

Bierman v. Benjamin

Case Number

S-18-0915

Case Audio

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Call Date

March 6, 2020

Case Time

9:00 AM

Court Number

Buffalo

Case Location

Lincoln

Court Type

District Court

Case Summary

S-18-0915 Douglas S. Bierman and James A. Hoppenstedt v. Brenda L. Benjamin, Personally and Individually; Brenda L. Benjamin, as the Personal Representative of the Estate of Mark W. Benjamin, Deceased; and BD Construction, Inc./Kearney, a Nebraska Corporation (Appellants)

Buffalo County District Court, Judge John H. Marsh

Attorneys: Kenneth F. George & Luke M. Simpson (Ross, Schroeder & George, LLC) and William J. Linday & John Svoboda (Gross & Welch, P.C., L.L.O.) --- Bradley D. Holbrook & Nicholas R. Norton (Jacobsen, Orr, Lindstrom & Holbrook, P.C., L.L.O.)

Civil: Contract; summary judgment; evidence; damages; fees

Proceedings below: The district court granted Appellees' motion for partial summary judgment; set the value of Mark's shares at \$2,242,000; found Brenda owed damages of \$538,802.21; removed Brenda as an officer and director of BD; and dismissed Appellants' counterclaim. Appellees filed a motion to bypass the Court of Appeals, which was sustained by the Nebraska Supreme Court.

Issues: Whether the district court erred in 1) granting Appellees' Motion for Partial Summary Judgment, as the buy-sell agreement is unenforceable as a matter of law in the event of a shareholder's death, 2) finding that Brenda acted in bad faith, breached any fiduciary duties with relation to bonuses paid to key employees, airplane repair costs and the retention of household furnishings, and in removing her as a director and officer of BD, 3) refusing to hear and consider evidence from Brenda's advisors regarding the good faith and reasonableness of the process followed to set bonuses, including industry-standards actually reviewed by Brenda, 4) setting the price for Mark's Shares at \$2,242,000, because April 14, 2015 bears no relationship to the value of BD and the value of the life insurance was excluded, and 5) allowing Startzer to testify regarding bonuses/compensation, as he was not qualified to testify as an expert in such area.

Issues on Cross-Appeal: Whether 1) After finding that BD sustained damages of \$1,129,928.00 for excessive bonuses Mrs. Benjamin wrongfully caused BD to pay to herself and its other management team members in December of 2016, the District Court erred as follows: a. After noting that, if the bonuses had instead been distributions to its shareholders, including Appellees, Mrs. Benjamin would have received 59% of such distribution as owner of 59% of the shares of BD at the time the bonuses were paid, the District Court erred by reducing said \$1,129,928.00 damages by 59%, or from \$1,129,928.00 to \$463,270.48; and b. By denying Appellees' request that the \$222,242.00 debt or receivable owing to BD as of April 14, 2015, be reinstated, since it had been paid by Mrs. Benjamin out of the bonus she wrongfully caused BD to pay her in December of 2016, and 2) the district court erred in not ordering BD or Mrs. Benjamin to pay reasonable attorney fees to Appellees.

Schedule Code

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