IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

CHAD RUPERT,	)	
	)	**Case No. CVCV096902**
Plaintiff,	)	
	)	
v.	)	**RULING ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**
	)	
ELPLAST AMERICA, INC.,	)	
	)	
Defendant.	)	

Comes now before the Court for consideration Plaintiff's Motion for Summary Judgment. After having considered the evidence presented, Plaintiff's Brief, Defendant's Resistance, Plaintiff's Reply thereto, and the applicable law, the Court enters the following ruling on the pending motion.

BACKGROUND FACTS

This case arises out of a suit filed by Plaintiff Chad Rupert ("Rupert") on January 27, 2021. Rupert alleges two claims: (1) Breach of Contract, and (2) A claim for payment of wages due under Iowa Code §91A, also known as the "Iowa Wage Payment Collection Law." Iowa Code §91A.1. These claims arise in connection with Rupert's former status as President of Defendant Elplast America, Inc. ("Elplast").[1] In April of 2020, Marcin Pawelak ("Pawelak"), the majority owner of Elplast, asked Rupert to step down as president of Elplast and leave the company.[2] As part of Rupert's leaving Elplast, the parties began negotiating a separation agreement.[3] Plaintiff's claim for breach of contract arises from the parties' dispute over whether

[1] Defendant's Response to Plaintiff's Statement of Undisputed Material Facts in Support of Partial Summary Judgment ("Def.'s Response to Plf.'s Statement of Undisputed Material Facts"), filed Feb. 4, 2022, at p. 1.
[2] Def.'s Response to Plf.'s Statement of Undisputed Material Facts at p. 1-2.
[3] Def.'s Response to Plf.'s Statement of Undisputed Material Facts at p. 2-3.

a contractual agreement was ever ratified.[4] Plaintiff's claim for unpaid wages arises from a dispute over whether Plaintiff was properly categorized as an independent contractor or an employee of Elplast.[5] Defendant countersued raising two claims: (1) Intentional Interference with Business Advantage and (2) Breach of Fiduciary Duty.[6] Defendant's first count, Intentional Interference with Business Advantage, has since been voluntarily dismissed.[7] The Court, recognizing the mootness of the issue, accordingly does not reach the merits of Plaintiff's Motion for Partial Summary Judgement regarding that count.

Plaintiff on February 4, 2022, filed the Motion for Partial Summary Judgment now at issue before the Court. Plaintiff argues with respect to Defendant's remaining claim for Breach of Fiduciary Duty that Defendant cannot demonstrate breach or damages. Plaintiff further argues that Iowa Code §490.842 immunizes Plaintiff from liability for his delegation of responsibility to other members of Elplast.

Defendant resists, arguing that breach and damage have been presented by the evidence in the record, such that there is a dispute of material fact to be reserved for trial.

ANALYSIS

"Summary judgment is appropriate only when the record shows no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Hedlund v. State*, 930 N.W.2d 707, 715 (Iowa 2019) (citing Iowa R. Civ. P. §1.981(3)). "On motion for summary judgment, the court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record." *Morris v. Legends Fieldhouse Bar and Grill, LLC*, 958 N.W.2d 817,

[4] Def.'s Response to Plf.'s Statement of Undisputed Material Facts at p. 2-3.
[5] Defendant's Answer to Petition at Law and Counterclaims ("Def.'s Answer"), filed Feb. 17, 2021, at p. 5.
[6] Def.'s Answer at p. 9-11.
[7] Partial Dismissal Without Prejudice, filed Feb. 14, 2022.

821 (Iowa 2021). The moving party bears the burden of showing there is no genuine issue of material fact. *Mormann v. Iowa Workforce Development*, 913 N.W.2d 554, 565 (Iowa 2018). "Even if the facts are undisputed, summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions." *Hedlund*, 930 N.W.2d at 715. "[A] court deciding a motion for summary judgment must not weigh the evidence, but rather simply inquire whether a reasonable jury faced with the evidence presented could return a verdict for the nonmoving party." *Clinkscales v. Nelson Securities, Inc.*, 697 N.W.2d 836, 841 (Iowa 2005).

The elements of Breach of Fiduciary Duty are (1) A fiduciary relationship, (2) breach of the duty, (3) proximate cause, and (4) damages. *Dee v. Burgett*, 949 N.W.2d 30 (Table); 2020 WL 4577116 at *4 (Iowa Ct. App., June 3, 2020) (Citing Iowa Civ. Jury Instr. 3200.1).

There can be no dispute that Rupert had a fiduciary relationship with Elplast. "A fiduciary relationship includes a relationship in which one is under a duty to act for the benefit of the other as to matters within the scope of the relationship." *Mendenhall v. Judy*, 671 N.W.2d 452, 455 (Iowa 2003). As an officer of Elplast, Rupert owed a fiduciary duty to the company and its shareholders. *Cookies Food Products, Inc., by Rowedder v. Lakes Warehouse Dist., Inc.*, 430 N.W.2d 447, 451 (Iowa 1988).

As to the second element, breach of duty, "[a]n officer, when performing in such capacity, has the duty to act in conformity with all of the following: a. In good faith. b. With the care that a person in a like position would reasonably exercise under similar circumstances. c. In a manner the officer reasonably believes to be in the best interests of the corporation." Iowa Code §490.842(1). Further,

> [t]he duty of an officer includes the obligation to do all of the following: a. Inform the superior officer to whom, or the board of directors or the board committee to

> which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known to the officer to be material to such superior officer, board, or committee. b. Inform the officer's superior officer, or another appropriate person within the corporation, or the board of directors, or a board committee, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

Iowa Code §490.842(2). Iowa courts recognize that this duty obliges the fiduciary "to act in all things wholly for the benefit of the corporation," and "limits a director's or officer's conduct both as to actions taken on behalf of the corporation and actions taken in the fiduciary's own behalf that may have an effect on the corporation." *Midwest Janitorial Supply Corp v. Greenwood*, 629 N.W.2d 371, 375 (Iowa 2001). However, this duty is not without limit. For example, mere preparation to form a competing business organization is not actionable as a breach of fiduciary obligation under Iowa law. *Id.* at 376. On the other hand, breach of fiduciary duty may be established when a defendant sells off assets of the company which are or may have been profitable. *Poulsen v. Russell*, 300 N.W.2d 289, 294 (Iowa 1981). For example, in *Poulsen*, the Iowa Supreme Court held that a fact question for a jury existed where the president of a corporation allegedly closed down a profitable gas station, sold equipment to reduce the corporation's debt, refused to sign notes for extensions of credit, and was absent from the business for significant periods of time. *Id.* Plaintiff argues that Defendant has not presented evidence to support its allegations that Plaintiff breached his fiduciary duty

> by failing to properly account for the transfer of company funds, failing to take action when a storm impacted the infrastructure of the plant, failing to timely repay company debt resulting in a lack of supplies and halt in production, failing to accurately report data to the company's board of directors and shareholders, failing to timely and properly report taxes, allowing products to be stored in a substandard warehouse, failing to properly train employees, failing to cooperate with the contributions of Elplast Europe to the company's business and other actions that were not in the best interest of Elplast America.[8]

[8] Def.'s Answer at p. 10.

The Court notes that since the filing of this motion, there has been a continuance to allow for additional discovery by the parties.[9] Defendant has subsequently submitted an appendix of evidence supporting its claims of breach.[10] The communications therein provided suggest that Plaintiff tended to ignore Pawelak's directives as the majority shareholder.[11] For example, emails from Pawelak to Plaintiff state that "There is (sic) a number of decisions you took without me," "you ordered forms for reels through the US supplier without telling me and golbally (sic) it would be better to give this business to the polish supplier," and "threatening me that my company will charge my company for Roger's time? WTF?"[12] Further, there appears to have been an issue with Plaintiff refusing to communicate information about the company to Pawelak. Emails from Powelak include assertions such as "And the biggest problem is that most of this doesn't come directly from you in a conversation. It comes from other people and from your actions that are not direct on me," and "I have a feeling that you tell me what I want to hear, and then you do what you want."[13] Defendants also present evidence that there was a trend of Elplast's tax returns not being filed on time.[14] Notably, this testimony was provided by Plaintiff's own deposition, during which Plaintiff also testified that Elplast's response to an audit by the Internal Revenue Service ("IRS") was conducted by Bruce Willey ("Willey") at Plaintiff's direction.[15] Plaintiff also testified during his deposition

[9] *See* Ruling on Pending Motions and Order Continuing Trial, filed Mar. 11, 2022, generally.
[10] *See* Defendant's Appendix in Support of Resistance to Partial Summary Judgment Vol. 1 ("Def's App. Vol. 1"), filed May 27, 2022. *See also* Defendant's Appendix in Support of Resistance to Partial Summary Judgment Vol. 2 ("Def's App. Vol. 2"), filed June 6, 2022.
[11] Def's App. Vol. 2 at p. 5.
[12] Def's App. Vol. 2 at p. 5.
[13] Def's App. Vol. 2 at p. 6-7.
[14] Def's App. Vol. 1 at p. 50.
[15] Def's App. Vol. 1 at p. 48-49

that he was "the focal point" for the taxpayer response to the IRS audit, stating that while he "probably got information from multiple sources in responding," he was the one responsible.[16] Defendants have also provided testimony to the effect that Plaintiff failed to properly manage Elplast's finances and accounts, despite a high level of personal involvement, to the extent that one witness testified at deposition that Rupert "controlled all of that."[17] Testimony was also provided establishing that there may have been an issue with the warehouses Plaintiff utilized to store the company's goods, such that the company had to expend "in excess of a hundred thousand dollars" and change warehouses following a hygiene incident wherein ants got into the company's products, although that incident was established to have been covered by insurance.[18]

The Court acknowledges that Plaintiff may have a different view of the events that transpired during his tenure as President, but as the nonmoving party Defendant is entitled to a favorable resolution of all disputed material facts in this case. *Morris*, 958 N.W.2d at 821. Here, Defendant has presented evidence which, if believed by a jury, would demonstrate Plaintiff refused to communicate with the majority shareholder of the company for whom he acted as president, failed to account for the company's finances, and may have repeatedly failed to ensure the company's tax returns were timely filed, in addition to potentially causing further trouble with the audit by the IRS. Refusal to keep Pawelak, the majority shareholder of Elplast, informed of the affairs of the company, on its face, is likely a breach of Iowa Code §490.842(2)(a). As to the other allegations by Defendant, injuring the profitability of the corporation by failing to properly discharge

[16] Def's App. Vol. 1 at p. 56.
[17] Def's App. Vol. 1 at p. 37-38.
[18] Def's App. Vol. 1 at p. 40.

one's duties as president may give rise to a breach of fiduciary duty, and accordingly, there is a dispute of material fact which must be resolved by a jury. *See Poulsen*, 300 N.W.2d at 295. The Court rejects Plaintiff's argument for summary judgment on that ground.

Next, Plaintiff argues that he is immunized from liability based on his reliance on "outside vendors and other management employees."[19] Iowa Code §490.842(3) provides that

> [i]n discharging the officer's duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on any of the following: a. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated. b. Information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are any of the following: (1) Matters within the particular person's professional or expert competence. (2) Matters as to which the particular person merits confidence.

First, the Court notes that the Iowa Code §490.842(3) defense is not absolute. Plaintiff is only entitled to the defense if he does not have knowledge that makes the reliance unwarranted. As to the issue of tax liability, Plaintiff in his own deposition testified that Elplast's tax returns had not been filed on time for multiple years prior.[20] A reasonable jury could infer from this fact that Plaintiff's reliance on Willey was unwarranted. Second, it is unclear from the record whether Plaintiff even delegated the responsibilities at issue here in the first place. Plaintiff in his own words was "the focal point" for the taxpayer response to the IRS audit, and ultimately

[19] Plaintiff's Brief in Support of Motion for Summary Judgment, filed Feb. 4, 2022, at p. 6.
[20] Def's App. Vol. 1 at p. 50.

responsible for it.[21] Further, Defendant has presented evidence that Plaintiff refused to delegate many tasks during his tenure as president, including but not limited to accounting and finance responsibilities.[22] Plaintiff obviously may not rely on a delegation of responsibility defense if he did not in fact delegate said responsibilities. The Court accordingly finds a dispute of material fact precluding summary judgment as to whether Plaintiff is entitled to rely on Iowa Code §490.842(3) as a defense.

Plaintiff next argues that Defendant is required to offer expert testimony to establish whether any of the alleged conduct amounts to a breach of fiduciary duty. "Persons engaged in the practice of a profession or trade are held to the standard of the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities." *Humiston Grain Co. v. Rowley Interstate Transp. Co. Inc.*, 512 N.W.2d 573, 575 (Iowa 1994). "Unless a professional's lack of care is so obvious as to be within the comprehension of a layperson, the standard of care and its breach must ordinarily be established through expert testimony." *Id.* For example, an insurance agent's failure to properly interpret a legal contract cannot be established as negligence absent expert testimony. *Id.* at 576. By contrast, an insurance agent's "mere failure to procure coverage requested and paid for by the client" does not require expert testimony. *Id.* By way of further example, expert testimony is generally required to support claims of medical malpractice. *Kennis v. Mercy Hosp. Medical Center,* 491 N.W.2d 161, 166 (Iowa 1992). Likewise "expert testimony on the standard of care due to a client is normally required for a legal malpractice claim." *Stender v. Blessum*, 897 N.W.2d 491, 502 (Iowa 2017). However, in certain cases, no expert testimony is required even to sustain a claim of legal malpractice. For example, in *Benton v. Nelsen*, the Iowa Court of Appeals found that evidence of

[21] Def's App. Vol. 1 at p. 56.
[22] Def's App. Vol. 1 at p. 37-38.

an attorney's failure to "mention or communicate the contents" of a relevant letter and memorandum to his clients was such clear evidence of negligence that, were it to be credited by a jury, "expert testimony would not be necessary." 502 N.W.2d 288, 290-291 (Iowa Ct. App. 1993).

The current claims of breach of fiduciary duty involve alleged failure to take action. Plaintiff alleges breach of fiduciary duty on grounds of failure to account for company funds, failure to take action to address storm damage, failure to report accurate information to the company's board and shareholders, failure to file taxes on time, leasing unsanitary warehouses, failing to properly train employees and refusing to cooperate with the businesses' international partners.[23] In the Court's estimation, these alleged failures to take action are not, like legal and medical malpractice cases, beyond the understanding of a layperson. Like an insurance agent's "mere failure to procure coverage requested and paid for by the client," the Court finds that the allegations of breach in this case do not require expert testimony. *Humiston Grain Co.* 512 N.W.2d at 576. The Court is certain, for example, that a layperson understands that one must file their taxes on time or face penalties. Likewise, *Benton* establishes that a simple failure to communicate important information is a failure of care so obvious as to not require expert testimony. *Benton*, 502 N.W.2d at 291. The Court accordingly rejects Plaintiff's argument that expert testimony is required to establish causation upon the facts in this case.

Finally, Plaintiff argues that Defendant cannot establish proximate cause or damages, the final two elements of a claim for Breach of Fiduciary Duty. Plaintiff takes issue with the fact that Defendant has only itemized its damages relating to the audit. As to the audit, Plaintiff relies on a delegation of responsibility defense, which, as previously discussed, may be rejected by a jury

[23] Def.'s Answer at p. 10.

and thus does not entitle Plaintiff to summary judgment.[24] As damages can be shown with respect to the expense of undergoing the audit, Plaintiff's argument fails as to that claim. Regarding Plaintiff's claim that damages cannot be shown for Defendant's alternative theories of breach, there is a distinction under Iowa Law between "proof of the fact that damages have been sustained and proof of the amount of those damages. If uncertainty lies only in the amount of damages, recovery may be had if there is a reasonable basis in the evidence from which the amount can be inferred or approximated." *Pringle Tax Service. Inc. v. Knoblauch*, 282 N.W.2d 151, 153 (Iowa 1979). It is sufficient for the purposes of maintaining suit that even one dollar in damages is demonstrated. *Hockenberg Equipment Co. v. Hockenberg's Equipment and Supply Co of Des Moines, Inc.*, 510 N.W.2d 153, 156 (Iowa 1993) ("The plaintiff need only show that the defendant actually caused plaintiff some injury to sustain a verdict for nominal compensatory damages (for example, one dollar) and punitive damages").

For example, in *Hockenberg*, the Iowa Supreme Court found that the plaintiff had sustained actual damages where "Defendants…marketing activities in central Iowa caused confusion and lost staff time for [plaintiffs]" in a suit for breach of contract regarding brand marketing. *Id.* Likewise, in *Orkin Exterminating Co., Inc. (Arwell Div.) v. Burnett*, the Iowa Supreme Court found that the amount of damages sustained by a breach of covenant not to compete was not too speculative to bar recovery. 160 N.W.2d 427, 430 (Iowa 1968). In that case, the Court held that because "[t]he evidence as to the amount of plaintiff's business which transferred to defendant was definite" and "[t]he evidence of the cost of producing that amount of sales was reasonably certain," damages could be reasonably determined, even though "plaintiff might not have lost this business in any event." *Id.* "Such possibility [did] not render

[24] *See* Supra at p. 8.

the evidence so speculative that plaintiff should [have been] deprived of all recovery." *Id.* The Court finds the same to be so in this case. A reasonable jury presented with the sworn testimony of Pawelak, Mike Burton, and Rupert himself[25] could reasonably infer the existence of damages, even if the amount is not precisely itemized. The Court accordingly rejects Plaintiff's argument on the grounds of lack of damages.

CONCLUSION

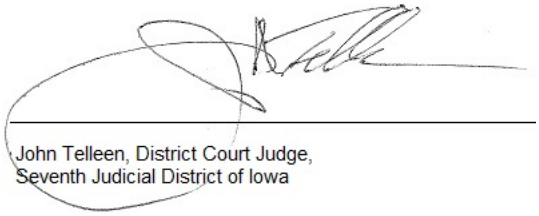
For all of the above-stated reasons, it is the ruling of the Court that the Plaintiff's Motion for Partial Summary Judgment is DENIED.

[25] Def's App. Vol. 1 at p. 3-56.

State of Iowa Courts

Case Number	**Case Title**
CVCV096902	CHAD RUPERT VS ELPLAST AMERICA INC
Type:	Other Order

So Ordered



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

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