



Shareholder in 83-Member Professional Corporation Permitted to Proceed to Trial with Direct Fiduciary Claim Against President

The Massachusetts Superior Court recently recognized another exception to the general rule that directors of a (not closely held) corporation only owe fiduciary duties to the corporation and not to individual shareholders.

In *Punzak v. Mclvor, et al.*, the Plaintiff, Dr. Stephen Punzak (“Punzak”), was a former member and shareholder of defendant Anesthesia Associates of Massachusetts, P.C. (“AAM”). All AAM shareholders were practicing anesthesiologists, and many of them referred to one another as “partners.” The physician shareholders earned the same base pay and shared equally in AAM’s profits. Defendant Dr. James English (“English”) was the president of AAM and exerted a significant amount of influence over the affairs of AAM, although he was not a “majority shareholder” because he held the same interest in AAM as all of the other shareholders.

Punzak’s employment was involuntarily terminated and he was forced to sell back his shares in AAM. At the time of his termination, there were 83 shareholders in AAM, and therefore it was not a closely held corporation. Punzak brought suit against English and others for breach of fiduciary duty and other claims. The defendants moved for summary judgment.

The court denied the motion with respect to the fiduciary duty claim brought by Punzak against English. The court stated that “the attributes of a closely held corporation” were “strikingly similar to those that pertain to professional corporations like AAM.” The court went on to hold that, where AAM and English had attributes “similar in nature to a closely held corporation and a controlling majority shareholder, respectively,” it was appropriate to apply an exception to the general rule that officers of a corporation do not owe direct fiduciary duties to shareholders. Accordingly, English “ought to have fiduciary obligations to each of his fellow physicians to treat them fairly, as well as obligations to AAM.”

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