

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

LORIANN BUSSE and LISA CARPENTIER,
ALEXANDRA RENEE CARPENTIER;
DEVAN MICHELE CARPENTIER; and
MARIE JOSEE CARPENTIER, A Minor
Through Her Mother and Next Best Friend
LISA CARPENTIER,

Plaintiffs,

v.

JEFFREY BUSSE; LAVERN T. BUSSE;
BUSSE FINANCIAL ADVISORS, LLC;
BUSSE FAMILY LIMITED PARTNERSHIP;
AB BI NOTE LIMITED PARTNERSHIP;
LAVERN T. BUSSE AND AUDREY BUSSE
FOUNDATION and Nominal Defendants: LTB
2002 IRREVOCABLE TRUST; LTB 2002
IRREVOCABLE TRUST U/D/O DECEMBER
20, 2002 F/B/O LORIANN BUSSE; LTB 2002
IRREVOCABLE TRUST U/D/O DECEMBER
20, 2002 F/B/O ALEXANDRA RENEE
CARPENTIER; LTB 2002 IRREVOCABLE
TRUST U/D/O DECEMBER 20, 2002 F/B/O
DEVAN MICHELE CARPENTIER; and LTB
2002 IRREVOCABLE TRUST U/D/O
DECEMBER 20, 2002 F/B/O MARIE-JOSEE
CARPENTIER,

Defendants.

CIVIL NO. LACV083022

ORDER DISMISSING COUNT X

Now before the Court is an oral motion that was raised by Attorney Paul Gamez, counsel for Jeffrey Busse (“Jeff”) and Lavern T. Busse (“Lavern”) (collectively referred to hereinafter as “Defendants”), during the final pre-trial conference. Attorney Paul Gamez’s oral motion sought clarification as to whether Count X has been dismissed in its entirety based on the Court’s prior summary judgment rulings. The Court reserved ruling on Attorney Gamez’s oral motion. On January 19, 2017, LoriAnn Busse (“LoriAnn”) and Lisa Carpentier (“Lisa”) (collectively referred to hereinafter as “Plaintiffs”) filed a Bench Brief Regarding Plaintiffs’ Breach of Fiduciary Duty Claim Against Jeff Busse as an Officer and Director of Busse Investments. Defendants filed a Response to Plaintiffs’ Bench Brief Regarding Count X – BI Breach of Fiduciary Duty by Defendants Jeffrey Busse and

Lavern Busse on January 19, 2017. The Court having heard oral arguments from counsel, considered the parties' written filings, and being fully apprised of the matter now enters the following order:

In Count X, LoriAnn Busse ("LoriAnn) and Lisa Carpentier ("Lisa") (collectively referred to hereinafter as "Plaintiffs") allege Jeff, as an officer and director of BI, breached fiduciary duties he owed to LoriAnn and Lisa as shareholders of BI. In Count X Plaintiffs allege:

Jeff breached those fiduciary duties owed to LoriAnn and Lisa by various acts, including but not limited to, mortgaging BI's future to entities Jeff controls solely for his personal benefit under misleading pretenses and attempting to coerce LoriAnn and Lisa to relinquish control of BI, which is in no way tied to BFA's business, by actions taken by him through his control [of] BFA, BFLP and ABBI.

(Amended Petition ¶ 214). Plaintiffs allege further in Count X that "Jeff's conduct has... frustrated the reasonable expectations of LoriAnn and Lisa." (Amended Petition ¶ 215).

Although Count X includes the catchall phrase "by various acts, including but not limited to," the parties agree Count X is limited to the following allegations: (1) Jeff, acting as an officer and director of BI, encumbered BI with a thirty-year obligation to further his own estate planning goals through the "MMB loans;" (2) Jeff, acting as an officer and director of BI, engineered a backup plan to keep BI saddled with debt over the long-term in the event that BI prepays its loan to MMB through the "BFLP Loan;" and (3) Jeff, acting as an officer and director of BI, prepaid a \$2.65 million debt that BI owed AB BI to help facilitate Lavern's retribution against Plaintiffs.

The Court, in its ruling on Defendants' First Motion for Partial Summary Judgment, held "Defendants are entitled to summary judgment on Counts X and XII, as they relate to compensatory damages and punitive damages stemming from the MMB loans, for overly speculative damages and uncertainty of actual harm." (Ruling on Defendants' First Motion for Partial Summary Judgment p. 28). The Court held further that "Defendants are entitled to summary judgment on Counts IV, VIII, X, and XII, as they relate to compensatory damages and punitive damages stemming from the BFLP Loan, for overly speculative damages and uncertainty of actual harm." (*Id.* at 29-30). The Court, in its

ruling on Defendants' Second Motion for Partial Summary Judgment, held "Plaintiffs have failed to establish standing to reform the BFLP Loan and Defendants are entitled to summary judgment as a matter of law on Counts IV, VIII, and X to the extent those counts seek reformation of the BFLP Loan." (Ruling on Defendants' Second Motion for Partial Summary Judgment p. 15).

Plaintiffs assert Count X should not be dismissed in its entirety, however, because Jeff, acting as an officer and director of BI, allegedly prepaid a \$2.65 million obligation to AB BI to help facilitate Lavern's retribution against Plaintiffs. According to Plaintiffs, Jeff engaged in the following conduct to facilitate Lavern's retribution: (1) Jeff, acting as an officer and director of BI, prepaid a \$2.65 million note to AB BI; (2) Jeff, acting as a BFA-appointed-manager of AB BI, loaned the proceeds from BI's \$2.65 million prepayment to Lavern; and (3) Jeff, acting as the trustee of LoriAnn and Lisa's daughters' Grantor Trusts, allowed Lavern to substitute approximately half of the proceeds from AB BI's \$2.65 million loan for the non-voting BI stock in LoriAnn and Lisa's daughters' Grantor Trusts. According to Plaintiffs, this supports their contention that "Jeff's conduct [as an officer and director of BI] has...frustrated the reasonable expectations of LoriAnn and Lisa [as shareholders of BI]." (Amended Petition ¶ 215).

The Court finds Plaintiffs' argument unavailing. Following the Court's summary judgment rulings, the only allegation remaining under Count X is that Jeff, as an officer and director of BI, prepaid \$2.65 million of BI's debt to AB BI. Plaintiffs, as shareholders of BI, neither suffered nor allege any harm attributable to BI prepaying \$2.65 million of its debt to AB BI. Furthermore, BI prepaying \$2.65 million of its debt to AB BI is merely the first transaction Jeff allegedly authorized to facilitate Lavern's retribution against Plaintiffs. Therefore, Plaintiffs harm, if any, attributable to BI prepaying \$2.65 million of its debt to AB BI arises from subsequent events. Specifically, (1) Jeff, as a BFA-appointed-manager of AB BI, authorizing a \$2.65 million loan to Lavern; and (2) Jeff, as trustee of the Grantor Trusts, authorizing the substitution of allegedly inequivalent assets for the non-voting BI stock in LoriAnn and Lisa's daughters' Grantor Trusts. The Court finds BI prepaying \$2.65 million

of its debt to AB BI is too attenuated from Plaintiffs' actual harm, if any, attributable to the series of transactions Jeff allegedly authorized to facilitate Lavern's retribution against them to support a claim of oppression under Count X. Plaintiffs' written filings support this conclusion. Plaintiffs specifically allege they were harmed by Jeff's conduct as a BFA-appointed-manager of AB BI. (Plfs. Resistance to Def. First Motion for Partial Summary Judgment Brief p. 36 ("Plaintiffs have been harmed by Jeff's use of AB BI's operating income to fund schemes of 'retribution' against Plaintiffs at the expense of pursuing better investment opportunities or distributing the money to Plaintiffs so they could make better use of the money.")). Plaintiffs' also specifically allege they were harmed by Jeff's conduct as trustee of LoriAnn and Lisa's daughters' Grantor Trusts. *Id.* at 20 ("By failing to account for BI's history of annual distributions and its quality as an investment, or in the valuation report he adopted, Jeff undervalued BI and impermissibly allowed Lavern to 'substitute' an un-equivalent amount of cash for the BI non-voting stock.")).¹ Plaintiffs allege, for the first time, they were harmed by BI prepaying \$2.65 million of its debt to AB BI in their January 19, 2017 Bench Brief. The only harm Plaintiffs' identify in their January 19, 2017 Bench Brief relating to BI prepaying \$2.65 million of its debt to AB BI, however, is that it was the first event in a series of transactions that Jeff authorized (in his other capacities for other entities) to allegedly facilitate Lavern's retribution. Therefore, Plaintiffs' January 19, 2017 Bench Brief fails to overcome the problem of attenuation. The Court finds that Plaintiffs' harm, if any, attributable to Jeff allegedly authorizing Lavern to substitute assets of inequivalent value for the non-voting BI stock in LoriAnn and Lisa's daughters' Grantor Trusts is too attenuated from BI prepaying \$2.65 million of its debt to AB BI to support a finding that Plaintiffs, *as shareholders of BI*, suffered harm. *See Hockenberg Equipment Co. v. Hockenberg's Equipment & Supply Co. of Des Moines, Inc.*, 510 N.W.2d 153, 156 (Iowa 1993) (citing *Pringle Tax Serv., Inc. v. Knoblauch*, 282 N.W.2d 151, 154 (Iowa 1979)) (holding nominal damages and punitive damages must be premised on the existence of harm). Accordingly, the Court finds Count X should be dismissed in its entirety.

¹ This claim is the basis for the alleged harm for Jeff's alleged actions in his capacity as trustee of the Grantor Trusts in Count II of Plaintiffs' Petition.

RULING

In light of the foregoing, the Court finds that Count X should be and hereby is DISMISSED IN ITS ENTIRETY. The Court directs the clerk to provide copies of this Ruling and Order to the counsel of record.



State of Iowa Courts

Type: OTHER ORDER

Case Number LACV083022
Case Title (BC)LORIANN BUSSE & LISA CARPENTIER ET AL VS JEFFREY BUSSE

So Ordered



John Telleen, District Court Judge,
Seventh Judicial District of Iowa