(#185310 v 1)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------X

ALAN ADES,

Plaintiff,

-against-

VAN DALE INDUSTRIES, INC., MAURICE SETTON, ALBERT ADES, JIMMIE ADES and GABRIEL ADES,

Defendants.
----------X

Index No.

Date Purchased:

SUMMONS

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis for venue is CPLR § 503(a).

Dated: New York, New York
November 11, 2021

FOSTER GARVEY, P.C.

By: _____
Alan A. Heller
Yeli Zhou
Attorneys for Plaintiff
100 Wall Street, 20th Floor
New York, New York 10005
(212) 965-4526

TO: VAN DALE INDUSTRIES, INC.
16 East 34th Street, 8th floor
New York, NY 10016

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FG:11201126.1

(#185310 v 1)

ALBERT ADES
16 East 34th Street, 8th floor
New York, NY 10016

MAURICE SETTON
15 Gateway Drive
Great Neck, New York 11021

JIMMIE ADES
1797 East 3rd Street
Brooklyn, New York 11223

GABRIEL ADES
1059 East 8th Street
Brooklyn, New York 11230

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ALAN ADES

Plaintiff,

-vs-

VAN DALE INDUSTRIES, INC., MAURICE SETTON, ALBERT ADES, JIMMIE ADES and GABRIEL ADES,

Defendants.

Index No._____ /2021

COMPLAINT

Plaintiff Alan Ades, individually, by and through his attorneys, Foster Garvey, P.C., for his complaint against Defendants, hereby alleges as follows:

NATURE OF ACTION

1. This action seeks the rescission of an illicit freeze-out merger initiated by the Board of Directors of Van Dale Industries, Inc. (the "Company") and approved by a majority vote of the shareholders of that closely held family owned Company at a Special Meeting of Shareholders on September 2, 2021 on the grounds that it is illegal, fraudulent and/or a violation of the defendant corporate management's fiduciary duty to Plaintiff. As discussed more fully below, this freeze-out merger had no bona fide business purpose. Its sole, illegitimate purpose was to divest the Company of Plaintiff, who was a passive owner of 19.44% of the Company, and his right to participate in the riches of a growing company. Put another way, merger's only purpose was to allow the remaining three shareholders to increase their individual wealth and not share that wealth with their co-shareholder who had been an owner of the Company for over 30 years.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is an individual currently residing at 134 Via Palacio, Palm Beach Gardens, Florida 33418.

3. Defendant Van Dale Industries, Inc. is a New York corporation with its principal place of business at 16 East 34th Street, 8th floor, New York, NY 10016.

4. Upon information and belief, Defendant Albert Ades ("Albert") is a resident of the State of New York with an office address at 16 East 34th Street, 8th Floor, New York, NY 10016, is the CEO of the Company and a member of its Board of Directors.

5. Upon information and belief, Defendant Maurice Setton ("Maurice") is a resident of the State of New York with an address at 15 Gateway Drive, Great Neck, New York 11021, is a shareholder and the President of the Company and is a member of its Board of Directors.

6. Upon information and belief, Defendant Jimmie Ades ("Jimmie") is a resident of the State of New York with an address at 1797 East 3rd Street, Brooklyn, New York 11223, is a shareholder of the Company and is a member of its Board of Directors.

7. Upon information and belief, Defendant Gabriel Ades ("Gabriel") is a resident of the State of New York with an address at 1059 East 8th Street, Brooklyn, New York 11230, is a shareholder of the Company and is a member of its Board of Directors.

8. Because the Company has its principal place of business in New York County, the Supreme Court of New York has personal jurisdiction over the Company and its Directors, and the County of New York is the proper venue.

FACTS COMMON TO ALL COUNTS

Background of the Company

9. The Company was established in or about 1982. As of September 1, 2021, Plaintiff, along with Maurice Setton, Jimmie Ades and Gabriel Ades, were the only shareholders in this closely held corporation.

10. According to its website, The Company is a leader in intimate apparel and foundations, including daywear, sleepwear, activewear and shapewear and manages private label and national brands in every distribution. Among the brands managed and/or licensed by The Company are Steve Madden (madden girl), Lucky Brand, Anne Klein, Vince Camuto, Jessica Simpson, IZOD, Rampage and Dollhouse. The Company is also a key resource for Walmart, Kohl's and JC Penny.

11. Albert is the CEO of the Company and, according to the Company website, "[t]hrough his leadership and guidance, this privately held company has grown from a moderate business to a well-known force in the intimate Apparel business."

12. Maurice is a shareholder and the President of the Company and, according to the Company website, "has overseen Vandale's growth from its infancy to the successful midsize company it is today." Until August 23, 2021, Maurice was the sole Director of the Company.

13. Gabriel and Jimmie are Albert's children. Neither Gabriel nor Jimmie are listed on the Company website as part of the leadership of the Company.

14. According to its website, the Company has an annual growth rate of 15-20% per annum.

The Notice of Special Meeting of Shareholders

15. On August 23, 2021, a Notice of Meeting (the "Notice of Meeting") was delivered to the shareholders of the Company by Gabriel Ades, as Secretary of the Company, notifying all shareholders that a Special Meeting was going to take place on September 2, 2021.

16. According to the Notice of Meeting, the purpose of the meeting was to consider and vote on a proposal to approve an Agreement and Plan of Merger (the "Merger Plan") between the Company and Van Dale Industries, Corp. (a recently formed corporation that was wholly owned by the three other shareholders of the Company) and that Plaintiff would be frozen out of this newly merged entity.

17. The Notice of Meeting specifically provided the following:

> In connection with its determination to approve the Merger Agreement, the Board deliberated and concluded that the business of the Company would be best served with management of the Company and ownership being fully aligned, thereby avoiding all potential conflicts of interest based upon the current organizational structure, consisting of three employee-management shareholders and one non-employee non-management shareholder.

18. The Board referenced in the Notice of Meeting who allegedly approved the alleged Merger Plan and who allegedly "deliberated and concluded that the business of the Company would be best served" if Plaintiff were to be extricated from his ownership of the Company (and leaving ownership solely in the hands of Maurice, Jimmie and Gabriel) were Maurice, Jimmie, Gabriel and Albert (Jimmie and Gabriel's father).

19. Jimmie, Gabriel and Albert were added to the Board of Directors of the Company on August 23, 2021, the very same day the alleged deliberation and conclusion of the alleged Merger Agreement was purportedly held and the Notice of Meeting allegedly sent.

20. The aforementioned alleged basis for the freeze-out merger of Plaintiff was not a valid exercise of business judgment and a legitimate corporate purpose but was an illegitimate excuse to divest the Company of Plaintiff – a 19.44% passive shareholder in that entity -- so that the individual wealth of the remaining shareholders would be increased.

21. No other alleged corporate purpose was stated in the August 23, 2021 Notice of Meeting.

22. At the September 2, 2021 meeting of the shareholders to vote on the freeze-out merger, Plaintiff was the only shareholder of the four shareholders of the Company to vote no to the merger.

Plaintiff's Election of Dissent

23. On August 31, 2021, Plaintiff timely sent the Company a Notice of Election pursuant to N.Y. Bus. Corp. Law § 623(a) exercising his dissenter's rights and demanding payment of the fair value for all of his 35 shares of the Company.

The Merger Plan Was Approved by the Majority Shareholders

24. As hereinabove alleged, the Special Meeting of Shareholders was held (on September 2, 2021) and the Merger Plan was voted on and approved by the majority shareholders (and post-merger shareholders) of the Company. Plaintiff, who was being divested of his interests in the Company, was the sole negative vote to the freeze-out merger.

25. As a consequence of the foregoing merger transaction, Plaintiff has been frozen out of the closely held company in which he held a 19.44% ownership interest for over 30 years.

26. Upon information and belief, a Certificate of Merger was filed with the Secretary of State of the State of New York on September 2, 2021 and the merger allegedly became effective on that day.

The Company's Offer to Plaintiff

27. On September 3, 2021, one day after the shareholders' meeting to approve the alleged Merger Plan, the Company sent Plaintiff a "Notice and Offer Pursuant to New York Business Corporation Law Section 623" offering to pay Plaintiff $222,287.15 for each one of his 35 shares, or an aggregate purchase price of $7,780,050,25.

Plaintiff's Rejection of the Company's Offer

28. On September 27, 2021, in accordance with N.Y. Bus. Corp. Law § 623(g), Plaintiff sent the Company a timely Notice of Rejection of Offer which, among other things, rejected the freeze-out price that the Company was willing to offer for Plaintiff's Shares.

29. Plaintiff has the right to bring this action under N.Y. Bus. Corp. Law § 623(k) which preserves the right of a shareholder "to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is unlawful or fraudulent as to him."

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty/Rescission of the Merger)

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "29" with the same force and effect as if more fully set forth herein.

31. New York law provides that fair dealing and fair price alone will not render freeze-out merger acceptable; there exists fiduciary duty, arising as concomitant to power reposed in majority over corporate governance, to treat all shareholders equally.

32. New York law further provides that majority shareholders and a corporation's board of directors have overriding duty to provide good and prudent management, which demands that decisions be made for welfare, advantage and best interests of corporation and shareholders as a whole.

33. New York law further provides that, in context of a freeze-out merger, variant treatment of minority shareholders will be justified when related to advancement of general corporate interest; benefit need not be great, but must be for the corporation.

34. New York law further provides that if sole purpose of merger is reduction of number of profit sharers, in contrast to increasing corporation's capital or profits, or improving its management structure, there will be no "independent corporate interest" justifying variant treatment of minority shareholders.

35. New York law further provides that, in entertaining equitable action to review freeze-out merger, court should view transaction as a whole to determine whether it was tainted with fraud, illegality or self-dealing, whether minority shareholders were dealt with fairly and whether there exists independent corporate purpose for merger.

36. The freeze-out merger approved by the Defendant Board of Directors and shareholders, was tainted with fraud, illegality or self-dealing, did not deal fairly with the minority shareholders and did not have an independent corporate purpose.

37. As set forth in the Notice of Meeting, the sole purpose for the merger was as follows:

> In connection with its determination to approve the Merger Agreement, the Board deliberated and concluded that the business of the Company would be best served with management of the Company and ownership being fully aligned, thereby avoiding all potential conflicts of interest based upon the current organizational structure, consisting of three employee-management shareholders and one non-employee non-management shareholder.

38. That "the business of the Company would be best served with management of the Company and ownership being fully aligned, thereby avoiding all potential conflicts of interest based upon the current organizational structure, consisting of three employee-management

shareholders and one non-employee non-management shareholder" is not an independent or legitimate corporate purpose.

39. Not wanting to share in the benefits of the Company with its passive non-employee shareholder is not a legitimate business purpose for a freeze-out merger.

40. No other "business purposes" was stated in the Notice of Meeting.

41. In fact, the sole purpose of the merger was that the employee-management shareholders desired to compensate themselves whatever they wished without having to account to the sole non-employee non-management shareholder who was entitled to 19.44% of the profits, dividends and distributions of the Company.

42. This freeze-out merger orchestrated by the majority shareholders and Board of Directors of the Company has no bona fide business purpose. Instead, the sole purpose of this unlawful freeze-out merger is to allow the majority shareholders (and three of the four members of the Board of Directors of the Company) to increase their individual wealth.

43. As Directors of the Company, Albert, Maurice, Gabriel and Jimmie owe fiduciary duties to both the Company and the minority shareholders, including the duties of utmost good faith, loyalty, honesty and due care.

44. As the majority shareholders of the Company, Maurice, Gabriel and Jimmie owe fiduciary duties to both the Company and the minority shareholder, including duties of utmost good faith, loyalty, honesty and due care.

45. Albert, Maurice, Gabriel and Jimmie, in their capacity as members of the Board of Directors of the Company, have breached the fiduciary duties owed to Plaintiff by consummating the Freeze-Out Merger, which cancels the shares held by Plaintiff and has no bona fide business purpose.

46. Maurice, Gabriel and Jimmie, in their capacity as majority shareholders of the Company, have breached the fiduciary duties owed to Plaintiff by consummating the Freeze-Out Merger, which cancels the shares held by Plaintiff and has no bona fide business purpose.

47. As a result, the alleged merger must be rescinded, be deemed null and void and of no force or effect, and Plaintiff should be restored to his 19.44% ownership interest in the Company effective September 2, 2021.

48. Plaintiff has not adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION
(Accounting)

49. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "48" with the same force and effect as if more fully set forth herein.

50. As hereinabove alleged, as Directors of the Company, Albert, Maurice, Gabriel and Jimmie owe fiduciary duties to its minority shareholder, including the duties of utmost good faith, loyalty, honesty and due care.

51. As hereinabove alleged, the majority shareholders of the Company, Maurice, Gabriel and Jimmie owe fiduciary duties to both the Company and the minority shareholder, including duties of utmost good faith, loyalty, honesty and due care.

52. Albert, Maurice, Gabriel and Jimmie should be ordered to provide an accounting to Plaintiff and provide Plaintiff, with documentary backup, of all expenditures made by the Company (including, but not limited to, compensation paid to the shareholders and directors) and dividends and distributions made to its shareholders from the date of the alleged merger to the date of the Order.

53. Plaintiff has no adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION
(Damages)

54. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "53" with the same force and effect as if more fully set forth herein.

55. Upon rescission and nullification of the alleged merger and restoration of Plaintiff as a 19.44% shareholder of the Company, Plaintiff shall be entitled to his pro rata share of distributions and dividends made by the Company from September 2, 2021.

56. Accordingly, Plaintiff has been damaged in the amount to be determined by this Court but not less than 19.44% of all distributions and/or dividends made to the Company's shareholders with interest thereon from the date of each distribution and/or dividend.

WHEREFORE, Plaintiff respectfully requests judgment as follows:

(a) On his First Cause of Action, an Order rescinding the alleged merger of the Company, directing that the merger be deemed to be null and void and of no force or effect, and directing that Plaintiff be restored to his 19.44% ownership interest in the Company effective September 2, 2021;

(b) On his Second Cause of Action, on Order directing Defendants to provide an accounting to Plaintiff and provide Plaintiff, with documentary backup, of all expenditures made by the Company (including, but not limited to, compensation paid to the shareholders and directors) and dividends and distributions made to its shareholders from September 2, 2021 onward;

(c) On his Third Cause of Action, damages in the amount to be determined by the Court but not less than 19.44% of all distributions and/or dividends made to the Company's shareholders with interest thereon from the date of each distribution and/or dividend; and

(d) Such other and further relief as this Court deems just and proper together with costs and disbursements of this Action.

Dated: New York, New York
November 11, 2021

FOSTER GARVEY, P.C.

By: _____
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