

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

THOMAS J. REHWALDT,)
)
Plaintiff,)
)
v.)
)
ROBERT A. ROTH, ROBERT E.)
McCAMANT, THOMAS K. YODER,)
JANE LEVINE, and CHICAGO)
READER, INCORPORATED,)
an Illinois Corporation)
)
Defendants.)

No. **06CH 28471**

**VERIFIED COMPLAINT FOR
EQUITABLE AND OTHER RELIEF**

Pursuant to 805 ILCS 5/12.56, Plaintiff Thomas J. Rehwaldt, through his attorneys,
Meltzer, Purtill & Stelle LLC, complains as follows against Defendants Robert A. Roth, Robert
E. McCamant, Thomas K. Yoder, Jane Levine, and Chicago Reader, Incorporated:

Common Factual Allegations

1. Plaintiff Thomas J. Rehwaldt ("Rehwaldt") is an individual who resides in Evanston, Cook County, Illinois. Rehwaldt owns 19.1% of the outstanding stock of Chicago Reader, Incorporated.
2. Defendant Robert A. Roth is an individual who resides in Chicago, Cook County, Illinois.
3. Defendant Robert E. McCamant ("McCamant") is an individual who resides in Chicago, Cook County, Illinois.

4. Defendant Thomas K. Yoder ("Yoder") is an individual who resides in Chicago, Cook County, Illinois.

5. Defendant Jane Levine ("Levine") is an individual who resides in Seattle, King County, Washington.

6. Defendant Chicago Reader, Incorporated (the "Reader") is an Illinois corporation with its principal place of business in Chicago, Cook County, Illinois. It publishes the Chicago Reader weekly free newspaper.

7. Roth, McCamant, Yoder and Levine (collectively, the "Individual Defendants") are the majority shareholders of the Reader, and own the following percentages of the outstanding shares of stock of the Reader:

Roth	21.2%
McCamant	38.4%
Yoder	11.0%
Levine	2.5%

8. Rehwaidt and the Individual Defendants own approximately the same percentages of the outstanding shares of another weekly free newspaper, published in Washington, D.C., the Washington Free Weekly, Inc. ("WFW") (collectively, the Reader and WFW are referred to below as the "Companies").

9. Several other individuals own the remaining outstanding shares of stock of the Companies.

10. The Individual Defendants constitute the Boards of Directors of both of the Companies. Rehwaidt is also a Director of both Companies. He is not an officer of either of them.

11. Roth is President, Levine is Executive Vice President, McCamant is Vice President, and Yoder is Secretary and Treasurer of both Companies.

12. Venue is proper in this Court because the Reader's principal place of business is in Cook County, three of the four Individual Defendants reside in Cook County, and because the acts and omissions complained of occurred substantially in Cook County, Illinois.

Count I

(Claims Under 805 ILCS 5/12.56)

1.-12. Plaintiff realleges paragraphs 1 through 12 above as paragraphs 1 through 12 of Count I.

13. Rehwaldt is one of the founders of the Reader and has been a shareholder since it was incorporated in 1975.

14. In 1991, in settlement of prior litigation between the parties in which Rehwaldt alleged oppression, waste and mismanagement, the parties signed a shareholder agreement ("Shareholder Agreement") which, among other things, governs the terms under which the Reader may be sold or merged into another corporation:

A Shareholder may Transfer Shares to a third-party transferee with the effect that such Transfer will terminate the Company's S Corporation status, provided that prior to any such Transfer the transferor Shareholder delivers to the Company (a) a written consent signed by the holders of at least ninety percent (90%) of the Company's outstanding Shares, specifically consenting to the Transfer and the termination of the Company's status as an S Corporation or (b) a binding written offer from a bona fide third-party purchaser addressed to each of the Shareholders of the Company offering to purchase all of their outstanding Shares for an aggregate cash purchase price of at least \$25 million or 7.8 times the average Net Income of the Company for the three most recent calendar years, whichever is greater, at the same price per Share, accompanied by the written agreement of holders of at least seventy-five percent (75% of the Company's outstanding Shares to sell their Shares to such purchaser at the price stated in the offer.

(Shareholder Agreement, par. 2.2, attached as Exhibit A.)

15. At the same time, the parties signed a similar agreement with respect to the WFW, which set the transfer price at the greater of \$3 million dollars or 7.8 times the average net Income for the three most recent calendar years.

16. If the shares of stock of the Companies were transferred pursuant to these agreements in 2006, the price would be substantially higher, based on the Net Income for the three most recent calendar years, than it would be if the transfer takes place in 2007, due to both Companies' poor financial performance in 2006.

17. Both of the Companies are corporations that have no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

18. As free newspapers, both the Reader and WFW rely almost exclusively on classified and display advertising for their revenue and income.

19. Since the late 1980's, the Reader's annual net income was typically approximately 30% of revenues, and WFW's was typically approximately 15% of revenue.

20. As a result of internet advertising, however, including free classified advertising sites such as Craigslist and others, in recent years advertising revenues have been steadily declining.

21. Net income as a percentage of advertising revenues has also been declining over the past several years, from 29.7% of revenues in 2003, to 23.8% in 2004, to 14.5% in 2005 for the Reader; and from 11.3% of revenues in 2003, to 10.3% in 2004, to 6.7 % in 2005 for WFW.

22. The Reader's net income for 2006 year to date is -2.45% of revenue, while WFW's is 4.7% of revenues.

23. In spite of declining revenues and income over the last three years, the Individual Defendants have refused to take reasonable steps to cut costs by, among other things, reducing staffing and reducing the number of pages printed.

24. Instead, in February 2006, the Individual Defendants instituted a policy to stop charging for certain classified advertisements, further reducing revenue and income.

25. Additionally, instead of taking steps to increase sales of display advertising, the Individual Defendants terminated the employment of the display advertising sales manager despite the fact that she had met her sales goals for the first quarter of 2006, and at that time display advertising sales were ahead of 2005, while as of the end of November such sales are behind by 8.3%.

26. The Individual Defendants have also failed to pursue expressions of interest from likely buyers of the Reader, including two national newspaper chains.

27. Instead, the Individual Defendants have stated their preference to sell the Reader to an investor with whom they have personal financial relationships (the "Preferred Investor") and have shared with that investor a low-ball purchase offer from another potential buyer, thus providing to the Preferred Investor confidential information which could be used to reduce any future purchase offer made by the Preferred Investor.

28. Instead of pursuing expressions of interest from third-parties, the Individual Defendants have proposed a plan to merge the Reader and the WFW with another similar paper in Seattle, and to sell some percentage of the Companies' interest in the merged company to the Preferred Investor at a price and value below that set forth in the Shareholder Agreements and which is less than the true value of the stock.

29. Despite Rehwaldt's repeated requests that they do so, the Individual Defendants have failed to retain a qualified business appraiser or investment banker to value the Reader and WFW for purposes of negotiating their sale to other interested parties, stating that to do so would be an insult to the Preferred Investor.

30. The Individual Defendants have taken actions to depress the value of the stock of both the Reader and WFW by, among other things, failing to take steps to decrease costs and increase revenues, instituting a policy that actually decreased classified advertising revenue, and charging WFW a monthly management fee without recognizing the corresponding income on the books of the Reader.

31. The Individual Defendants have voted to increase their own compensation despite the Reader's poor financial performance, have failed to provide timely, complete and accurate information to Rehwaldt concerning the management and financial status of the Companies, failed to openly and freely share with Rehwaldt their plans for addressing the Companies' financial problems, and refused Rehwaldt's requests to hold meetings of the Board of Directors to discuss valuing the Companies, cost-cutting, budgets and projections for 2007, and any outstanding proposals or expressions of interest from parties interested in purchasing them.

32. Pursuant to 805 ILCS 5/12.56, a Court may order one or more of a number of remedies if it is established that:

(a)(3) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent with respect to the petitioning shareholder whether in his or her capacity as a shareholder, director or officer; or

(a)(4) The corporation's assets are being misapplied or wasted.

33. The Individual Defendants have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent with respect to Rehwaldt, both as a shareholder and as a director, in at least the following ways:

- (a) They have refused to allow him to attend meetings of management although other directors are allowed to attend and do attend such meetings;
- (b) They have refused to implement or even to consider his ideas for revenue enhancement and expense reduction;
- (c) They have refused to retain an expert to value the Reader for purposes of possible sale to interested parties;
- (d) They have refused to consider or negotiate proposals from interested parties for the purchase of the Companies;
- (e) They have refused to hold meetings of the Board of Directors when requested by Rehwaldt;
- (f) They have refused to provide him with financial and other information that is made available to management and the other Directors; and
- (g) Rehwaldt is informed and believes and therefore alleges that they have taken steps to depress the value of the stock of the Companies in anticipation of a sale or merger in 2007 for less than the fair value of the shares in order to squeeze out Rehwaldt and deprive him of participation in the Companies and the value of shares.

34. Through the actions and inactions of the Individual Defendants, as alleged above, the Reader's assets are being misapplied or wasted.

35. Rehwaldt is informed and believes, and therefore alleges that the Individual Directors are planning a sale or merger of the Companies after the end of 2006, and have

purposely taken steps and allowed the Companies' financial condition to deteriorate in order to depress the value of Rehwaldt's shares and the amount of the distribution he would receive as a result of such a sale or merger.

36. As a result of the poor performance of the Reader for 2006, pursuant to the Shareholder Agreement the Individual Defendants have not been required to make any distributions to Rehwaldt and the other minority shareholders, and have refused to make any distributions out of the Reader's substantial retained earnings.

37. Rehwaldt is informed and believes, and therefore alleges, that the Individual Defendants have refused to make any distributions out of the Reader's substantial retained earnings for the purpose of pressuring Rehwaldt to agree to sell his shares of the Reader for less than fair value.

38. Given the illegal, fraudulent or oppressive actions of the Individual Defendants as alleged above, and the ongoing waste and misapplication of corporate assets, the Court's intervention is necessary to protect Rehwaldt's interests and those of the other minority shareholders and creditors of the Reader.

39. Pursuant to 805 ILCS 5/12.56, the relief which the Court may order includes, but is not limited to the following:

(b)(1) The performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers or any other party to the proceedings;

(b)(3) The removal from office of any director or officer;

(b)(4) The appointment of any individual as a director or officer;

(b)(5) The appointment of a custodian to manage the business and affairs of the corporation to serve for the term and under the conditions prescribed by the court;

(b)(7) The appointment of a provisional director to serve for the term and under the conditions prescribed by the court;

(b)(8) The submission of the dispute to mediation or other forms of non-binding alternative dispute resolution;

(b)(9) The payment of dividends;

(b)(10) The award of damages to any aggrieved party;

(b)(11) The purchase by the corporation or one or more other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair value and on the terms determined under subsection §12.56(e); and

(b)(12) The dissolution of the corporation if the court determines that no remedy specified ... or other alternative remedy is sufficient to resolve the matters in dispute....

WHEREFORE, Plaintiff Thomas J. Rehwaldt respectfully requests this Court to order any and all appropriate relief pursuant to 805 ILCS 5/12.56, including but not limited to the following:

A. Ordering the purchase by the corporation or one or more other shareholders of all, but not less than all, of Rehwaldt's shares for their fair value on such terms and conditions prescribed by the court; or

B. In the alternative,

(1) Ordering the Individual Defendants to permit Rehwaldt to attend management meetings, to conduct proper board meetings, and to provide to Rehwaldt all information available to management and the other directors in a timely manner;

(2) Appointing Rehwaldt an officer and member of the management team;

(3) Appointing a provisional director to oversee the conduct of the Individual Defendants;

- (4) Appointing a custodian to manage the business and affairs of the corporation to serve for the term and under the conditions prescribed by the court;
- (5) Submitting the dispute to mediation;
- (6) Ordering the Individual Defendants to approve payment of an appropriate dividend;
- (7) Awarding Rehwaldt such damages as may be proved at trial; or,
- (8) If no other remedy is deemed sufficient, ordering the dissolution of the Reader, payment of its liabilities and equitable distribution of its assets, along with an award of costs and any other appropriate relief.

COUNT II

(Breach of Fiduciary Duty)

1.-38. Rehwaldt realleges paragraphs 1 through 38 of Count I as paragraphs 1 through 38 of Count II.

39. The Individual Defendants, as directors and majority shareholders, owe a fiduciary duty to Rehwaldt to act with the utmost good faith, honesty and integrity in connection with the operation and business affairs of the Reader.

40. The Individual Defendants breached their fiduciary duties to Rehwaldt when, among other things, they failed to take reasonable steps to return the Companies to profitability by cutting costs and increasing revenues and income; failed to consider potential offers to purchase the Companies from interested parties, which would allow Rehwaldt and other minority shareholders to secure the value of their investment; voted to increase their own compensation at a time when the Companies were becoming unprofitable; shared confidential information with their Preferred Investor and devised a plan to sell a percentage interest in the Companies to the

Preferred Investor at less than fair value; and effectively shut Rehwaldt out from any role in the management and affairs of the Companies.

41. Rehwaldt has been damaged by the Individual Defendants' breach of fiduciary duty in that Rehwaldt has been denied the right and the opportunity to fully participate in the business of which he is a founder and director, he has not received appropriate dividends, and the value of his shares has been diminished by Individual Defendants' wrongdoing.

WHEREFORE, Rehwaldt requests this Court to enter judgment in his favor and against the Individual Defendants for such damages as may be proved at trial to have been caused by their breach of fiduciary duty, along with an award of costs and all other appropriate relief.

Thomas J. Rehwaldt,

By: Deborah S. Bussert
One of his attorneys

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