Opinion of September 21, 2000, Withdrawn; Reversed and Rendered. Corrected Opinion filed October 26, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00038-CV

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LINDA M. CHRISTIANS AND DOUGLAS K. CHRISTIANS, Appellants

V.

LINDA STAFFORD, Appellee

On Appeal from the 215th District Court
Harris County, Texas
Trial Court Cause No. 95-07954

C O R R E C T E D O P I N I O N

Linda M. Christians and Douglas K. Christians ("the Christians"), appellants, appeal from a jury verdict in favor of Linda Stafford ("Stafford"), appellee. The Christians appeal on three points of error. Because we find insufficient evidence to support the jury's verdict, we reverse the judgment of the trial court, and render judgment that Stafford take nothing.

Factual and Procedural History

Linda J. Stafford began as an employee of Universal Nurses of Houston, Inc., a nursing staffing agency, and was responsible for generating and servicing all of the new company business. Stafford had a close personal relationship with Linda Christians, who was the majority shareholder of Universal Nurses. After the company went through some transition, the Christians approached Stafford and offered her a twenty percent ownership in the company. Stafford accepted the offer, but also took a cut in her salary with the Christians' promise that her salary would be restored when the business reached certain projected levels; however, her salary was never restored.

Subsequently, the Christians entered into lease agreements between entities they owned and Universal Nurses. Under these lease agreements, Universal Nurses paid a monthly sum to the entities for used furniture and computer equipment; Universal Nurses paid over $1000.00 a month for over two years to lease the furniture and equipment. Stafford was not included in the financial decision regarding these leases; only the Christians participated in these decisions.

Stafford, thereafter, resigned from her position at Universal Nurses and went to work for a competitor company. Universal Nurses immediately sued Stafford and her new employer for breach of fiduciary duty, misappropriation of trade secrets, and tortious interference with contractual relations. Stafford countersued Universal Nurses and the Christians as third party defendants. Stafford sued individually and also brought a shareholder's derivative claim on behalf of Universal Nurses against the Christians for breach of fiduciary duty, fraud in a stock transaction, conspiracy, restraint of trade, minority shareholder oppression, and intentional infliction of emotional distress.

The jury found against Universal Nurses on its claims against Stafford for breach of fiduciary duty, misappropriation of trade secrets, and tortious interference with contractual relations. However, the jury found that the Christians entered into lease agreements with insiders at less than fair value. As a result of this finding, the trial court deemed the Christians' conduct as oppressive to Stafford in her position as a minority shareholder, found Stafford was entitled to equitable relief, and ordered the Christians to "buy-out"

Stafford's minority shares for their fair market value of $145,000.00. The Christians appeal the jury's finding.

Discussion and Holdings

In their first point of error, the Christians argue that no evidence, or alternatively, insufficient evidence supports the jury's finding that they entered into lease agreements (for furniture and computer equipment) with insiders at less than fair value. Additionally, the Christians contend that they did not *individually* enter into lease agreements, and no evidence reflects the lease agreements' fair value. As we explain below, we agree that insufficient evidence supports the jury's finding.

Before discussing the sufficiency of the evidence, we must address the Christians' argument that Stafford sued them in the wrong capacity. The Christians argue that the cause of action belongs to Universal Nurses rather than to Stafford, individually. However, a court may order an equitable "buy-out" of a party's minority shares for oppressive acts of the majority when the party sues both individually in his own right and as a shareholder on behalf of the corporation. *See Davis v. Sheerin*, 754 S.W.2d 375, 378-80 (Tex. App.—Houston [1st Dist.] 1988, writ denied). Here, as we stated, Stafford sued the Christians individually and as a shareholder on behalf of Universal Nurses for oppressive conduct. Thus, Stafford sued the Christians in the correct capacity, and the trial court had the equitable power to decree a "buy-out" of her shares.

Turning to the Christians' sufficiency argument, we will now discuss the applicable standards of review. When an appellant attacks the legal sufficiency of an adverse finding on an issue for which he did not have the burden of proof, he must demonstrate on appeal that there is no evidence to support the adverse finding. *See Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983). On review, this court will consider only the evidence and inferences that tend to support the finding, and disregard all evidence and inferences to the contrary. *See Weirich v. Weirich*, 833 S.W.2d 942, 945 (Tex. 1992). If any evidence of probative force to support the finding exists, the point must be overruled and the finding upheld. *See Southern States Transp., Inc. v. State*, 774 S.W.2d 639, 640 (Tex. 1989).

When reviewing a complaint that the evidence is factually insufficient to support a jury finding, this court will consider all the evidence that supports the finding as well as that which is contrary to it. *See*

Plas-Tex., Inc. v. U.S. Steel Corp., 772 S.W.2d 442, 445 (Tex. 1989). This court will set aside the verdict only if the evidence is so weak as to render the finding wrong or manifestly unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

Here, we find the evidence legally insufficient to support the jury's finding. We reach this conclusion after examining the testimony and the exhibits in the record. The evidence is legally insufficient because the plaintiffs never specifically identified the exact furniture and equipment covered by the leases and never assessed a value for the furniture and equipment and leases. For example, Stafford testified that she bought used furniture with the company credit card and paid approximately $3,600.00 for the furniture. To her knowledge, this was the same furniture that was rented to Universal Nurses for $1000.00 a month on the lease agreement. But, she did not state how long Universal Nurses paid $1000.00 a month on the lease. She also never stated which pieces of furniture she purchased, nor did she testify about the costs of the computer equipment.

Two other witnesses testified about the lease agreement, the furniture, and the computer equipment, but their testimony is equally vague. Douglas Christians testified that his company leased computer equipment to Universal Nurses, but he did not testify how much money his company paid for the equipment. Linda Christians also testified that Universal Nurses leased the computer equipment and furniture from her company. She explained that Universal Nurses paid $1,130.00 a month to lease this equipment and furniture, and that Universal Nurses would have paid about $15,000.00 - $45,000.00 to purchase it. However, she did not testify how she arrived at the purchase price, nor did she testify as to how long Universal Nurses paid $1,130.00 a month to lease this equipment and furniture. Lastly, Stafford's expert rendered an opinion as to the value of the lease, however, he stated that his estimate was based on an "arbitrary" reduction based on his prior experience with lease agreements and his conversations with the parties.[1] Throughout this testimony, we find no evidence to support the finding that the Christians, acting *individually* rather than on behalf of Universal Nurses entered into the lease agreements.

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[1] The record includes an exhibit which lists the costs of some furniture and equipment and details some of the items. However, we find no testimony in the record related to this exhibit, and the exhibit itself is not self-explanatory.

In short, we have combed through the record looking for evidence to support the jury's verdict and have found only bits and pieces of information which, together, do not make a complete picture. Consequently, we find insufficient evidence reflecting the value of the furniture and the equipment, and the value of the lease agreement. We also find insufficient evidence to support the finding that the Christians acted individually rather than as representatives of Universal Nurses. The Christians' first point of error is sustained.

Because we conclude that the evidence is insufficient to support the jury finding, we need not address the Christians' second and third points of error. The judgment of the trial court is reversed, and we render judgment that Stafford take nothing.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Corrected Opinion filed October 26, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

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