

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

JAMES JANOUSEK,

Plaintiff,

v.

MICHAEL SLOTKY, ET AL.,

Defendants.

Case No. 2009 CH 22216

Calendar 03

Honorable Franklin U. Valderrama

ORDER

This matter coming to be heard on Michael Slotky and the Estate of Burton Slotky's Joint Motion under 735 ILCS 5/2-1203 to Reconsider and Vacate or, Alternatively, to Modify Judgment on Count III, due notice having been given, and the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. On June 7, 2016, the Court issued its Trial Opinion and Judgment Order (the "June 7, 2016 Judgment Order") in which the Court entered judgment in favor of Plaintiff, James Janousek, derivatively on behalf of Bureaus Investment Group, LLC ("BIG"), and against Defendants, Michael Slotky ("Michael") and the Estate of Burton Slotky ("Burton") (collectively, the "Slotkys") on Count III of Janousek's Sixth Amended Verified Complaint ("Sixth Amended Complaint").
2. Specifically, the Court concluded that the Slotkys breached their fiduciary duty of loyalty to BIG by forming Bureaus Investment Group III, LLC ("BIG III"), usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, and failing to fully and fairly disclose such opportunities to BIG.
3. The Court noted that an appropriate measure of damages for breach of fiduciary duty by usurping corporate opportunities includes: (1) the profits the injured entity lost by not pursuing the opportunities itself; and (2) any benefit received in connection with the breach by the party who breached their fiduciary duty so as to eliminate the incentive to engage in such activity. *Vendo Co. v. Stoner*, 58 Ill. 2d 289, 305, 310 (1974).
4. The Court concluded that an appropriate measure of compensatory damages to BIG for the benefit the Slotkys received in connection with their breach of fiduciary duty was the value of BIG III—\$203,301,180.75—and entered judgment in favor of Janousek, derivatively on behalf of BIG, and against the Slotkys in that amount.
5. The Slotkys subsequently filed the instant motion to reconsider and vacate or, alternatively, to modify the Court's judgment on Count III. The Slotkys argue that the measure of damages for a derivative claim of breach of fiduciary duty is lost profits. In this case,

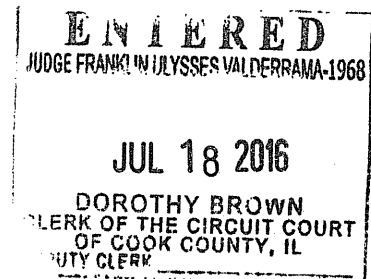
however, according to the Slotkys, Janousek's expert witness, Thomas Kabler, did not calculate any benefits or profits the Slotkys received from BIG III. Moreover, assert the Slotkys, Janousek cites no authority which supports the award of the value of BIG III as damages for the Slotkys' breach of fiduciary duty in lieu of lost profits.

6. Janousek, on the other hand, asserts that the Court has the authority to fashion an appropriate remedy for the Slotkys breach of their fiduciary duty of loyalty, and that the Court's judgment on Count III was an appropriate exercise of that authority. In the alternative, Janousek contends that if the Court reconsiders its judgment on Count III, the Court should increase the judgment by \$34,040,356.00, the amount of BIG's decreased value, plus 14% equitable interest.
7. The Court, upon further reflection, finds that the value of BIG III is not an appropriate measure of compensatory damages to BIG for the benefit the Slotkys received in connection with their breach of fiduciary duty.
8. Therefore, the Court vacates those portions of the Court's June 7, 2016 Judgment Order, specifically paragraphs 79, 80, and 93 of the Court's Conclusions of Law, in which the Court found that the value of BIG III was an appropriate measure of compensatory damages to BIG for the benefit the Slotkys received in connection with their breach of fiduciary duty and entered judgment in favor of Janousek, derivatively on behalf of BIG and against the Slotkys on Count III of Janousek's Sixth Amended Complaint in the amount of \$203,301,180.75.
9. Additionally, the Court did not award as compensatory damages profits lost by BIG as a result of the Slotkys' breach of fiduciary duty. Instead, the Court found that Janousek did not present any evidence of profits lost by BIG by not being able to take advantage of the opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest that the Slotkys usurped through BIG III.
10. While the Court's finding that Janousek did not present any evidence of profits lost by BIG as a result of the Slotkys' breach of fiduciary duty is accurate, the Court finds that it is not a complete account of the evidence presented by the parties at trial with respect to profits lost by BIG as a result of the Slotkys' breach of fiduciary duty. Specifically, neither party acknowledged in their post-trial briefs and the Court omitted from its June 7, 2016 Judgment Order the unrebutted testimony of one of Defendants' expert witnesses, Mark Hosfield ("Hosfield"), who expressly testified to the profits lost by BIG in the event the Slotkys were found to have breached their fiduciary duty of loyalty to BIG by forming BIG III and usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest.
11. Upon further consideration of Hosfield's unrebutted testimony regarding the profits lost by BIG as a result of the Slotkys' breach of fiduciary duty, the Court makes the following supplemental findings of fact:

- a. As a result of the Slotkys' formation of BIG III, BIG lost profits in the amount of \$5,656,912.00 from October 2007 through December 2014 and \$2,798,124.00 from January 2015 through December 2019.
 - b. As such, BIG's past and future lost profits which resulted from the Slotkys' formation of BIG III totaled \$8,455,036.00 from October 2007 through December 2019.
12. Therefore, the Court finds that the appropriate measure of the compensatory damages due to BIG by the Slotkys for their breach of their fiduciary duty of loyalty by competing with BIG and usurping opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest through BIG III and the BIG III Portfolios is BIG's lost profits.
13. As for Janousek's request that the Court increase any judgment by \$34,040,356.00, the amount of BIG's decreased value, plus 14% equitable interest, to reflect BIG's diminished value, the Court finds that the diminished value of BIG is not a proper measure of compensatory damages for the Slotkys' breach of their fiduciary duty of loyalty to BIG.
14. Finally, the Slotkys argue that any damages award against them on Count III should be apportioned according to their original respective ownership interests in BIG III. However, the Court finds that such apportionment of the Court's award of \$8,455,036.00 in compensatory damages is inappropriate as that award is not directly related to the value of BIG III or the Slotkys' ownership interests therein, but is instead in reference to BIG's past and future lost profits which resulted from the Slotkys' breach of their fiduciary duties.
15. Accordingly, the Court modifies its judgment in favor of Janousek, derivatively on behalf of BIG, and against the Slotkys on Count III of Janousek's Sixth Amended Complaint from the amount of \$203,301,180.75 to \$8,455,036.00 in compensatory damages.

SO ORDERED.

ENTERED:



Judge Franklin U. Valderrama

DATED: July 18, 2016