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New Jersey Appeals Court Finds No Oppression but Affirms Breach of Fiduciary Duty by Majority Shareholder

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A recent unpublished decision from **New Jersey's Appellate Division** shows that a breach of fiduciary duty owed by the controlling shareholders in a close corporation will not necessarily constitute oppression of the minority shareholders. In *Goret v. H. Schultz & Sons, Inc.*, Docket No. A-4281-10T1 (N.J. Super Ct. App. Div. Sept. 10, 2013), the court also highlighted the extent to which controlling shareholders must disclose significant corporate information to the minority.

The shareholders in *Goret* were all third-generation family members who held shares in a distributor of household products and cookware (the Company). Although the Company had historically generated healthy profits, over the past 10 years shareholder distributions had decreased and eventually ceased. Both sides agreed that this was largely due to a changed market in which "big box" stores had become the dominant forces and generally did not buy from middleman distributors. The Company held periodic shareholder meetings during which the minority holders consistently asked to be bought out, although the shareholders' agreement did not provide for any buy-out right except in the event of the death of a shareholder. The minority holders also asserted that Robert Schultz, an officer and the majority shareholder, had unilaterally and without notice to them, summarily rejected a third-party offer to purchase the Company's warehouse and offices for $7.4 million. When the majority shareholders refused to agree to purchase their shares, the minority shareholders filed a lawsuit in the chancery court under the oppressed minority shareholder statute (N.J.S.A. 14A:12-7), seeking the appointment of a receiver and the liquidation of the Company.

The trial court held that the minority did not prove their oppression claim and the Appellate Division affirmed that decision. The appeals court agreed with the trial judge that the measure of "oppression" was whether the majority shareholders had frustrated the "reasonable expectations" of the minority shareholders. In *Goret*, the record established that the minority shareholders did not take an active role in the Company and were given the opportunity to voice their desires for the liquidation of the Company or a buy-out. The lack of distributions did not result from fraud or waste but rather from

difficult market forces, which the majority owners had a plan to address. Characterizing the issue as a "[m]ere disagreement between stockholders," the court ruled that the minority's expectations must give way against "the corporation's ability to exercise its business judgment and run its business efficiently." Slip op. at 17.

However, the court also sustained the trial court's finding of breach of fiduciary duty based on Robert's failure to disclose, and his "on the spot" rejection of a fair market $7.4 million offer to purchase the Company's real property. The Appellate Division quoted approvingly from the trial judge's opinion, which noted that Robert was not candid with his fellow officers about the offer nor his reasons for rejecting it. Calling Robert's actions "a unilateral wielding of power that is inconsistent with his [fiduciary] duties," the court found that all shareholders had "a right to be informed and consulted before decisions are made that could impact the Company's bottom line and viability." Slip op. at 18-19. As a remedy for this breach, the trial court had ordered that, until dividend payments were resumed, the shareholders should be "provided with information and documentation on the Company's investments, potential acquisitions, and major business decisions." Slip op. at 20. The Appellate Division agreed but chose not to impose any time period on that remedy. Thus, *Goret* can be read to impose on controlling shareholders and officers a duty to disclose all potentially significant corporation transactions.

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