

STATE OF MICHIGAN
COURT OF APPEALS

PAUL FELDMAN, ROBERT WOLF, and
FWS, INC.,

UNPUBLISHED
May 23, 1997

Plaintiffs-Appellants,

v

No. 177746
Wayne Circuit Court
LC No. 92-225775-CB

STEVEN SIEGEL and UNITED AUTOMOTIVE
SUPPLY,

Defendants,

and

FEL-PRO, INC.,
Intervening Party-Appellee.

Before: Smolenski, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiffs Feldman and Wolf are corporate officers of plaintiff FWS, Inc. ("FWS"). Defendant Siegel is a former corporate officer and employee of FWS. In August, 1992, plaintiffs filed a complaint alleging that Siegel breached his fiduciary duty to FWS by secretly negotiating to establish the "identical business in which Plaintiffs were engaged." The parties agreed to settle the case. The agreement, which is not part of this record, apparently stated that in exchange for \$15,000, plaintiffs would release all claims against defendants Siegel and United Automotive. A judgment entered. By agreement, the \$15,000 was paid to the court clerk awaiting the outcome of this controversy.

Intervening party Fel-Pro, a judgment creditor of FWS, then appeared. Fel-Pro held a pre-existing lien against FWS in the amount of \$30,000. Fel-Pro moved to enforce its lien against the \$15,000 settlement/judgment. At a hearing on June 10, 1994, the trial court determined that the attorney's lien of plaintiffs' attorney had first priority. After the enforcement of that lien, \$7,500 of the award remained. The court held that the remaining \$7,500 should be paid to Fel-Pro in satisfaction of its lien. Plaintiffs moved the trial court for reconsideration, but the motion was denied.

Plaintiffs appealed, arguing that the settlement was intended to be awarded to each of the three plaintiffs in equal portions, and that the corporate plaintiff, FWS, would receive only \$5,000 of the \$15,000. As a result, the amount available to satisfy Fel-Pro's lien against FWS was only \$2,500 (after payment of the attorney's lien).

This Court reviews the trial court's decision on a motion for reconsideration for an abuse of discretion. *Cason v Auto Owners Ins Co*, 181 Mich App 600, 605; 450 NW2d 6 (1989). As this Court stated in *Environair, Inc v Steelcase, Inc*, 190 Mich App 289, 292; 475 NW2d 366 (1991):

An action must be prosecuted in the name of the real party in interest. MCR 2.201(B). A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another. . . . In Michigan, the law treats a corporation as entirely separate from its shareholders, even where one person owns all the corporate stock. . . . Generally, a suit to enforce corporate rights or to redress or prevent injury to the corporation, whether arising out of *contract or tort*, must be brought in the name of the corporation and not that of a stockholder, officer, or employee. . . . [(citations omitted) (emphasis in original).]

An examination of the complaint in the instant case reveals that plaintiffs Feldman and Wolf along with defendant Siegel purchased the assets of an existing business, and those "three individuals became shareholders and officers of FWS, Inc." To advance the business, "plaintiffs" spent money on marketing and paid defendant Siegel a salary. "Unknown to Plaintiffs, however, Defendant Siegel, in direct breach of his fiduciary responsibility," was negotiating with another business. Defendant Siegel took, "without the consent of Plaintiffs," property such as a customer list, business plans, legal documents and marketing strategies. He also "took money that belonged to the Plaintiff corporation" for his own use.

The complaint further alleged that defendant United Automotive Supply knew that Siegel's actions were a breach of his fiduciary responsibility, and "acted in concert with Defendant Siegel, [and] tortiously interfered with Plaintiffs' contractual relationship with its customer and likewise converted the assets of the Plaintiffs to its own benefit." The complaint also claimed that United Automotive was aware that "Siegel was acting in breach of his fiduciary duty to Plaintiffs."

From our review of the complaint, we conclude that the litigation was commenced to enforce the rights of and redress the wrongs done to the corporation, FWS, Inc. Individual plaintiffs Wolf and Feldman appear to have no relationship to this litigation other than as

shareholders of the corporation. Individual shareholders may pursue a cause of action against a corporate director only when they have sustained a loss separate and distinct from that of other shareholders. *Environair, supra*, 190 Mich App at 292. The complaint does not allege any distinct harm sustained by Wolf and Feldman. Thus, the trial court did not err in ruling that Fel-Pro was entitled to the full \$7,500 as partial satisfaction of its lien against FWS.

Affirmed.

/s/ Michael R. Smolenski

/s/ Michael J. Kelly

/s/ Roman S. Gibbs