

STATE OF MICHIGAN
COURT OF APPEALS

HAMPTON BLOCK COMPANY,

Plaintiff-Appellant,

and

ROBERT E. HAMPTON,

Plaintiff/Counterdefendant-Appellant,

v

EUGENE HAMPTON,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED
October 27, 2000

No. 211468
Oakland Circuit Court
LC No. 96-513893-CK

Before: Cavanagh, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order denying their motion for summary disposition and dismissing the case. We affirm.

Plaintiff Robert Hampton and his brother, defendant Eugene Hampton, each owned fifty percent of Hampton Block Company. In 1972, the brothers entered a stock redemption agreement, which made provisions for the purchase of the corporation's stock in the event of the death or retirement of either brother. On February 15, 1996, Robert filed a complaint on behalf of himself and Hampton Block Company, alleging that Eugene failed to honor the agreement when Robert indicated his desire to retire. Robert requested dissolution of the corporation and a supervised sale of the assets or appointment of a receiver. Eugene filed a counter-complaint, alleging that Robert breached his duty to actively participate in the business in order to force a buy-out. Eugene eventually recognized that he would not be able to maintain the business and also requested appointment of a receiver. The trial court appointed a receiver with authority to sell the corporation's assets. Thereafter, Robert filed a motion for

summary disposition, claiming that Eugene had siphoned corporate assets for his own personal use. Robert requested that the misappropriated amounts be considered part of the corporate accounts during the dissolution process. Robert also requested attorney fees. The court denied Robert's motion, ruling that the complaint and counter-complaint were moot because the court had already ordered appointment of a receiver and sale of the corporation's assets.

On appeal, Robert first argues that the trial court erred in dismissing the case as moot when the evidence demonstrated that Eugene had siphoned funds from the corporation. We disagree. A trial court's decision to dismiss an action on procedural grounds is reviewed for an abuse of discretion. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995). Robert's claim that Eugene misappropriated corporate funds was not properly pleaded below. Plaintiffs' complaint specifically alleged breach of contract for Eugene's failure to honor the stock purchase agreement and requested dissolution of the corporation or appointment of a receiver. Although subsequent motions and papers filed by Robert alleged that Eugene was attempting to drain corporate assets, the complaint is bereft of any allegation of wrongdoing other than mere breach of contract.¹ General rules of pleading require that a complaint be sufficiently clear to reasonably inform the adverse party of the nature of the claims the party is called on to defend. MCR 2.111(B)(1); *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997). At no time did Robert seek to amend his complaint to include an allegation of misappropriation. Thus, Robert's claim that Eugene had siphoned corporate funds was not pleaded below and the trial court did not abuse its discretion in dismissing the case.

Robert next argues that the trial court abused its discretion in failing to award him attorney fees. We disagree. The decision whether to award attorney fees is within the trial court's discretion. *Phinney v Perlmutter*, 222 Mich App 513, 560; 564 NW2d 532 (1997).

Robert sought attorney fees in connection with the suit filed against Eugene pursuant to MCL 450.1562; MSA 21.200(562), which provides:

A corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by the

¹ We note that, in ¶ 12 of the complaint under the breach of contract count, plaintiffs alleged in part that Eugene, by his prior actions and statements, had indicated his intention "to take over the assets and properties of the corporation for his own separate use and convert them so as to deprive [Robert] of any benefit." However, that paragraph does not allege that a tortious act had occurred, but merely that plaintiffs believed Eugene would convert corporate assets at some point in the future. While Robert subsequently claimed within motions that Eugene had, in fact, misappropriated assets, plaintiffs did not amend their complaint to add the claim.

person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the corporation except to the extent authorized in section 564c.

In addition, MCL 450.1563; MSA 21.200(563) provides:

To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 561 or 562, or in defense of a claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against actual and reasonable expenses, including attorneys' fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this section. [Footnote omitted.]

Under the plain language of those statutes, Robert is not entitled to attorney fees. The statutes indicate that directors and officers are protected in *defending* themselves against claims by a shareholder and do not compensate plaintiffs who bring suit against officers and directors of a corporation. MCL 450.1563; MSA 21.200(563) clearly states that indemnification applies when an officer or director is successful “in *defense* of an action” (emphasis added). Consequently, there is no support under either statute for Robert’s contention that he is entitled to attorney fees in connection with the suit that he brought against Eugene. Moreover, we are not convinced that Robert was the prevailing party under the present circumstances. The trial court never ruled on the merit of Robert’s breach of contract claim. The court’s appointment of a receiver and liquidation of the corporation was consistent with the relief that Robert requested. However, Eugene had also requested appointment of a receiver. Under these circumstances, the trial court did not abuse its discretion in failing to award attorney fees.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Brian K. Zahra