2014 IL App (2d) 130706-U
No. 2-13-0706
Order filed June 17, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ROBERT IVERSEN, Plaintiff-Appellant, v. C.J.C. AUTO PARTS AND TIRES, INC., JOHN M. CRIVOLIO, JOHN J. CRIVOLIO, ANTHONY DEL BOCCIO, and GREGORY VERZAL, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 2011-CH-5552 Honorable Bonnie M. Wheaton, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff failed to state a cause of action for shareholder oppression, civil conspiracy, and breach of shareholder and director fiduciary duty where plaintiff failed to sufficiently allege that he was terminated from his job or deprived of his income or that defendant violated the corporate bylaws, mismanaged the corporation, or engaged in self-dealing; rather plaintiff alleged that he was unable to sell his shares in the closely-held corporation and retire; affirmed.

¶ 2 Plaintiff, Robert Iversen, appeals from the trial court's order dismissing his complaint against defendants, C.J.C. Auto Parts and Tires, Inc. (C.J.C.), John M. Crivolio (Crivolio Jr.), John J. Crivolio (Crivolio Sr.), Anthony Del Boccio, Jr. (Del Boccio Jr.), and Gregory Verzal,

alleging shareholder oppression, civil conspiracy, breach of director's fiduciary duty, and breach of shareholder's fiduciary duty. Plaintiff argues that the trial court erred by dismissing his complaint because he stated causes of action for all counts alleged. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff is an employee and shareholder of C.J.C., an Illinois closely-held corporation involved in the sale of auto parts and tires with locations in Melrose Park, Lombard, and Bensenville. This dispute involves plaintiff's desire to retire and his inability to sell his shares in C.J.C. Crivolio Jr. and Del Boccio Jr., are also employees and shareholders of C.J.C. Crivolio Sr. is a former and may be a current shareholder of C.J.C. and plaintiff alleges that he controls the company.

¶ 5 On November 23, 2011, plaintiff filed a complaint against defendants that the trial court dismissed without prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (625 ILCS 5/2-615 (West 2014)). On November 28, 2012, plaintiff filed a four-count amended complaint alleging: (1) shareholder oppression against all defendants; (2) civil conspiracy against all defendants; (3) breach of director's fiduciary duty against Crivolio Sr., Crivolio Jr., and Del Boccio Jr.; and (4) breach of shareholder's fiduciary duty against all of the individual defendants. Plaintiff requested the following relief: (1) an order directing the majority shareholders to purchase plaintiff's shares for $32,500 per share; (2) a declaratory judgment that Crivolio Sr. is not a shareholder of C.J.C; (3) an order removing some or all of the current directors or officers of C.J.C.; (4) an order appointing plaintiff as a director of C.J.C. until the sale of his shares is completed; (5) attorney fees, appraisal fees, and costs; and (6) other and future relief as the court may deem proper.

¶ 6 Plaintiff's amended complaint alleged the following. On October 15, 1982, Crivolio Sr., Anthony Del Boccio Sr., Timothy Cleary, and Robert Jensen entered into a "Purchase and Sale Agreement" (shareholder agreement), that granted each party equal ownership in the company. Each party owned 20 shares for a total of 80 shares. The shareholder agreement provided mechanisms for the sale or transfer of stock and the determination for the value of stock.

¶ 7 The shareholder agreement was amended in 1982 to allow Del Boccio Sr. to devise his shares to his son, Del Boccio Jr. The amendment also provided that when Del Boccio Jr. received his shares he would be employed with the company and he would enter into the shareholder agreement. Shortly thereafter, Del Boccio Sr. died and Del Boccio Jr. became the owner of 20 shares, and began working at the company at a salary comparable to the other three shareholders.

¶ 8 Plaintiff also alleged the following. On December 30, 1986, Crivolio Sr. bought Jensen's 20 shares for $100,000. However, in violation of the shareholder agreement, Jensen never offered his shares to the other two shareholders before the sale, and the shareholder agreement was not amended to authorize this sale. With this purchase, Crivolio Sr. owned 50% of the shares of the company.

¶ 9 On January 31, 1993, plaintiff purchased Cleary's 20 shares for $200,000, thus becoming a minority shareholder of the company. The other shareholders amended the shareholder agreement, "to require plaintiff to be employed with [C.J.C.], and to bind [plaintiff] to the shareholder agreement." Plaintiff did not receive a stock certificate or a copy of the shareholder agreement at that time.

¶ 10 In January 1993, Crivolio Sr. sold his 40 shares to Crivolio Jr. and Verzal; each purchasing 20 shares. Although Crivolio Sr. did not own any shares of the C.J.C. after this sale,

he "remained the primary authority and decision maker regarding the actions of the shareholders and directors as it relate[d] to the shareholder, director and management decisions." Plaintiff alleged:

> "Once it became apparent that Crivolio, Sr., may be overreaching his authority as a non-shareholder, he began claiming to the shareholders that he, in fact, retained two (2) shares of C.J.C. after his sale to Crivolio Jr. and Verzal."

Plaintiff also alleged that, after 1993, Crivolio Sr. was a director of C.J.C., maintained "complete secrecy over the books and records of the company," exclusively controlled the "salaries paid to all shareholder employees," hired and retained "family friends despite severe lack of competence," and made "substantial business decisions without input from the remaining shareholders, including" closing the Westmont store; "prohibiting" the closing of the Bensenville store despite its "chronic unprofitability," and instead expanded the store; and hiring a new sales employee without "any meaningful discussion with the remaining shareholders."

¶ 11 In February 2009, Crivolio Sr. and Crivolio Jr. transferred Del Boccio Jr. to the Lombard store "to eventually acquire [plaintiff's] job." In February or March 2009, plaintiff and the individual defendants met with C.J.C.'s accountant who reviewed C.J.C.'s 2008 financial statement. The accountant stated that each shareholder was worth "three quarters each" meaning $750,000 for each shareholder's one-quarter interest. In the spring of 2009, plaintiff called C.J.C.'s attorney and requested the shareholder agreement. The attorney claimed the shareholder agreement was written by another attorney and that he did not have it. Plaintiff then called Crivolio Jr., who was then president of C.J.C., and Crivolio Jr. told plaintiff that he thought Crivolio Sr. had the shareholder agreement "in his underwear drawer" and promised to get a copy for plaintiff. Crivolio Jr. did not give plaintiff the shareholder agreement. Plaintiff

received a copy of the shareholder agreement on September 2, 2009 after his attorney called Crivolio Sr.

¶ 12 In addition, plaintiff alleged the following. At the end of October 2009, plaintiff decided to retire. Plaintiff was told by a "company appraiser" that his 20 shares were worth $725,000. On October 29, 2009, at the Lombard store, plaintiff told Crivolio Jr. of his intention to sell his shares and to retire he gave Crivolio Jr. a written offer to sell his shares for the appraised price of $725,000. Crivolio Jr. handed the offer back to plaintiff and left "without comment." The following day, plaintiff "made the same announcement" to Del Boccio Jr. and Verzal. Crivolio Jr. told plaintiff that C.J.C.'s attorney "said that the notice had to be written in a different way." Plaintiff wrote a letter (attached to plaintiff's complaint) dated November 20, 2009, to Crivolio Jr, Del Boccio Jr., and Verzal. The letter states that plaintiff intended to retire and was offering his shares to the "remaining shareholders" for the independently appraised price of $725,000. The letter also states "If after 30 days" the shareholders do not "wish to purchase my shares, I will be free to sell them to anyone." On December 2, 2009, C.J.C.'s attorney sent a letter (attached to plaintiff's complaint) to Crivolio Jr, Del Boccio Jr., and Verzal, advising them regarding plaintiff's offer letter. The end of the letter provides, "cc: Mr. Robert Iversen." The letter described plaintiff's proposed sales price as "premature" and states:

> "I advise the three remaining shareholders to retain an appraiser who is to coordinate with [plaintiff's] appraiser to select a third appraiser; and the three appraisers are to determine the fair market value of [plaintiff's] stock."

¶ 13 Plaintiff also alleged the following. Shortly after January 1, 2010, Crivolio Sr. came into the Lombard store and told plaintiff, "You're too high!" In mid-January when plaintiff tried to arrange a meeting with "the other shareholders" and C.J.C.'s attorney, Crivolio Jr. refused,

stating: "we don't have to pay an attorney to tell us how to read a Buy-Sell agreement." Subsequently, plaintiff's attorney sent C.J.C.'s attorney a letter (attached to plaintiff's complaint), dated February 15, 2010, stating that since the other shareholders "have no interest in buying" plaintiff's shares and they had his offer for "over thirty days" the other stockholders have "waived their option to purchase [plaintiff's] shares." Plaintiff's attorney's letter also states that, pursuant to the shareholder agreement, plaintiff "is free to transfer his shares to anyone of his choosing." On March 12, 2010, plaintiff offered to sell his shares to Del Boccio Jr., wherein Del Boccio Jr. would pay a down payment of $100,000 and finance the balance over five years. Plaintiff and Del Boccio Jr. thought this would work because Del Boccio Jr. "would collect an additional amount of salary while owning 50% of the company, which is what happened early on in the company when Crivolio Sr. collected a double salary." However, on March 24, 2010, Del Boccio Jr. told plaintiff that "he was taking a pass on the deal" because he did not have the money for the down payment. When plaintiff told Del Boccio Jr. that he would be "marketing his shares outside of the company," Del Boccio Jr. responded, "Good luck in this economy." After a closed-door meeting in April 2010 from which plaintiff was "excluded" plaintiff told Crivolio Sr. that he was going to "look outside of the company for a buyer." Crivolio Sr. replied, "Good luck in this economy."

¶ 14 Plaintiff further alleged that, in May 2010, plaintiff found a potential buyer, Mike Armbruster, who had worked for another company, had experience as a "manager/counterman, was a foreign as well as domestic car specialist[,] and stated that he had a large book of business." Plaintiff set up a meeting between Armbruster and the shareholders. Crivolio Sr. and Crivolio Jr. refused to attend the meeting. Del Boccio Jr. and Verzal attended the meeting and at the end of the meeting they "shook Armbruster's hand and welcomed him into the business. By

the end of the summer of 2010, plaintiff's and Armbruster's attorneys prepared an agreement for the purchase of plaintiff's shares (the Armbruster agreement). The Armbruster agreement proposed the following. Armbruster would pay $650,000 as the total purchase price for plaintiff's shares; $15,000 due at the execution of the agreement, $50,000 due at closing, and the balance of $585,000 would be paid pursuant to the terms of a note. The agreement was "contingent upon" the following: "employment of [Armbruster] at the same annual base salary of $100,000 (which is the same amount that the other major shareholders receive), plus a year-end bonus equal to the other major shareholders;" the other shareholders' written waiver of their "right of first refusal," and approval of the sale by C.J.C. Plaintiff also alleged that the agreement required "that a stock certificate be issued for the stock being purchased."

¶ 15 Plaintiff alleged that in the fall of 2010, he drove to the Melrose store to discuss the Armbruster deal with Crivolio Jr. Crivolio Jr. told plaintiff, [Armbruster] will never work here," and "my old man says you can work until you're 99." When plaintiff told Crivolio Jr. that he was following the shareholder agreement, Crivolio Jr. "admitted dropping the ball" and said that he "should have done the appraisal process as stated in the Shareholder Agreement." In early October 2010, plaintiff brought Armbruster to the Lombard store and Crivolio Sr. called and angrily told plaintiff to get Armbruster "out of there." About the same time, Crivolio Jr. called plaintiff and said that Armbruster would be escorted off the premises by police if Armbruster ever came to work for the company.

¶ 16 Plaintiff also alleged in his complaint that at the end of 2010 he sent notice of a directors' and shareholders' meeting to the individual defendants, "the purpose of which was to accept Armbruster as a shareholder in [plaintiff's] place and [to approve] Armbruster as an employee earning equal pay" as the other equal shareholders. At the January 5, 2011, meeting, all of the

shareholders except plaintiff "summarily" voted without discussion against approving Armbruster as a shareholder and as an employee. When plaintiff's counsel asked Crivolio Sr. how plaintiff was supposed to retire, Crivolio Sr. told plaintiff's counsel, "He has to go through me!" Plaintiff sent a letter (attached to plaintiff's complaint) dated January 31, 2011, to the other shareholders offering to sell his shares for "$32,500 per share *** which reflects the fair market value of the shares offered for purchase by Mr. Armbruster." Plaintiff's letter also states that if that price was unacceptable, the shareholders were "required to appoint an appraiser to work with my chosen appraiser and a third independent appraiser to determine the fair market value of the stock." Plaintiff provided the name and address of his appraiser.

¶ 17 On January 26, 2011, Crivolio Jr. "replaced [plaintiff] with Del Boccio Jr. as the manager of the Lombard store." On several occasions during January and February of 2011, Crivolio Sr. stopped into the Lombard store, told plaintiff that he was angry that plaintiff would not lower his price, that he wanted a "special price" for plaintiff's shares, and warned plaintiff that plaintiff's job was in jeopardy. In February 2011, Crivolio Sr. took plaintiff in an office in the Lombard store and yelled, "I want you out of here!" and "I never should have sold to you!" During a meeting in March 2011 between plaintiff and Crivolio Sr. to discuss the stalemate, Crivolio Sr. told plaintiff that he had no intention of ever meeting Armbruster and that plaintiff could work at C.J.C. until he was 99. On March 4, 2011, plaintiff noticed that Del Boccio Jr. had processed a cash credit using plaintiff's initials. Plaintiff brought it to Del Boccio Jr.'s attention and asked Del Boccio Jr. to be more careful because Crivolio Sr. was looking for reasons to fire him.

¶ 18 Plaintiff also alleged that, in December 2011, after Crivolio Sr. had received a copy of plaintiff's complaint, Crivolio Sr. accused plaintiff of stealing from C.J.C. On December 22, 2011, Crivolio Sr. "was having difficulty matching the money with the slips" and he telephoned

plaintiff and screamed, "What did you do with the money?" Before plaintiff could reply, Crivolio Sr.'s assistant said, "Here it is."

¶ 19 On December 3, 2011, there was a meeting to elect officers and directors, the first one that was conducted while plaintiff was a shareholder. Plaintiff was elected as a director at the meeting. Also at the meeting, a motion was put forth to pass a resolution to approve and ratify all prior actions of the directors and officers. Plaintiff abstained from voting and the other shareholders voted in favor of the resolution. In January 2012, plaintiff received a copy of the minutes of the meeting and noticed that it incorrectly indicated that he voted to approve the resolution. Plaintiff wrote Crivolio Jr. and objected to the misrepresentation of his vote reflected in the minutes.

¶ 20 On February 23, 2012, while plaintiff was at home sick, Crivolio Sr. "rummaged through the accounts that [plaintiff] handled." From February through October 2012, several meetings were conducted by Crivolio Sr. that excluded plaintiff. In May 2012, Crivolio Jr. stormed out of the Lombard store telling plaintiff, "You know I want those shares."

¶ 21 On December 31, 2012, defendant C.J.C. filed a combined motion to dismiss plaintiff's amended complaint pursuant to sections 2-615, 2-619(a)(9), and 2-619.1 of the Code (735 ILCS 5/2-615, 5/2-619(a)(9), and 5/2-619.1 (West 2012)). C.J.C. argued: (1) "All Counts of the Complaint should be dismissed pursuant to 2-615 because the Plaintiff fails to properly allege causes of action for either shareholder oppression or civil conspiracy"; (2) "Count II should be dismissed pursuant to 2-615 because it fails to state a claim for civil conspiracy"; (3) "The Complaint should be dismissed pursuant to 2-619 because Affirmative Matter attached in the Armbruster Contract Demonstrate that the Defendants violated no obligation"; and (4) "The Plaintiff's Complaint, even if all facts are to be true does not constitute Oppressive Conduct."

¶ 22 After hearing argument by counsel, on May 15, 2013, the trial court granted C.J.C.'s motion to dismiss "without prejudice" and the case was set for status. On June 19, 2013, plaintiff's counsel advised the trial court that plaintiff had elected to stand on his amended complaint, and that he would not be filing a second amended complaint. The trial court then clarified its May 15 order, stating "it has dismissed all counts of Plaintiff's first amended complaint in granting Defendant's motion to dismiss." The trial court also stated, "Pursuant to Illinois Supreme court Rule 304(a) there is no just reason to delay enforcement or appeal of this Court's order." Plaintiff filed his notice of appeal on July 9, 2013.

¶ 23 II. ANALYSIS

¶ 24 Initially, we note that the individual/non-corporate defendants have not filed an appellees' brief. However, because the record is simple and the issues can be decided without an appellee's brief, we will decide the merits of this case. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 25 On appeal, plaintiff argues that the trial court erred by dismissing his complaint pursuant to sections 2-615 and 2-619(a)(9) and of the Code. Under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)) a defendant may raise alternative grounds for dismissal under section 2-615 (735 ILCS 5/2-615 (West 2012)) and section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2012)). A motion to dismiss under section 2-615 attacks the legal sufficiency of the complaint on the basis that, even assuming the allegations of the complaint are true, the complaint fails to state a cause of action that would entitle the plaintiff to relief. 735 ILCS 5/2-615 (West 2010). When ruling on a section 2-615 motion, the relevant question is whether, taking all well-pleaded facts as true, the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief

may be granted. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47. Documents attached as exhibits to a complaint become part of the complaint. *Miller v. Harris*, 2013 IL App (2d) 120512, ¶ 17. A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved under the pleading which will entitle plaintiff to recover. *Khan*, 2012 IL 112219, ¶ 47.

¶ 26 A section 2-619(a)(9) motion allows for dismissal when the claim asserted against the defendant is "barred by other affirmative matter avoiding the legal effect of or defeating the claim" (735 ILCS 5/2-619(a)(9) (West 2012)). *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54. We review *de novo* a trial court's dismissal under either section 2-615 or 2-619 of the Code. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 27 In ruling on a motion to dismiss, the court must accept as true all well-pled facts in the complaint and all reasonable inferences that can be drawn therefrom. *Sandholm*, 2012 IL 111443, ¶ 55. In making this determination, the court interprets the pleadings and supporting documents in the light most favorable to the plaintiff. *Id.* A cause of action should not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved under the pleading which will entitle plaintiff to recover. *Khan*, 2012 IL 112219, ¶ 47.

¶ 28 Plaintiff argues that count I of his amended complaint stated a cause of action for shareholder oppression. Section 12.56(a)(3) of the Business Corporation Act of 1983 (Act) provides remedies to shareholders of closely-held corporations where "directors or those in control of the corporation act in a manner that is illegal, oppressive, or fraudulent with respect to" the other shareholders. See 805 ILCS 5/12.56(a)(3) (West 2012). The statute does not define "oppressive." No Illinois case has provided a definition of "oppressive" within the meaning of the Act. Although the Act does not define what types of conduct are "oppressive," the few cases

that address the issue under Illinois law have found that conduct is oppressive if it is "arbitrary, overbearing and heavy-handed." See, *e.g.*, *Hager-Freeman v. Spircoff*, 229 Ill. App. 3d 262 (1992); *Compton v. Paul K. Harding Realty Co.*, 6 Ill. App. 3d 488, 499 (1972).

¶ 29 In *Compton*, 6 Ill App. 3d 488, the appellate court determined that the corporate president engaged in an "arbitrary, overbearing and heavy-handed" course of conduct. *Id*. at 499. The record showed that the corporate president solely controlled and directed the operations and policies of the corporation, and continued to raise his salary in violation of the shareholder agreement. *Id*. at 493, 496. The appellate court concluded that such conduct justified the trial court's finding of oppression and affirmed the order of dissolution; noting that the corporate president had an "imperious attitude" when questioned about his excessive salary. *Id*. at 499.

¶ 30 In *Gidwitz v. Lanzit Corrugated Box Co.*, 20 Ill. 2d 208 (1960), the trial court ordered dissolution of a closely-held family corporation under subsections of the Business Corporations Act requiring deadlock and oppression (now 805 ILCS 5/12.56(a)(1),(3) (West 2012)). *Id*. at 211. The corporation was "split fifty-fifty in stock ownership between the president's family and the family of the plaintiffs." *Id*. at 220. The supreme court affirmed, reasoning that the president of the corporation violated the bylaws, administered the affairs of the corporation for his own benefit, borrowed money from himself on behalf of the corporation and realized a profit, gave improper raises and took deductions from corporation officers without proper authorization, and used and lost corporate money to organized a separate corporation that he controlled. *Id*. 218-20. The supreme court also reasoned that the "president acted in an arbitrary and highhanded manner as president of the corporation—refusing to follow the dictates or direction of the corporate bylaws, or to subordinate his actions to the advice or control of the board of directors." *Id*. Thus, the supreme court concluded that dissolution was appropriate. *Id*. at 221.

¶ 31 In *Hager-Freeman*, 229 Ill. App. 3d 262, after the trial court dismissed the plaintiff's complaint, the appellate court reversed, holding that the plaintiff stated a cause of action for shareholder oppression. *Id*. at 276-77. The plaintiff alleged that the defendant, a shareholder in a closely-held corporation that had been formed by three equal shareholders, took control of the corporation by obtaining the third shareholder's shares in a deceptive transaction. The plaintiff also alleged that the defendant enriched himself and his son with corporate assets and the defendant failed to pay the corporation back for a debt that he had assumed from the third shareholder. *Id*. The plaintiff further alleged that, since the defendant's takeover, the plaintiff was terminated from her employment from the corporation, relieved of all her duties and told she would not receive any return on her investment in the future. *Id*. at 274-75. In addition, the plaintiff alleged that the corporate books showed false entries, corporate earnings dramatically declined, the defendant mismanaged the business, and the defendant increased his own salary and his son's salary. *Id*. at 276. Thus, the appellate court stated that the plaintiff's allegations "set out a course of unfair and heavy-handed conduct that may be fairly viewed as oppression." *Id*. at 276.

¶ 32 In *Notzke v. Art Gallery, Inc.*, 84 Ill. App. 3d 294 (1980), the plaintiff, one of three shareholders, was fired, depriving the plaintiff of his salary and his bonus. *Id*. at 295, 296. Further, the other two shareholders wanted to sell their shares but made the acquisition of their shares to the plaintiff "impossible." *Id*. at 299. In addition, after the plaintiff was fired, one of the other shareholders took over the plaintiff's job at the plaintiff's former salary and then purchased the other shareholder's shares to be paid over time. *Id*. at 296, 297. Given these facts, the appellate court determined that the plaintiff stated a cause of action for shareholder oppression. *Id*.

¶ 33 Plaintiff argues that he sufficiently alleged an arbitrary, overbearing and heavy handed course of conduct, particularly by Crivolio Sr. and Crivolio Jr., to state a cause of action for shareholder oppression. Plaintiff notes that he alleged that defendants purposely and intentionally cajoled and intimidated him into leaving C.J.C., tried to force him to sell his shares "at a lower-than-reasonable value," excluded him from the operation of C.J.C., demoted him, and accused him of stealing. Plaintiff also alleged that Crivolio Sr. had an "imperious attitude," and that Crivolio Sr. and Crivolio Jr. had a wholly dilatory reaction to plaintiff's request for the shareholder agreement and stock certificate, that defendants failed to call board of directors' and shareholder meetings for ten years, and called secret meetings.

¶ 34 Contrary to plaintiff's argument, we determine that plaintiff failed to state a claim for shareholder oppression. Unlike the situation in *Gidwitz* or *Compton*, there has been no allegation here of failure on the part of Crivolio Sr., or any of the other defendant to call policy-making board meetings, or that Crivolio Sr., or any other defendant, raised their own salaries or engaged in any other type of self-dealing. Although plaintiff may have been "demoted," unlike the situation in *Hager-Freeman* or *Notzke*, plaintiff does not allege that he was terminated from his employment or deprived of his income. See *Hager-Freeman*, 229 Ill. App. 3d at 274-75; *Notzke*, 84 Ill. App. 3d at 295. Further, unlike *Gidwitz*, plaintiff does not allege that Crivolio Sr. or any other defendant violated the corporate bylaws. See *Gidwitz*, 20 Ill. 2d at 218-20. In addition, plaintiff does not allege with any specificity that Crivolio Sr., or any other defendant, mismanaged the corporation and plaintiff does not sufficiently allege "a disarray of corporate affairs which would be indicative of an arbitrary course of conduct." See *Jaffe Commercial Finance Co. v. Harris*, 119 Ill. App. 3d 136, 146 (1983).

¶ 35 Plaintiff argues that the "gist" of his action is that he invested $200,000 in C.J.C., needs to sell his shares to retire, and that the marketability of his shares is limited. Plaintiff acknowledges that the shareholder agreement provided a "methodology" to sell his shares. However, plaintiff argues that the individual defendants failed to follow the terms of the shareholder agreement.

¶ 36 The intent of the parties is our primary objective when construing a contract. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). The best indication of the parties' intent is found in the plain and ordinary meaning of the language of the contract. *Id*. at 233. We will not "alter, change or modify existing terms of a contract, or add new terms or conditions to which the parties do not appear to have assented." *Thompson v. Gordon*, 241 Ill. 2d 428, 449 (2011). To determine the intent of the parties, a court must consider the contract as a whole and not focus on isolated portions of the contract. *Salce v. Saracco*, 409 Ill. App. 3d 977, 981 (2011). If the language of a contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract itself. *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007).

¶ 37 The relevant sections of the shareholder agreement provide:

"**ARTICLE IV**

Purchase of Sale of Stock Other Than by Reason of Death or Disability

If a Stockholder wishes to transfer his stock for any reason other than death or disability, *he must first offer such stock for sale to the other stockholders. The other Stockholders shall have thirty (30) days from the receipt of such offer during which time each may purchase* that amount of stock which bears the same ratio to the total shares being so offered as his individual shareholdings bear to the total outstanding stock other

than that of the offering Stockholder, *for the price and upon the terms and conditions hereinafter set forth. Thereafter, the Stockholder who wishes to transfer his stock shall be free to transfer such shares not purchased by the other Stockholders to anyone, and as to him, this Agreement is terminated.*

ARTICLE V

Purchase Price and Determination of Value of Stock

* * *

C. In the event that the parties shall fail to stipulate upon maintaining the last stipulated price or to agree upon a new stipulated price for a period of one (1) consecutive year, then the purchasers collectively shall appoint an appraiser *** and *** the selling Stockholder or his personal representative (in the event of a sale not because of death) shall appoint an appraiser and the two appraisers so appointed shall together appoint a third appraiser, and the three appraisers so appointed shall determine the fair market value of the stock to be sold as of the date of death or the date of sale not because of death as the case may be, and their decision in writing to the parties shall be binding on all parties hereto."

¶ 38 In this case, the parties agree that plaintiff sent a letter to defendants on November 20, 2009, offering to sell his 20 shares for $725,000; the value was determined by plaintiff's appraiser. Plaintiff also attached his offer letter dated January 31, 2011, to his complaint. Plaintiff sent a letter (attached to plaintiff's complaint) dated January 31, 2011, to the individual defendants offering to sell his 20 shares for "$32,500 per share *** which reflects the fair market value of the shares offered for purchase by Mr. Armbruster" or a total of $650,000. Plaintiff provided the name and address of his appraiser and invited the individual defendant's to begin the appraisal process provided in the shareholder agreement if plaintiff's price was

"unacceptable." Thus, according to the shareholder agreement, upon receipt of these offers, the individual defendants had 30 days to "purchase" plaintiff's shares. The price was to be determined by plaintiff and any purchasing stockholder each appointing an appraiser and then the two appraisers appointing a third appraiser. The three appraisers would then determine the fair market value of the shares. However, after plaintiff offered his shares more than once, defendants never began this appraisal process; they did not obtain an appraiser so that the two appraisers could choose a third appraiser and engage in the valuation process. Further, the individual defendants never purchased plaintiff's shares. Thus, according to the shareholder agreement, plaintiff was "free to transfer such shares not purchased by the other Stockholders to anyone, and as to him, [the] Agreement [was] terminated."

¶ 39 Plaintiff alleges that when he attempted to sell his shares to "anyone," namely, Armbruster, the individual defendants failed to follow the shareholder agreement as follows. Defendants failed to: approve of Armbruster; issue Armbruster a stock certificate when requested by plaintiff so plaintiff could complete his contract to sell his shares; and hire Armbruster in a position of "equivalent duties" and "equivalent pay," despite the fact that all shareholders were supposed to work with the Company, as set forth in the Shareholder Agreement." However, plaintiff cites to nothing in the shareholder agreement that either requires defendants to approve of a stock purchaser, or requires defendants to issue a potential stock purchaser a stock certificate prior to purchase, or requires defendants to promise employment to a potential shareholder. Thus, while plaintiff may have been able to sell his shares to "anyone," he has failed to allege that defendants breached the shareholder agreement. Plaintiff also alleged that defendants refused to arbitrate the shareholder agreement. However, plaintiff failed to allege that he

requested arbitration pursuant to the shareholder agreement. Thus, the trial court properly dismissed plaintiff's claim alleging shareholder oppression.

¶ 40 Next, plaintiff argues that he properly stated a claim for civil conspiracy. Initially, we note that plaintiff alleged civil conspiracy against all defendants, including C.J.C. This allegation is a legal impossibility. Corporations can only act through their agents. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App .3d 722, 737 (2009). Therefore, a corporation is incapable of conspiring with itself. *Small v. Sussman*, 306 Ill. App. 3d 639, 645 (1999). Thus, plaintiff failed to state a cause of action against C.J.C. for civil conspiracy. See *id*.

¶ 41 Regarding the individual defendants, to allege a cause of action for civil conspiracy, plaintiff was required to allege, *inter alia*, specific facts of an agreement between the individual defendants, and that a tortious act was committed in furtherance of that agreement. See *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 133 (1999). However, plaintiff's civil conspiracy count sets forth only a factual conclusion that defendants "all agreed to commence a course of conduct for the purpose [of] coercing" plaintiff to sell them his shares "at a price substantially below that of fair market value." See *Premier Networks, Inc. v. Stadheim and Grear, Ltd.*, 395 Ill. App. 3d 629, 633 (2009) ("a complaint will not survive a motion to dismiss if the complaint consists of only conclusions of law and conclusory factual allegations unsupported by specific factual statements"). Further, plaintiff's allegation that defendants conspired to not buy his shares also falls short because defendants were not obligated to buy plaintiff's shares. Plaintiff also alleged that defendants failed to approve the sale of plaintiff's shares to Armbruster and to hire him. Again, defendants were not obligated to do so. Plaintiff also alleged that defendants made his life "untenable," in an attempt to force him to sell his shares at lower than fair-market price. However, plaintiff's civil conspiracy claim fails for the

same reasons that plaintiff was unable to state a cause of action for shareholder oppression. Characterizing a combination of acts as a civil conspiracy is insufficient to withstand a motion to dismiss. See *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23-24 (1998); *Indeck North American Power Fund, L.P. v. Norweb PLC*, 316 Ill. App. 3d 416, 432 (2000). A conspiracy is not an independent tort. *Indeck North American Power Fund*, 316 Ill. App. 3d at 432. Because plaintiff fails to state an independent cause of action underlying his civil conspiracy claim, his claim for civil conspiracy fails. See *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 63 (1994).

¶ 42 Plaintiff also argues that he stated causes of action for breach of director and shareholder fiduciary duty. In this case, there is no doubt that the individual defendants owed plaintiff a fiduciary duty. See *Anest v. Audino*, 332 Ill. App. 3d 468, 476 (2002) (individuals who control closely-held corporations and shareholders owe a fiduciary duty to the corporation and the other shareholders). Assuming, *arguendo*, that plaintiff sufficiently alleged that the individual defendants' acts constituted a breach of fiduciary duty, plaintiff failed to allege that such acts were the proximate cause of the damages plaintiff claims he suffered, namely, being precluded from selling his shares to anyone, incurring significant personal and legal time and expense, and diminishing the value of C.J.C. See *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000) (to prevail on a claim for breach of fiduciary duty a plaintiff must prove that the defendant breached this duty, and that the plaintiff suffered damages proximately caused by the breach). Accordingly, the trial court properly dismissed plaintiff's claims against defendant alleging breaches of shareholder and director fiduciary duty.

¶ 43 Finally, C.J.C. urges this court to award attorney fees and costs incurred on appeal pursuant to section 12.60(j) of the Business Corporations Act (805 ILCS 5/12.60(j) (West

2014)). Pursuant to section 12.60(j), our authority to award fees and costs is limited to situations in which we find that a party acted "arbitrarily, vexatiously, or otherwise not in good faith." *Id*. Although plaintiff was not successful on appeal, he presented objectively reasonable arguments. After reviewing the record, we agree with the trial court that this is an "untenable position for all the parties involved." Thus, we decline C.J.C.'s request for attorney fees and costs incurred on appeal pursuant to section 12.60(j) of the Business Corporations Act.

¶ 44 III. CONCLUSION

¶ 45 Accordingly, we affirm the judgment of the circuit court of Du Page County.

¶ 46 Affirmed.