

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JUDITH A. LAWTON, THOMAS LAWTON, :
MARSHA E. DARAS, STEPHEN H. LAWTON, :
NANCY J. CRONIN, DAVID T. LAWTON, :
T. MICHAEL LAWTON, JOANNA J. LAWTON :
AND SUZANNE M. LAWTON, :

Plaintiffs

C.A. No. 98-288

v.

ROBERT NYMAN, KEITH JOHNSON, :
KENNETH NYMAN, NYMAN :
MANUFACTURING CO., INC., :

Defendants

AMENDED COMPLAINT

Parties

1. Plaintiffs Judith A. Lawton and Thomas Lawton, husband and wife, are residents of Lawrenceville, Georgia.
2. Plaintiffs Marsha E. Daras, Stephen H. Lawton, Nancy J. Cronin, David T. Lawton, T. Michael Lawton, Joanna J. Lawton and Suzanne M. Lawton are the adult children of plaintiffs Judith A. Lawton and Thomas Lawton. Plaintiff Marsha E. Daras is a resident of Michigan, plaintiff Nancy J. Cronin is a resident of Virginia, plaintiff David T. Lawton is a resident of Massachusetts, and plaintiffs Stephen H. Lawton, T. Michael Lawton, Joanna J. Lawton and Suzanne M. Lawton are residents of Rhode Island.
3. Defendant Nyman Manufacturing Co., Inc. ("Nyman Mfg.") is a Rhode Island corporation with a principal place of business in East Providence, Rhode Island.

4. Defendant Robert C. Nyman is a resident of Rhode Island and the brother of plaintiff Judith A. Lawton. Defendant Robert C. Nyman was at all times pertinent hereto an officer, director, shareholder and employee of Nyman Mfg.

5. Defendant Keith Johnson is a resident of Rhode Island, and was at all times pertinent hereto an officer, director, shareholder and employee of Nyman Mfg.

6. Defendant Kenneth Nyman is a resident of Rhode Island and the brother of plaintiff Judith A. Lawton. Defendant Kenneth Nyman was at all times pertinent hereto an officer, director, shareholder and employee of defendant Nyman Mfg.

Jurisdiction

7. This action arises under the anti-fraud provisions of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)], and Securities and Exchange Commission Rule 10b-5 (17 C.F.R. §240.10b-5). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 and 15 U.S.C. §78aa. This Court also has supplemental (pendent) jurisdiction pursuant to 28 U.S.C. § 1367 over the related state common law claims of fraud, negligent misrepresentation and breach of fiduciary duty asserted herein.

8. Venue properly lies in the United States District Court for the District of Rhode Island pursuant to Section 27 of the Securities Exchange Act, 15 U.S.C. §78aa, in that the securities transaction constituting the violation alleged herein occurred in Rhode Island.

Factual Allegations

9. In and prior to May 1996, plaintiffs each held Class A non-voting shares of common stock in defendant Nyman Mfg., and collectively plaintiffs held a total of 952 shares in Nyman Mfg. These shares of stock are/were securities pursuant to 15 U.S.C. §78c(a)(10).

10. On or about May 8, 1996, defendant Keith Johnson via United States mail forwarded to plaintiffs letters inviting plaintiffs to sell their shares of Class A common stock in Nyman Mfg. for two hundred (\$200.00) dollars per share. In these letters, defendant Keith Johnson referenced five years of significant losses incurred by Nyman Mfg., and stated that Nyman Mfg. was willing to repurchase plaintiffs' common stock shares based on an agreement by the

corporation's banks that limited common stock shares could be repurchased by the company. The letters also set an expiration date for the proposed securities purchase and sale transaction of May 22, 1996. A true copy of said letter to plaintiff Judith A. Lawton is affixed hereto as Exhibit A. Similar letters were forwarded to each of the other plaintiffs.

11. Shortly thereafter, defendant Robert C. Nyman telephoned plaintiff Judith A. Lawton and represented that the opportunity to sell plaintiffs' shares of stock to Nyman Mfg. was limited and was unlikely to be present again, that based on Nyman Mfg.'s history of losses the company was likely to further decline and such a decline would cause the stock to further decrease in value, and that it was likely that the price per share of plaintiffs' stock in Nyman Mfg. would decrease in the future.

12. In reliance on the representations made in the foregoing May 8, 1996 letters and subsequent telephone call from defendant Robert C. Nyman, on or about May 22, 1996, plaintiffs sold all of their shares in Nyman Mfg. to the corporation for two hundred (\$200.00) dollars per share.

13. Less than one month later, on or about June 25, 1996, defendants Robert C. Nyman, Keith Johnson and Kenneth Nyman purchased a total of 4115 shares of Class A stock for two hundred (\$200.00) dollars per share, as well as 750 shares of Class B stock, from Nyman Mfg., which purchase they funded with a promissory note to the company in the principal amount of \$973,000. As a result of that transaction, defendants collectively owned approximately seventy eight (78%) percent of the total stock of Nyman Mfg.

14. In or about September of 1997, all of the shares in Nyman Mfg. were sold to Van Leer Industries for approximately \$1800 per share, and defendants thereby profited greatly from that sale.

15. At the time that defendants made the foregoing representations to plaintiffs, defendants knew and failed to disclose that (a) Nyman Mfg. would be purchased or was likely to be purchased, (b) Nyman Mfg. was being prepared for purchase, (c) the shares of Class A common stock in Nyman Mfg. were grossly undervalued at two hundred (\$200.00) dollars per

share, and (d) defendants intended to repurchase plaintiffs' shares. In addition, defendants imposed a false deadline upon plaintiffs in an effort to induce plaintiffs to act quickly and without full knowledge, and to discourage and effectively prevent plaintiffs from obtaining independent advice concerning the sale of the shares.

16. At the time that defendants made the foregoing representations to plaintiffs, defendants knew that their representations to plaintiffs were false, or at minimum acted with a reckless disregard for the truth, in that defendants knew that the opportunity to sell plaintiffs' shares would exist beyond May 22, 1996, knew that the shares were grossly undervalued, and knew that it was likely that the shares would increase in value in the future.

COUNT I
Rule 10(b)5

17. Plaintiffs incorporate by reference paragraphs 1 through 16, inclusive, of the Complaint as if fully set forth herein.

18. Through the foregoing conduct, defendants Robert C. Nyman, Keith Johnson and Kenneth Nyman engaged in manipulation and deceptive conduct in connection with a securities transaction in violation of 15 U.S.C. §78 j(b) and the rules and regulations promulgated thereunder, by pretending loyalty to plaintiffs while secretly intending to profit by planning to repurchase plaintiffs' shares. Defendants' non-disclosures and misrepresentations about the state and condition of Nyman Mfg. were deceptively pessimistic and misleading in light of the circumstances under which they were made. The objective and effect of defendants' conduct was to prevent plaintiffs from ascertaining the true extent of the value of their shares, and to induce plaintiffs to sell their shares whereby defendants would become able to repurchase the shares and profit greatly therefrom.

19. In reliance on the foregoing misrepresentations and material omissions by defendants, plaintiffs were induced to sell all of their shares of stock in Nyman Mfg.

20. As a direct and proximate result of defendants' unlawful conduct as aforesaid, plaintiffs were damaged.

21. As a result of their conduct, defendants are liable to plaintiffs for punitive damages.

COUNT II
Breach of Fiduciary Duties

22. Plaintiffs incorporate by reference paragraphs 1 through 21, inclusive, of the Complaint as if fully set forth herein.

23. Plaintiffs and defendants were co-shareholders of Nyman Mfg., defendants Robert C. Nyman, Keith Johnson and Kenneth Nyman were officers and directors of Nyman Mfg., and plaintiffs and defendants Robert C. Nyman and Kenneth Nyman are members of the same family. Through the foregoing relationships between plaintiffs and defendants, there existed a relationship of dependence and influence whereby defendants had a fiduciary duty to plaintiffs to act with the utmost good faith, honesty and loyalty toward plaintiffs, and not to favor their own interests at the expense of the interests of plaintiffs.

24. Through the foregoing conduct, defendants willingly and fraudulently breached their fiduciary duty owed to plaintiffs by making material misrepresentations and omissions, by failing to disclose material facts regarding the status of Nyman Mfg., and by placing defendants' interests ahead of the interests of the plaintiffs.

25. As a direct and proximate result thereof, plaintiffs were damaged.

COUNT III
(Common Law Fraud)

26. Plaintiffs incorporate by reference paragraphs 1 through 25, inclusive, of the Complaint as if fully set forth herein.

27. Defendants knew at the time that they made the false representations and concealed the material facts alleged above that such representations were untrue and that defendants were concealing material facts from plaintiffs.

28. Defendants acted with the intention to deceive and mislead plaintiffs, to fraudulently induce plaintiffs to sell their stock in Nyman Mfg. and thereby enable defendants to purchase those shares and profit therefrom.

29. Plaintiffs acted in reliance on defendants' false representations and material omissions, and were thereby induced to sell their shares in Nyman Mfg.

30. As a direct and proximate result thereof, plaintiffs were damaged.

31. As a result of their conduct, defendants are liable to plaintiffs for punitive damages.

COUNT IV
(Negligent Misrepresentation)

32. Plaintiffs incorporate by reference paragraphs 1 through 31, inclusive, of the Complaint as if fully set forth herein.

33. At the time that defendants made the foregoing false representations and material omissions to plaintiffs, defendants had no reasonable ground for believing them to be true.

34. These false representations and omissions were made by defendants in a reckless and negligent manner not warranted by the information that defendants had concerning the subject matter of the representations and without regard to whether or not they were true.

35. As a direct and proximate result thereof, plaintiffs were damaged.

COUNT V
(Unjust Enrichment)

36. Plaintiffs incorporate by reference paragraphs 1 through 35, inclusive, of the Complaint as if fully set forth herein.

37. As a result of the conduct described above, defendants have been unjustly enriched at the expense of the plaintiffs.

38. Defendants should be required to disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of plaintiffs, and a constructive trust should be imposed thereon for the benefit of the plaintiffs.

WHEREFORE, plaintiffs demand judgment against the defendants, jointly and severally, as follows:

1. For compensatory damages in the amount of six million (\$6,000,000.00) dollars, plus interest.

2. For punitive damages in the amount of ten million (\$10,000,000) dollars.

3. For a constructive trust upon the defendants' stock and any proceeds relative thereto for the benefit of the plaintiffs.

4. For injunctive relief as this Court deems appropriate, including a preliminary injunction restraining defendants from dissipating the proceeds from the sale of their stock in Nyman Manufacturing Co., Inc. pending a final determination of this case.

5. For plaintiffs' costs, together with a reasonable attorneys' fee.

6. For such other and further relief as this Court deems meet and just.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY AS TO ALL COUNTS SO TRIABLE.

Plaintiffs
By their attorneys,

Joseph V. Cavanagh, Jr. (1108)

K.A. Pelczarski

Joseph V. Cavanagh, Jr. #1139
Karen A. Pelczarski #3357
Blish & Cavanagh
30 Exchange Terrace
Providence, Rhode Island 02903
(401) 831-8900 (telephone)
(401) 751-7542 (facsimile)

CERTIFICATION

I hereby certify that on the 25th day of June, 1998, a true copy of the foregoing Amended Complaint was hand delivered to: Robert Corrente, Esq., Hinckley, Allen & Snyder, 1500 Fleet Center, Providence, Rhode Island 02903 and delivered via facsimile and First Class mail to: Michael Allen, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110-2624.

Diane Edgington

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Single-Use Foodservice Spec

East Providence

May 8, 1996

Mrs. Judith A. Lawton
90 Juniper Drive
W. Warwick, RI 02893

Dear Judie:

I would like to report to you some information about Nyman Mfg. and a limited term opportunity that you now have as a Nyman shareholder with 584 shares of Class A Non-Voting Stock.

As you know, the Company has had major "ups and downs" over the past 10 years including 5 years in which significant losses were experienced. In the two most recent years, the Company's financial condition has improved and its lending banks have agreed that limited amounts of its common stock may be re-purchased. This is an opportunity for shareholders who are interested in achieving liquidity now.

Last November, the Company was able to re-purchase certain shares of stock held by Rhode Island Hospital Trust Bank as co-executor of Marge Burt's estate at a price of \$145.36 per share. Since that time, the Company has received several inquiries from other minority shareholders concerning their desire to sell their shares of Nyman Mfg. Co. stock. In response to these inquiries, the Company has negotiated with its lending banks to allow it to offer to purchase additional shares of Nyman stock at this time.

Given favorable economic factors and current estimates of operating results, the Company is offering to purchase all of your shares at a price of \$200 per share.

Since the Company cannot provide you with any advice as to whether the sale of the stock by you is in your best financial interest, we suggest that you discuss this matter with your financial advisor. You should know that these receipts will be subject to the appropriate federal and state taxes and that you should consult with a tax advisor, particularly with regard to your share of any tax-loss carry-over from the Magda Burt estate which may help to reduce any tax liability you may have.

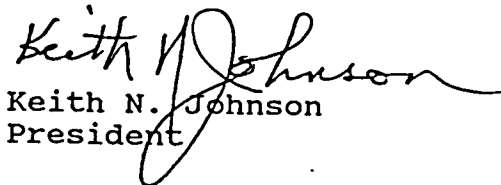
Nyman Mfg.

May 8, 1996

Please indicate on the enclosed form your interest in selling your 584 shares back to the Company at the offer price of \$200.00 per share for a total value of \$116,800. This offer will expire on May 22, 1996. The Company is planning to complete this transaction with you within two weeks after the receipt of your written acceptance of this offer along with the receipt of your stock certificates.

Sincerely,

NYMAN MFG. CO.


Keith N. Johnson
President

KNJ:eas

Enclosures