

YORK v. HINKLE et al.

Supreme Court of Wisconsin, 1891. 80 Wis. 624, 50 N.W. 807, 27 Am. St. Rep. 73

Appeal from Circuit Court, Ashland County; J. K. Parish, Judge.

Action by James E. York against A. Howard Hinkle and others. From an order overruling a demurrer to the complaint, plaintiff appeals. Affirmed. The other facts fully appear in the following statement by Cassoday, J.:

This action was commenced against the defendants, A. Howard Hinkle, William H. Hinkle, Frank B. Foote, William H. Davis, and the Ashland Iron & Steel Company, for the purpose of rescinding and vacating the assignment of certain stock and conveyance of a certain land, and for an accounting, etc. The complaint alleges, in effect, that the businessmen and real-estate owners of Ashland, in 1896, donated a furnace site and lots of the value of over \$15,000, as a bonus for the plaintiff for erecting a blast furnace at Ashland; that the defendant William H. Hinkle, for one-half interest in the real estate thus donated, agreed to aid in placing stock and organizing a company for the purpose of erecting such furnace; that the plaintiff agreed to transfer the site to such company, to wit, the Ashland Iron & Steel Company, for \$10,000, in stock of said company; that said A.H. Hinkle subscribed 5,000 shares of said stock; said William H. Hinkle, 4,000 shares thereof; the plaintiff, 2,500 shares thereof; said Foote, a brother-in-law of said Hinkle, 1,000 shares thereof; that, after the furnace was erected, the plaintiff necessarily purchased two additional lots for the company, at a cost of \$600; that the stock of said company was worth more than par value, and would pay 15 per cent. dividends; that the relations of the parties was harmonious to the time of the grievances mentioned; that A.H. Hinkle loaned the company \$200,000, with the understanding that the same might be kept by the company as long as needed, but no such agreement was actually executed, through the willful neglect of the defendants; that the plaintiff paid \$17,500 in cash of his said subscription to said stock; that, after the completion of the furnace, the defendants entered into a conspiracy to wrest from the plaintiff his stock at much less than its real value; that in December, 1888, W.H. Hinkle, knowing the plaintiff was temporarily in straitened circumstances, informed the plaintiff that A.H. Hinkle wanted the plaintiff's stock, and a settlement of all matters between the plaintiff and the company; that he was authorized to offer the plaintiff 50 per cent. of the par value of the plaintiff's stock, on condition that that the plaintiff would assume and pay the \$600 due for the two lots mentioned, and deduct \$500 from his claim for services.

It does not appear from the complaint that the indebtedness of the company to A. Howard Hinkle for borrowed money was not due and enforceable at the time of the alleged duress, but, on the contrary, it is fairly inferable therefrom that it was then due and enforceable. It does not appear therefrom that the plaintiff's position, as vice-president and general manager of the company, was secured to him permanently or for any definite length of time, but, on the contrary, it is fairly inferable therefrom that, like all other officers and agents of the corporation, he was subject to displacement by a majority of the stockholders. In case the defendants had concluded to execute such threats, there would have been no obligation on their part to keep the same silent or refrain from informing persons proposing to purchase the plaintiff's stock. No fraud or deceit is alleged. It is true the plaintiff had put his money and property into the

corporation which was subject to the control of a majority of stockholders; and they may have threatened to unwisely manage it; but such action on his part was voluntary, and with full knowledge that he was thereby subjecting his property to the management and control of such majority. Besides, such majority could do nothing to injure the intrinsic value of the plaintiff's stock which would not have a corresponding effect upon their own stock.