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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3636-08T3

ROBERT SIPKO,

Plaintiff-Appellant/
Cross-Respondent,

v.

KOGER, INC., KOGER DISTRIBUTED SOLUTIONS, INC., KOGER PROFESSIONAL SERVICES, INC., KOGER LIMITED (DUBLIN), RASTISLAV SIPKO and GEORGE SIPKO,

Defendants-Respondents/
Cross-Appellants.

Argued: March 16, 2011 - Decided: May 16, 2011

Before Judges Cuff, Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-393-07.

Dennis T. Smith and Michael S. Stein argued the cause for the appellant/cross-respondent (Pashman Stein, attorneys; Mr. Smith and Mr. Stein, of counsel and on the brief).

Paul A. Sandars, III, argued the cause for respondents/cross-appellants (Lum, Drasco & Positan, attorneys; Mr. Sandars, of counsel and on the brief; Bernadette H. Condon and Scott E. Reiser, on the brief).

PER CURIAM

In this business dispute among family members, plaintiff Robert Sipko appeals from a final judgment dismissing most of his claims against his father, George Sipko, and brother, Rastislav Sipko (Ras). George and Ras cross-appeal from a dismissal of their counterclaim seeking damages and counsel fees. We affirm in part and reverse in part.

George started a business which evolved into three close corporations.[1] Robert claimed that he became an oppressed minority shareholder in the companies because George and Ras disapproved of Robert's relationship with Lisa, who became his wife, and his resignation was the product of physical force and intimidation. As a result, Robert attempted to force a buy-out of his interest in the businesses, as well as two properties he partly owned with George and Ras.[2] George and Ras countered that Robert voluntarily resigned to reside and work in California.

The Sipko family immigrated to the United States from Slovakia in the early 1990s. In 1994, George formed Koger to create information systems software for use by investment funds for internal processing. Koger's customers tended to be hedge fund and pension fund administrators. Robert and Ras joined

[1] Koger, Inc. (Koger), Koger Professional Services, Inc. (KPS), and Koger Distributed Solutions, Inc. (KDS) (Koger entities).
[2] Trotters Lane property (Trotters Lane) and Halifax Road property (Halifax Road).

Koger in 1997 and 1998, respectively. Robert attended graduate school in 1998 and returned to Koger in 2000. George was Managing Director, responsible for the development and design of the software. Ras primarily took care of the accounting, billing and bookkeeping. Robert helped with the development of the software and was responsible for the development of internet technology. Robert's title was Chief Technology Officer.

Around 2000, George gifted to Robert and Ras a 1.5% ownership interest in Koger, and George retained ownership of the remaining 97%. The parties disputed whether the 1.5% interest for each son was an unconditional gift from George. Robert maintained that it was an unconditional gift. George and Ras both testified that the gift was conditioned on the sons working in the Koger entities. The terms of the gift were never reduced to writing.

In June 2002, KDS was formed to diversify Koger's service lines, protect against liability, and aid in George's estate planning. In December 2004, KPS was formed for similar reasons, and to develop new software. Robert and Ras each had an ownership interest in KDS and KPS.

The Sipkos purchased Trotters Lane as a residence in which they would live with Gabriella, the mother of Robert and Ras.[3] Robert contributed 25% of the purchase price, or $250,000. In December 2004, Robert and Ras purchased the vacant Halifax Road property as an investment. Robert contributed approximately $285,000 for his 50% ownership interest.

George controlled the Koger entities. At George's direction, the Koger entities distributed their yearly profits, on an aggregate basis, 50% to George and 25% each to Robert and Ras. This distribution arrangement was never reduced to writing. George testified that he determined what salary his sons would receive, how much would be charged for the licensing of Koger's products, and how much money went back and forth between Koger, KPS and KDS. George also had the authority to veto any licensing agreements entered into by KPS and KDS.

George, Ras and Robert each used company credit cards for personal expenses. The parties disputed whether Robert's personal use of company credit was disproportionate to Ras's and George's personal charges.

Robert met Lisa in the summer of 2004 and told Gabriella about her in the fall of 2005. Gabriella was concerned about the relationship because Lisa was older, divorced with children,

[3] Gabriella died before the trial began.

and from a "different culture." Gabriella told George about the relationship on February 3, 2006.

Once George learned about Lisa, the relationship between Robert and his family changed. Robert testified George warned him that Lisa would steal his money and chastised him for wanting to marry someone who was divorced with children and from a different culture. Robert contended that George physically harmed and threatened him and forced him to transfer his interest in KPS and KDS by signing certain documents. George denied these allegations.

The parties disputed whether Robert relinquished his ownership interest in KDS and KPS. Robert signed two documents purportedly transferring his interest in KDS and KPS, contended that George forced him to sign the documents, and argued that he received nothing of value in return. George and Ras testified that Robert voluntarily relinquished his interest in KDS and KPS.

Robert moved out of the family home and requested permission to work remotely from Lisa's home in California. George suggested to Robert that he should bring Lisa to the east coast because the Koger entities had their base in New Jersey.[4]

[4] The only exception was Koger's affiliate, Koger Limited (Dublin), which was located in Europe.

George denied discussing whether Robert could work remotely, but testified that it would not have been possible because of the time difference between California and Europe. George also denied telling Robert that if he did not end his relationship with Lisa he could no longer work for Koger.

Robert worked remotely anyway and it affected his job performance. There were times when Robert took the red-eye flight back from California and then showed up late for work on Monday, or would take a nap in his car. There were instances where Robert missed a Monday meeting because he was late arriving from California.

On March 10, 2006, Robert submitted his resignation from Koger, stating:

> I feel that the separation between business and family matter[s] that I have been asking for has not been honored. I have come back to work three times with the hope that as a family, we can keep the business separate from the family matters. Instead, each time more escalation of threats and imposition of control resulted. I believe that this has now reached a point of not being healthy for you as parents, me as your son and above all, Koger. As such, I am putting in my resignation of employment with Koger effective March 13, 2006. This is not what I wanted. . . . Unfortunately, I am left with no choice but to move on with my career elsewhere.

Robert and Lisa were married on December 31, 2006.

After Robert resigned and moved out of Trotters Lane, George and Ras passed a resolution recalling Robert's shares in Koger because Robert had abandoned the company and violated the condition for retaining the 1.5% interest. Ras also asked Robert to sign a document stating the date of his resignation from Koger and that Robert was relinquishing his 1.5% interest in Koger. Robert refused to do so, maintaining that he still owned stock in Koger.

In August 2007, Robert requested that Ras buy out his 50% interest in the Halifax Road property and that Ras and George buy out his 25% interest in the Trotters Lane property. Ras and George refused Robert's requests.

On November 13, 2007, Robert filed a verified complaint in the Chancery Division against George, Ras and each of the Koger entities seeking an accounting, the appointment of a fiscal agent, injunctive relief, compensatory and punitive damages, and attorney's fees. Robert sought to compel a buy-out of his interests, to dissolve the Koger entities, and to partition the Trotters Lane and Halifax Road properties. George, Ras, and the Koger entities filed a counterclaim and sought attorney's fees and damages for Robert's improper use of corporate credit cards. The judge ordered an accounting and enjoined any transfer or

sale of ownership interest in the Koger entities without court approval.

The judge conducted a bench trial over seven days and rendered a written decision on January 12, 2009. He found that Robert quit the Koger entities because George and Ras refused to accept Robert's relationship with Lisa. The judge disbelieved Robert's testimony that he was assaulted, intimidated or threatened, concluded that Robert was not an oppressed minority shareholder, and stated that Robert voluntarily surrendered his interests in KPS and KDS, companies with no value. He found that George gave Robert an unconditional gift of 1.5% ownership interest in Koger but did not compel a buy-out of that interest because Robert was not an oppressed minority shareholder. The judge ordered that Robert be bought out from his interests in the Trotters Lane and Halifax Road properties, dismissed the counterclaim, and denied all requests for counsel fees.

Robert then filed a motion to clarify whether his 1.5% interest in Koger included the value of KPS and KDS. On March 20, 2009, the judge refused to make that finding and denied Robert's motion. This appeal follows.

On appeal, Robert contends that the judge erred by denying his request for (1) a buy-out of the Koger entities; (2) counsel fees; and (3) clarification of whether the 1.5% ownership

interest in Koger included the value of KPS and KDS. In their cross-appeal, George and Ras argue the judge erred by (1) finding that George made an unconditional gift of 1.5% interest to Robert; (2) ordering that Robert's interest in Trotters Lane be bought out; and (3) denying counsel fees.

Robert's argument concerning his request for clarification is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We confine our discussion to the parties' remaining contentions.

The scope of review of a judgment entered in a non-jury case is that the findings on which the judgment is based should not be disturbed unless they are not supported by adequate, substantial and credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). Thus, the fact findings and legal conclusions of the trial judge should not be disturbed unless the court is clearly convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonable credible evidence as to offend the interests of justice. Id. at 484.

I

We begin by addressing Robert's argument that the judge erred by denying his request to buy-out his interest in the

Koger entities. Robert contends that he was an oppressed minority shareholder, and that his transfer of stock back to KDS and KPS was void because it was made under duress and without consideration. There is sufficient credible evidence that Robert was not an oppressed minority shareholder, and that his transfer of stock was void.

Whether a shareholder is oppressed, as that term is used in the minority shareholder oppression statute, is a mixed question of law and fact. Walensky v. Jonathan Royce Int'l, Inc., 264 N.J. Super. 276, 279 (App. Div.), certif. denied, 134 N.J. 480 (1993).

N.J.S.A. 14A:12-7 provides in pertinent part:

> (1) The Superior Court . . . may . . . order a sale of the corporation's stock . . . upon proof that
>
> . . . .
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> (c) In the case of a corporation having 25 or less shareholders, the directors or those in control . . . have acted oppressively or unfairly toward one or more minority shareholders in their capacities as shareholders, directors, officers, or employees.

This statute is interpreted broadly to provide remedies for the distinctive problems of close corporations. Brenner v. Berkowitz, 134 N.J. 488, 508 (1993). Shareholders in a close corporation need special protection because of their unique

vulnerability to be "frozen out" of the management of the corporation, and their inability to readily sell their shares when they become dissatisfied with management. Bostock v. High Tech Elevator Indus., Inc., 260 N.J. Super. 432, 443 (App. Div. 1992); Exadaktilos v. Cinnaminson Realty Co., Inc., 167 N.J. Super. 141, 153 (Law Div. 1979), aff'd, 173 N.J. Super. 559 (App. Div.), certif. denied, 85 N.J. 112 (1980).

Oppression does not require illegality or fraud; rather, oppression is defined as frustrating the reasonable expectations of the shareholder's role in the corporation. Brenner, supra, 134 N.J. at 506, 510. The shareholder must demonstrate a nexus between the alleged oppressive conduct and his or her interest in the corporation. Id. at 508. In determining that nexus, the court has the discretion to determine which factors are pertinent to its evaluation of the quality and nature of the misconduct. Ibid. Even non-monetary expectations, such as the termination of a shareholder's status as an employee, should be considered. Id. at 509. The minority shareholder has the burden of demonstrating both the misconduct and the nexus. Id. at 510. Cases under the statute "are very fact sensitive, and thus any hard and fast rules are difficult to formulate." Id. at 516.

"Thus, the statutory language embodies a legislative determination that freeze-out maneuvers in close corporations constitute an abuse of corporate power." Exadaktilos, supra, 167 N.J. Super. at 154. A court must determine initially the understanding of the shareholders as to their expectations vis-à-vis the corporation. Id. at 155. "Armed with this information, the court can then decide whether the controlling shareholders have acted in a fashion that is contrary to this understanding . . . ." Ibid.

To support his determination that Robert was not an oppressed shareholder the judge found that:

> The weight of the competent credible evidence is that . . . Robert Sipko quit the Koger entities because his family . . . refused to accept his relationship with a woman named Lisa, whom he eventually married. The Court is unable to credit the plaintiff's claims of physical assault, intimidation, menacing or threats of violence: the allegations may possibly be true, but none were proven to be true. The family's refusal to accept, honor or respect his relationship with Lisa proved intolerable to Robert, and he made his choice to leave the company and move out to California with Lisa.
>
> . . . Robert demanded but did not - in his view - receive his parents[']
> unconditional love, which, in his mind, meant parental acceptance of Lisa and his relationship with Lisa. . . . Robert began to spend weekends with Lisa in California, which . . . negatively impacted his ability to perform his job at Koger. George and Ras

complained about the negative effect Robert's relationship with Lisa was having on the business. None of this remotely approaches duress by the family members against or upon Robert. It is not conduct that can even be faulted in any legal sense, or characterized as unreasonable or oppressive. It is simply family dynamics, being played out in the context of a family business.

. . . He was not forced out; he was not fired; he was not disassociated from the business; he was not locked out. He found he could no longer work in the family business under all the circumstances, and so he left.

. . . The idea that Robert was in any way forced out of the business against his will simply has no basis in the credible record of this case.

I stress that the family reaction to Lisa, and the objections of George and Ras to the negative impact Robert's conduct was having on the business, was not expressed in any oppressive or unreasonable conduct on the part of George or Ras against Robert. Robert was not frozen out of the decision-making process, nor deprived of input and authority within his very substantial spheres of authority within the business. He was not even in open conflict with his father or brother on business matters.

Again, he was not ousted, he left of his own accord.

. . . .

I find in the record before me no basis for finding that any defendant has acted fraudulently or illegally[], mismanaged the corporation, or abused their authority as officers or directors, or have acted

> oppressively or unfairly toward minority shareholder Robert Sipko, or thwarted any reasonable expectations of Robert, within the meaning of N.J.S.A. 14A:12-7(1)(c), or otherwise.
>
> Robert presented George with an ultimatum:
>
> > If you are able to separate this from business and you want me to continue to help the company independently of what my personal life holds, I'm ready to help. However, if you are not ready or willing to separate it and based on it you are not willing for me to continue in the firm, I can only accept it, respect it and look for a job elsewhere. Please let me know your final decision so I can adjust my schedule.

The judge found that Robert

> began to chafe under [George's] style of leadership, and longed to rise within the family business, with George's role correspondingly diminished. This was a subsidiary factor in the decision of Robert to leave the business, and he left with the firm, announced expectation that Koger would not survive as a thriving business enterprise, in his absence.

Robert argues that he was oppressed because, subsequent to February 3, 2006, he was allegedly subject to a hostile work environment in which constant complaints and threats were directed towards him. Mere disagreement or discord between the shareholders, however, is not sufficient to constitute oppression. Brenner, supra, 134 N.J. at 506. Moreover, Robert

was only in the office on a few occasions between February 3 and the date he resigned.

Robert contends that his reasonable expectations were denied because he was not permitted to work from California. A minority shareholder's expectations must be balanced against the corporation's ability to exercise its business judgment to run its business effectively. Muellenberg v. Bikon Corp., 143 N.J. 168, 179 (1996). There is evidence in the record that George considered it problematic for Robert to work from California, and Ras testified that Robert's weekend commuting from California impacted Robert's full participation in the company.

Robert argues that he had a reasonable expectation to remain an employee of Koger. However, Robert resigned rather than being terminated. See Exadaktilos, supra, 167 N.J. Super. at 155-56 (no shareholder oppression where minority shareholder voluntarily quit and could not get along with other employees).

Robert also claims that holding a December 2006 Koger board meeting without him, and rejecting his request for financial information in the summer of 2007, constituted oppression. Robert, however, was no longer a shareholder in Koger when these actions took place, and thus was not entitled to either notice of the meeting or the financial information.

While Robert was not an oppressed shareholder, his transfer of stock back to KDS and KPS was void for lack of consideration. The judge found consideration existed, but that Robert was not entitled to buyout his interest in KDS and KPS. The judge concluded Robert did not transfer his interest under duress and that the companies had no value. George and Ras contend that Robert's relinquishment of his duties and liabilities as owner in the Koger entities constitutes consideration. However, Robert resigned as an employee after he signed the documents transferring his stock and did not receive anything of value in return for the transfer of his interest in KDS and KPS. Although the judge found that the companies had no value, KDS and KPS earned income and had a net worth at the end of 2005. KPS's earnings increased in 2006 and 2007. Thus, substantial credible evidence supports the finding there was no consideration and that KDS and KPS had value. We affirm, however, the judge's ruling not to compel a buyout of Robert's interest in KDS and KPS because Robert was not an oppressed minority shareholder. As a result, Robert retains his 50% interest in both KDS and KPS.

II

Next, we address Robert's contention that the court erred by denying him, under the Business Corporation Act, N.J.S.A.

14A:1-1 to 17-1, counsel fees he incurred in defending against the counterclaim. Robert contends that his conduct concerning the use of the corporate credit cards was not relevant to whether he was entitled to indemnification.

The trial court did not abuse its discretion by rejecting Robert's claim for counsel fees. Robert failed to establish a statutory or non-statutory basis for a counsel fee award. In denying Robert's motion for counsel fees, the judge stated:

> What sets this case apart is the fact that, and it's deeply offensive to this Court, father and both sons profited immensely from operating these entities . . . while running . . . substantial personal expenses through these companies. I found that all the parties were engaged in illegal tax avoidance on a substantial scale.
>
> . . . .
>
> It cannot be that the law requires this Court to direct that the attorney's fees of an individual engaged in illegal tax avoidance scheme be reimbursed, where the only reason there's not a judgment against him is that the accusers were equally guilty of the same conduct, and because of a failure of proof in discovery.

Under N.J.S.A. 14A:3-5(4), a corporation is required to "indemnify a corporate agent against expenses to the extent that such corporate agent has been successful on the merits . . . or in defense of any claim, issue or matter therein."

"[S]tatutes such as N.J.S.A. 14A:3-5 are intended to provide indemnification to protect persons who exercise binding managerial authority and discretion on behalf of a corporation in matters involving third parties." Cohen v. Southbridge Park, Inc., 369 N.J. Super. 156, 174 (App. Div. 2004). Its purpose is "'to encourage capable and responsible individuals to accept positions in corporate management, secure in the knowledge that expenses incurred by them in upholding their duties will be borne by the corporation.'" Id. at 172 (quoting 13 Fletcher Cyclopedia of the Law of Private Corporations § 6045.10 (1995)). Specifically, N.J.S.A. 14A:3-5(4) requires corporations to indemnify its corporate agent if that agent is successful in a shareholders' derivative suit. Id. at 164.

Here, the counterclaim was neither a shareholders' derivative suit nor an action involving a third party. Nor did it involve Robert's exercise of his duties as an officer or director. Rather, the counterclaim related to his alleged use of corporate credit cards for personal use. That all parties were apparently engaged in an effort to use corporate credit cards as a means of tax avoidance is irrelevant to whether plaintiff was entitled to counsel fees under the terms of N.J.S.A. 14A:3-5(4).

Robert notes that KPS's and KDS's bylaws provide for indemnity. However, while these bylaws are contained in the record, Koger's are not. The counterclaim specifically relied on Robert's status as an employee and owner of Koger. Therefore, it is Koger's bylaws that would be determinative as to the question of indemnification. Since those bylaws are not in the record, and neither is the pertinent indemnification language of that document, Robert's reliance on the other two entities' bylaws as a non-statutory basis for a counsel fee award cannot be sustained.

III

We agree with the contention on the cross-appeal that the judge erred by finding that George's gift to Robert of 1.5% ownership interest was unconditional.

There is no dispute that George gave the 1.5% percent interest in Koger to Ras and Robert without consideration and that it was therefore a gift. "A gift is a transfer without consideration . . . ." Hill v. Warner, Berman & Spitz, P.A., 197 N.J. Super. 152, 164 (App. Div. 1984). The rules for determining the validity and effect of gifts of stock are largely the same as those applicable to gifts of personal property except that the transfer of stock is subject to statutory regulation. Id. at 161. While the transfer of shares

is governed by provisions of the Uniform Commercial Code, N.J.S.A. 12A:8-301 to 8-307, there may be constructive delivery and acceptance of a gift of stock when there has been a change in the relation of the parties to it. Hill, supra, 197 N.J. Super. at 161-62 (App. Div. 1984).

Whether a gift is conditional or absolute is a question of the donor's intent, to be determined from any express declaration by the donor at the time of the making of the gift or from the circumstances. 38 Am. Jur. 2d Gifts § 67 (2010). Moreover, when the donee fails or refuses to comply with a condition subsequent to the gift, the donor may revoke the gift. Ibid.

Here, there was substantial evidence that George transferred the 1.5% interest in Koger to Ras and Robert on the condition that they remain with the company. Robert testified it was assumed that he would always work in the companies.

> THE COURT: Did the family ever arrive at an understanding as to what would happen if one of the family members wanted out of any of the Koger entitites?
>
> A: No, we never had that conversation. It was always implicitly assumed that -- especially by my father -- that we're going to be working together for the rest of our lives.

George testified that the interest was gifted on condition that his sons remain with the companies.

Q: Now, George did you at some time give each of your sons one and a half percent of Koger, Inc., stock to them?

A: Yes, correct.

Q: Was this a gift?

A: Yes. Yes, it was.

Q: Were there any conditions on the gift?

A: Yes. That they will work honestly and as a corporation.

Q: Did either Robert or Rastislav pay any money to you for their stock interest in Koger, Inc.?

A: No, they have not. It was a gift of shares.

. . . .

Q: Let me show you Defendant's Exhibit 9. Can you identify that, sir?

A: These are minutes from Koger. Where I took away from him one and a half shares from the Koger.

Q: Why did you take one and a half percent from Robert in Koger, Inc.?

A: These were the shares that were given to him. Gifted. And this gift was conditional to the fact that he will continue to work at Koger diligently. And that he's going to defend and protect the corporation as the officer.

Ras testified that George gave him and Robert the interest so long as they remained with the companies.

Q: Now, how did you [Ras] get one-and-a-half percent of Koger, Inc.?

A: It was given to me, to us, both of us by George, and it was conditioned upon the full-time employment.

Q: So you didn't pay any money for the one-and-a-half percent?

A: No, I did not.

. . . .

Q: Now, how was compensation determined for you and your brother?

A: Well, when there was enough money George and I'd say we have a surplus and it would be time to make payments to ourselves and George, and we'd determine how, and the payments would be split.

Q: Did George give you any idea of what the basis for his compensation decisions were?

A: No.

Q: Did you understand that you could get compensation from your father if you didn't work for the company?

A: That never was the understanding that we had.

Q: What was the understanding?

A: The understanding was that while we worked for the firm we get the benefits of being compensated.

. . . .

Q: Now, between the time that he [Robert] issued his resignation notice and the time that he physically left the office, did he

ever ask you or your father for any money for any stock he may have owned in any of the entities?

A: No, he did not.

. . . .

Q: And after Robert left, would you say that he was welcome to return at any time to work?

A: Absolutely. We, in fact, felt that he's going to come back, and we paid him for some time after he left. We paid him salary, we paid him also the medical insurance.

Q: And did he get a K1 for Koger for 2006?

A: He did, yes.

In finding that the gift was unconditional the court "disbelieve[d] the proffered, contrary evidence." A trier of fact is free to reject testimony, even when not directly contradicted, when it contains inherent improbabilities or contradictions which, alone or in connection with other circumstances in evidence, raises suspicion as to its truth. CPC Int'l, Inc. v. Hartford Accident & Indem. Co., 316 N.J. Super. 351, 375 (App. Div. 1998), certif. denied, 158 N.J. 73 (1999). George's and Ras's testimony did not contain "inherent improbabilities or contradictions." They both stated that the gift was conditioned on continued participation in the company. Even though denying that such a conversation took place, Robert

acknowledged that there was an expectation that all three would always work for the company.

Consequently, there is a lack of such evidence to support the court's determination that the gift was unconditional. Rova Farms Resort, Inc., supra, 65 N.J. at 483-84. Therefore, once Robert resigned from Koger, that condition was breached and George was entitled to revoke the gift of stock. See Aronow v. Silver, 223 N.J. Super. 344, 354 (Ch. Div. 1987) (stock placed in joint names as a gift in anticipation of marriage reverted back to the stockholder after engagement was broken). As a result, Robert's shares in Koger were properly revoked in December 2006.

IV

We reject the argument by George and Ras that the judge erred by compelling a buy-out of Robert's interest in Trotters Lane. The judge did not err in determining that Robert's interest in Trotters Lane should be bought out without any offsets.

Robert purchased his 25% interest in Trotters Lane with money he received from Koger. Robert stated it was money he had "earn[ed]," while George stated the money was a "bonus." A bonus is "something given or paid in addition to the usual or expected." Chapel v. Bd. of Trustees, 258 N.J. Super. 389, 393-

94 (App. Div. 1992) (citation and internal quotations omitted); see also Anthony v. Jersey Central Power & Light Co., 51 N.J. Super. 139, 143-45 (App. Div. 1958). Thus, by his own admission, George's description of the money given to Robert to purchase Trotters Lane showed it was not a gift.

George and Ras also argue that if the money used by Robert to purchase his interest in Trotters Lane was not a gift, they should be entitled to offsets to the buyout price to account for the carrying costs of the property. The court found that "[n]o justified offsets were proven to exist."

George and Ras argued that they had produced an itemized list of carrying costs allegedly incurred by George concerning the Trotters Lane property. However, as the trial court noted, George and Ras did not offer anything to substantiate the list of expenses. Thus, the trial court's determination that defendants had not proven any offsets had sufficient support in the record.

V

George and Ras maintain that the trial court abused its discretion by not awarding them counsel fees as the prevailing parties in the shareholder oppression claim, under N.J.S.A. 14A:12-7(10). They analogize recovery under this statute to the

recovery of counsel fees under the Frivolous Litigation Statute, N.J.S.A. 2A:15-59.1. George and Ras contend Robert knew that his claim that he was an oppressed shareholder was meritless. The court did not abuse its discretion in denying counsel fees.

A reviewing court should only reverse the trial court's determination denying counsel fees if there was an abuse of discretion. Torres v. Schripps, Inc., 342 N.J. Super. 419, 438 (App. Div. 2001). We conclude that the trial court did not abuse its discretion by denying counsel fees under the shareholder oppression statute, which provides in part:

> If the court determines that any party to an action brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including counsel fees incurred in connection with the action, to the injured party or parties.
>
> [N.J.S.A. 14A:12-7(10).]

Thus, the statute requires a finding that a party acted arbitrarily, vexatiously or with a lack of good faith. Belfer v. Merling, 322 N.J. Super. 124, 146 (App. Div.), certif. denied, 162 N.J. 196 (1999). This does not mean that every corporation that wins a shareholder oppression suit may recover counsel fees; bad faith, or one of the other states of mind, must also be proved. Ibid.

Here, the judge correctly held that Robert's shareholder oppression action was not brought in bad faith. Robert had several viable bases for bringing the action. His interest in Koger had been revoked. An alleged agreement with Ras to exchange their shares in KPS and KDS had not been honored. He believed he was unjustly pressured by George to forfeit his shares because George rejected the marriage. All these had a basis in the record. Their success in the litigation was not the measure by which to determine whether he brought the action vexatiously or in bad faith. See Belfer, supra, 322 N.J. Super. at 146 (bad faith and vexatiousness are not shown merely because shareholder acted to prevent himself from being frozen out of the company).

After a thorough review of the record and consideration of the controlling legal principles, we conclude that the remaining arguments on appeal are without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part and reversed in part.