STATE OF MICHIGAN

COURT OF APPEALS

RAMA MADUGULA,

Plaintiff/Counter-Defendant-Appellee,

v

BENJAMIN A. TAUB,

Defendant/Counter-Plaintiff-Appellant,

and

DATASPACE INC.,

Defendant,

and

ANDREW FLOWER,

Defendant.

UNPUBLISHED
October 25, 2012

No. 298425
Washtenaw Circuit Court
LC No. 08-000537-CK

Before: RONAYNE KRAUSE, P.J., and BORRELLO and RIORDAN, JJ.

RONAYNE KRAUSE, J. *(concurring in part and dissenting in part)*

I concur with the majority opinion's excellent analysis of minority shareholder oppression and affirming the award of damages, however I would remand for a new trial on all equitable remedies sought in this case. Equitable remedies should be tried before a bench trial, not submitted to a jury, and accordingly I dissent in part. I would remand for a new trial solely for equitable remedies.

Although I can understand reliance on *Forsberg v Forsberg Flowers, Inc*, unpublished opinion per curiam of the Court of Appeals, issued December 5, 2006 (Docket No. 263762) by the appellants in this case, it is nonetheless unpublished, and, therefore, the trial court was correct in determining that it was only persuasive precedent and not binding. Furthermore, I acknowledge that the dissenting opinion of *Forsberg* is very logically presented, so I can understand reliance on that reasoning, as well. However, I am not persuaded that *Anzaldua v*

Band, 457 Mich 530; 578 NW2d 306 (1998), on which *Forsberg* heavily relies, should be controlling in our analysis of whether MCL 450.1489 creates a right to a jury trial.

In *Anzaldua*, the Michigan Supreme Court determined whether the Whistleblower's Protection Act (WPA), MCL 15.361 *et seq.*, created a right to a jury trial. In its analysis, the Court noted that the statutory language of the WPA lacked an express grant of jury trial. The Court then determined that because the WPA allows a court to render judgment yielding "actual damages" there was a right to a jury trial present in the statute. *Anzaldua*, 457 Mich at 538-539. Furthermore, the Court was persuaded by the inclusion of language in the WPA that was identical to other statutes that contained rights to jury trials. *Id.* at 545-548. The reasoning of *Anzaldua* rests heavily on language in the WPA that does not appear in MCL 450.1489. Thus, I would distinguish *Anzaldua* from the instant case, rendering any application of *Forsberg* inappropriate.

Without applying *Forsberg*, I turn to our other case law for my analysis. The Michigan Supreme Court has previously articulated that equitable issues "are for non-jury determination by the Court." *Abner A Wolf, Inc v Walch*, 385 Mich 253, 258; 188 NW2d 544 (1971). Furthermore, "[t]he right to have equity controversies dealt with by equitable methods is as sacred as the right of trial by jury." *Id.* at 259 (quotation omitted). The language of MCL 450.1489(1)(a)-(e) creates equitable remedies, which should be determined by a bench trial. The only remedy that creates a right to jury trial is the remedy for an award of damages set forth in MCL 450.1489(1)(f), and it has been established that "in a case where plaintiff seeks both equitable relief and legal relief in the form of damages, a plaintiff has the right to have a jury hear his damage claim." *B & M Die Co v Ford Motor Co*, 167 Mich App 176, 184; 421 NW2d 620 (1988). Thus, the right to a jury trial should only extend to relief granted under MCL 450.1489(1)(f).

MCR 2.509(D) allows for use of an advisory jury or trial by consent, if both parties consent to a jury trial on equitable issues. However, this court rule does not apply to this case because defendant Taub objected to the trial court using a jury trial in a motion in limine prior to any proceedings. Consequently, the trial court should not have submitted any matters pertaining to MCL 450.1489(1)(a)-(e) to a jury for determination, absent consent by all the parties to the case.

For the reasons set forth above, I concur with the majority in affirming the damages awarded under MCL 450.1489(1)(f), but I disagree that the entire trial court judgment should be affirmed. I would remand for a new bench trial to determine what equitable relief is available for the plaintiff under MCL 450.1489(1)(a)-(e). See *Zurcher v Herveat*, 238 Mich App 267, 300-301; 605 NW2d 329 (2000).

/s/ Amy Ronayne Krause