

SHORT FORM ORDER

**SUPREME COURT : STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. IRA B. WARSHAWSKY,
Justice.**

TRIAL/IAS PART 16

RICHARD A.J. WILLIAMS, individually and on
behalf of the shareholders of Continental Guest
Services Corp.,

Plaintiff,

**INDEX NO.: 011551/2003
MOTION DATE: 03/15/2004
MOTION SEQUENCE: 01 & 02**

- against -

ARNOLD GOLDEN a/k/a ARTHUR GOLDEN,
GLADYS GOLDEN, BETTY ZHANG, BARBARA
MANSDORF and CONTINENTAL GUEST
SERVICES CORP.,

Defendants.

The following papers read on this motion:

Notice of Motion, Affidavits & Exhibits Annexed.....	1
Defendants' Memorandum of Law in Support.....	2
Defendants' Compendium of Unreported Decisions.....	3
Plaintiff's Memorandum of Law in Opposition & Addendum.....	4
Order to Show Cause, Affirmation & Exhibits Annexed.....	5
Affidavit of Betty Zhang in Opposition & Exhibits Annexed.....	6
Reply Memorandum & Exhibit Annexed.....	7

This motion by defendants for an order staying this action and compelling plaintiff to proceed to arbitration or, in the alternative, for an order pursuant to CPLR 3211(a)(1), (3), (5) or (7), 3013, and 3016(a) and (b) dismissing the complaint, and for an order

pursuant to CPLR 3211(a)(8) dismissing the complaint against defendant Gladys Golden, and the motion by plaintiff for a stay of arbitration are determined as follows.

The issue to be determined in the motions sub judice is whether the several causes of action plead treat with the value of plaintiff's stock in a redemption agreement to a sufficient degree to warrant arbitration pursuant to the parties Shareholders Agreement. After a considered review of the papers submitted for and against the motions it is the determination of the court that arbitration is appropriate to the degree set forth below.

From 1997 to 2002, plaintiff was employed as the CEO and consultant of the defendant corporation Continental Guest Services Corporation, (Continental), without a written employment agreement. He also served as a director. The other directors and shareholders are all members by birth or marriage of the Golden family. In 1999 he purchased 50 shares, or 25% of the issued stock in this closely held corporation, according to the terms of a Stock Subscription Agreement. The Shareholder's Agreement provided, inter alia, that if his employment ended, his stock would be bought back at a price "equal to the sum of (i) the payments made under the Subscription Agreement for such Shares, (ii) such Shareholder's proportionate share of the Corporation's net worth in excess of \$500,000, and (iii) the balance of any loan account (the Purchase Price).

In September of 2002, plaintiff experienced serious medical problems, he did not appear at work and indicated he would need a certain period of time to recuperate. By action of the Board his employment was terminated in December. In February of 2003 he was offered \$613,784.49 as the value of his shares of stock, which he declined to accept and this action ensued.

The gravamen of the complaint is that family members, lead by the founder and patriarch Arnold Golden, as a matter of course paid themselves from the corporation for their personal pleasures. The obvious result was to deplete the assets of Continental which affected its net worth, and, consequently, the computation of the Purchase Price.

The causes of action are crafted to recover plaintiff's investment in the firm during his tenure as CEO where he was an at will employee endowed with authority to lead and grow the company, but sat at the pleasure of an entrenched board of directors of a closely held corporation where he was but a minority shareholder.

Details of the facts need not be expanded upon here. In summary, there are charges of Golden's promises of bonuses and remuneration either forgotten or delayed, plundering of the corporate fisc and self dealing as directors of Continental, including the termination of plaintiff, and defendants charge that plaintiff was a disappointing failure at his job, for which he was paid a million dollars a year. For purposes of this motion, the duty of the court is to determine whether the sixteen causes of action deal with disputes arising under the Shareholders Agreement which the parties agreed to settle by arbitration, although they are carefully crafted to appear that they do not. See, Nationwide Gen. Ins. Co. v Investors, Inc., 37 N.Y.2d 91 (1975) (The role of the court is to see whether the dispute is arbitrable, while the substantive issues are the province of the arbitrators.) In such endeavor, the court remains mindful that it is not unusual to reiterate one claim in the form of another. Cranston Print Works v Brockmann, 521 F.Supp. 609 (S.D.N.Y. 1981).

Plaintiff's causes of action for an accounting, unjust enrichment, shareholder's derivative claim, and a declaratory judgment all seek to morph Continental into a business where all corporate formalities are observed, including decisions made by a conscientious, disinterested board of directors for the good of the corporation, for one abstract point in time and then value it's shares.

Relative to the purchase price for plaintiff's shares of stock, as stated in plaintiff's Memorandum of Law, "Here. . . the value of plaintiff's stock is linked directly to the value of the corporation's assets." Compare, Coleman v Traub, 638 F2d 628 (3d Cir.).

The damages in each instance seek to restore value to the corporation and/or plaintiff directly. Thus, the lesson set forth by the Court of Appeals is afforded respect:

"Once it appears that there is, or is not a reasonable relationship between the subject matter of the dispute and the general subject matter of the underlying contract, the court's inquiry is ended." Id. At 96.

The first cause of action is for breach of fiduciary duty which must be dismissed as to Golden and Zhang, Ingle v Glamore Motor Sales, 73 N.Y.2d 183 (1989) (directors and shareholders owe no fiduciary duty to at will employee/ minority shareholder), but which may, arguably, be continued against the directors under the umbrella of the BCL § 720 claim which is intertwined with preserving the assets of Continental. The cause of action for defamation is subject to dismissal with leave to replead and need not detain us here.

The remaining causes of action are for violations of this States Human Rights Law, the Federal Family and Medical Leave Act and the Consolidated Omnibus Budget Reconciliation Act and Insurance Law and resolution can abide determination of the disputes under the Shareholder's Agreement relative to fixing the amount of Continental's net worth. Accordingly, defendants' motion is granted in part, and it is

ORDERED that the parties proceed to arbitration on the second, third, fifteenth and sixteenth causes of action and the first cause of action on behalf of the corporation.

The action is stayed as to the fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth causes of action. The fourth cause of action is dismissed with leave to replead.

Dated: March 16, 2004


J.S.C.

ENTERED

MAR 18 2004

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**