne Ryan Revocable Trust.

IT IS THEREFORE ORDERED AND ADJUDGED that Plaintiffs' Motion for Leave to File Amended Complaint is hereby denied.

Dated this 26 day of March, 2018.

BY THE COURT:


District Judge

CERTIFICATE OF SERVICE

I, the undersigned, certify that on March 26, 2018 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

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Date: March 26, 2018

BY THE COURT:

Carol Kromm

CLERK

