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## Comment

### ***Pedro v. Pedro*: Consequences for Closely Held Corporations and the At-Will Doctrine in Minnesota**

*Sandra L. Schlafge*

Brothers Alfred, Carl, and Eugene Pedro were equal owners of a business for most of their adult lives.<sup>1</sup> Alfred Pedro discovered a discrepancy of several hundred thousand dollars in the financial records of their closely held corporation, the Pedro Companies.<sup>2</sup> After he demanded an explanation, his relationship with his brothers deteriorated.<sup>3</sup> Carl and Eugene Pedro placed him on leave of absence and eventually discharged him from employment.<sup>4</sup>

Alfred Pedro commenced a suit against his brothers, seeking dissolution of the company and damages for wrongful termination.<sup>5</sup> At trial, the jury found that a Stock Retirement Agreement executed by the brothers was valid and enforceable, and therefore awarded Alfred a buyout of his shares at the specified purchase price.<sup>6</sup> The jury also awarded \$256,740 in damages for wrongful termination.<sup>7</sup> On appeal, the Minnesota

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1. *Pedro v. Pedro*, 463 N.W.2d 285, 287 (Minn. Ct. App. 1990).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* Alfred also sought appointment of a receiver, alleged infliction of emotional distress and slander, and asked for an award of attorney fees. *Id.* The trial court denied his motion to amend the complaint to add a claim for punitive damages; his claims for infliction of emotional distress and slander also were dismissed during trial. *Id.*

6. *Id.* The Stock Retirement Agreement (SRA) provided for a purchase price of 75% of the net book value of outstanding shares at the end of the preceding calendar year. *Id.* At trial, the jury also awarded damages of \$500,000 for the brothers' failure to act openly, honestly, and fairly with Alfred. *Id.* The Minnesota Court of Appeals set this award aside and remanded for a determination of whether the fair value of the shares was greater than the buyout price under the SRA, the difference being the appropriate measure of the damages Alfred suffered from being forced to sell his shares to the company. *Id.* at 288.

7. *Id.* at 287. The jury apparently based the damage award for lost wages

Court of Appeals held that the reasonable expectations of a minority shareholder in a closely held corporation can be the basis for a wrongful termination claim.<sup>8</sup> The court of appeals decision in *Pedro* sets a precedent in Minnesota<sup>9</sup> by creating a new exception to the established employment at-will doctrine.<sup>10</sup> It is also controversial because it may severely limit the right of majority shareholders to terminate minority shareholders, thereby affecting employer and employee relationships in closely held corporations.<sup>11</sup>

This Comment explores the significance of the *Pedro* decision. Part I discusses the evolution of legal protection for minority shareholders as employees of a closely held corporation. Part II compares this protection with the protection provided to employees in general by wrongful termination principles. Part III analyzes the *Pedro* court's rationale for allowing a minority shareholder to bring a cause of action for wrongful termination. Part IV criticizes the court's reasoning and warns of the potential adverse effect *Pedro* may have on employment doctrine as it relates to closely held corporations in Minnesota. This Comment concludes by arguing that employee-shareholders of closely held corporations are afforded adequate protection by existing law and should not be granted a special remedy through an unjustified interpretation of Minnesota corporate and employment law.

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upon a calculation of the present value of Alfred's future wages had he been employed from the date of the termination until the age of 72 at the same salary, accounting for an annual increase of 4.5%. *Id.* at 289.

8. *Id.* at 288-89. The Minnesota Court of Appeals remanded these claims to the trial court for a determination of whether the damages for lost wages following the buyout were appropriately awarded. *Id.*

9. The Minnesota Supreme Court denied review, thereby leaving the court of appeals decision as the law in Minnesota. *See id.* at 285.

10. Traditionally, employment relationships in Minnesota have been governed by the "at-will" doctrine, which provides that an employer may discharge an employee for any reason whatsoever when there is no agreement limiting discharge to just cause or specifying a definite period of employment. *See infra* part II (describing the employment at-will doctrine in Minnesota).

11. A closely held corporation in Minnesota is a corporation with less than 35 shareholders. MINN. STAT. § 302A.011 subd. 6a (1990). Because more than 90% of all companies incorporated in Minnesota are closely held corporations, the *Pedro* decision has significant consequences for the corporate community. *See* Joseph E. Olson, *Statutory Changes Improve Position of Minority Shareholders in Closely-Held Corporations*, HENNEPIN LAWYER, Sept.-Oct. 1983, at 12 n.34 (citing REPORT TO THE SENATE, 1983 SPECIAL PAMPHLET CONTAINING M.S.A. CH. 302A, at viii); *see also* Alfred F. Conard, *The Corporate Census: A Preliminary Exploration*, 63 CAL. L. REV. 440, 458-59 (1975) (estimating that over 90% of all corporations in 1970 had 10 or fewer shareholders).

## I. EVOLUTION OF THE CORPORATE LAW PROTECTING MINORITY SHAREHOLDERS OF CLOSELY HELD CORPORATIONS

There is a clear trend in the law toward providing remedies for oppressed minority shareholders of closely held corporations. For decades, legal scholars have commented on the vulnerability of minority shareholders of closely held corporations and have encouraged legislative protection.<sup>12</sup> State legislatures have responded to the concerns by passing legislation designed to protect minority shareholders who have been "frozen out" by the oppressive actions of majority shareholders.<sup>13</sup>

### A. THE NATURE OF CLOSELY HELD CORPORATIONS AND TRADITIONAL CORPORATE LAW PRINCIPLES

The nature of a closely held corporation places the minority shareholder in a vulnerable position which traditional corporate law fails to remedy. Typically, only a few shareholders own stock in a close corporation. By definition, no established market exists for closely held corporate stock. The shares are not listed on exchanges and are rarely traded.<sup>14</sup>

Often, the shareholders of a closely held corporation live in the same area, know each other well, and are familiar with each other's business acumen.<sup>15</sup> In addition, the shareholders typically participate actively in the management of the busi-

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12. See F. HODGE O'NEAL & ROBERT B. THOMPSON, O'NEAL'S CLOSE CORPORATIONS (3d ed. 1988) [hereinafter O'NEAL'S CLOSE CORPORATIONS]; F. HODGE O'NEAL & ROBERT B. THOMPSON, O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS (2d ed. 1985) [hereinafter O'NEAL'S OPPRESSION]; Carlos L. Israels, *The Sacred Cow of Corporate Existence: Problems of Deadlock and Dissolution*, 19 U. CHI. L. REV. 778 (1952); F. Hodge O'Neal, *Close Corporations: Existing Legislation and Recommended Reform*, 33 BUS. LAW. 873 (1978) [hereinafter O'Neal, *Existing Legislation*]; Arthur D. Spratlin, Jr., Comment, *Modern Remedies for Oppression in the Closely Held Corporation*, 60 MISS. L.J. 405 (1990).

13. See *infra* notes 19-21 and accompanying text (describing the term "frozen out" and the vulnerable position of minority shareholders).

14. O'NEAL'S CLOSE CORPORATIONS, *supra* note 12, § 1.07, at 24. In contrast, the publicly held corporation is often owned by numerous shareholders who act as passive investors and are not employed by the corporation. *Id.* Their interest in the corporation is thus limited to the amount of their dollar investment in their shares, which can be sold at any time on the public market, and is not tied to their salary and other employment benefits. *Id.* A significant characteristic of shareholders of closely held corporations is their dependence upon wages received from the corporation. *Id.* Because closely held corporations characteristically do not pay dividends, the role of employee often becomes financially more important than acting as a shareholder.

15. *Id.*

ness.<sup>16</sup> Minority shareholders do not typically anticipate future disputes or oppression because of their close relationship with the controlling shareholders.<sup>17</sup> Thus, they do not bargain for employment agreements protecting against mistreatment.<sup>18</sup>

Traditional corporate law allows majority shareholders in closely held corporations to "freeze out" minority shareholders by withholding dividends or salaries and by limiting their participation in the management of the company.<sup>19</sup> Courts have

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16. *Id.*

17. See O'Neal, *Existing Legislation*, *supra* note 12, at 881. Professor O'Neal explains: "A person taking a minority position in a close corporation often leaves himself vulnerable to squeeze-out or oppression by failing to insist upon a shareholders' agreement or appropriate charter or bylaw provisions" because of a lack of awareness of the risks or a weak bargaining position. *Id.* at 883; see also Meiselman v. Meiselman, 307 S.E.2d 551, 558 (N.C. 1983) (stating that the practical realities of the close corporation often mean that the parties will not bargain); Robert B. Thompson, *Corporate Dissolution and Shareholders' Reasonable Expectations*, 66 WASH. U. L.Q. 193, 224 (1988) (stating that advance planning usually is not explored by the shareholders and a lack of a shareholder employment agreement is to be expected because of mutual trust at the corporation's inception).

18. *Id.* Because of the unique position of minority shareholders, some courts and commentators consider the relationship between closely held corporate shareholders analogous to that of partners in a partnership. See *Westland Capital Corp. v. Lucht Eng'g, Inc.*, 308 N.W.2d 709, 712 (Minn. 1981) (noting that a closely held corporation is in reality a "partnership in corporate guise" and extending partnership standards to shareholders of the close corporation); see also *Donahue v. Rodd Electrotape Co.*, 328 N.E.2d 505, 515 (Mass. 1975) (holding that the stockholders in a close corporation "owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another. . . . [T]he 'utmost good faith and loyalty'"). The close corporation has been defined as the "corporate entity typically organized by an individual, or a group of individuals, seeking the recognized advantages of incorporation . . . but regarding themselves basically as partners and seeking veto powers as among themselves much more akin to the partnership relation than to the statutory scheme of representative corporate government." *Israels*, *supra* note 12, at 778-79.

19. *Spratlin*, *supra* note 12, at 407. It is only in closely held corporations that the noncontrolling shareholders can be "locked in" to a business in which they may be deprived of any earnings and a voice in management by the oppressive actions of the controlling shareholders. *Id.* Because closely held corporate shareholders typically have no available public markets in which to sell their shares, they can be denied any return of investment if terminated by the controlling shareholders. Shareholders in a closely held corporation thus have far more at risk from the conduct of the controlling shareholders than do shareholders in publicly held corporations. *Thompson*, *supra* note 17, at 196-97, 237. In no other type of business arrangement do owners face the possibility of completely losing their investments by being excluded from employment and denied profits. David A. Kendrick, Comment, *The Strict Good Faith Standard—Fiduciary Duties to Minority Shareholders in Close Corporations*, 33 MERCER L. REV. 595, 596 (1982). This is commonly described by legal commentators and courts as a "freeze out" of the minority shareholder. *Id.* at 596; see,

upheld these actions against attack under the traditional corporate concepts of majority rule and the business judgment rule.<sup>20</sup> Early courts hesitated to order relief even when the controlling interest subjected the minority shareholder to abuse.<sup>21</sup>

## B. CRITICISMS OF THE TRADITIONAL LAW AND THE EVOLUTION OF PROTECTION

Critics of traditional corporate law have focused attention on the law's failure to protect "frozen-out" minority shareholders of closely held corporations.<sup>22</sup> Professor F. Hodge O'Neal, a leading authority on close corporations, has explained that the

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*e.g.*, *Wilkes v. Springside Nursing Home, Inc.*, 353 N.E.2d 657, 662 (Mass. 1976); *Kemp & Beatley, Inc. v. Gardstein (In re Kemp & Beatley, Inc.)*, 473 N.E.2d 1173, 1176 (N.Y. 1984); *Taines v. Gene Barry One Hour Photo Process, Inc. (In re Taines)*, 444 N.Y.S.2d 540, 541 (N.Y. App. Div. 1981); *Topper v. Park Sheraton Park Pharmacy, Inc. (In re Topper)*, 433 N.Y.S.2d 359, 364 (N.Y. App. Div. 1980); *Balvik v. Sylvester*, 411 N.W.2d 383, 386-87 (N.D. 1987); O'NEAL'S OPPRESSION, *supra* note 12, § 3.06. The position of the close corporate shareholder is also distinguishable from that of a partner because of the illiquidity of investment. The partner has the right to participate in management and to dissolve the partnership. This gives partners rights under the law that a minority shareholder lacks. *See Olson, supra* note 11, at 10.

20. The majority rule concept allows majority shareholders to vote a minority shareholder out of the corporation because they control the vote of a majority of the shares. *See Thompson, supra* note 17, at 197; *Spratlin, supra* note 12, at 405.

The business judgment rule, as applied by the courts, presumes that the directors of a corporation use their best business judgment when making decisions and that courts should not second-guess these business decisions. *Thompson, supra* note 17, at 197. Thus, courts traditionally have been hesitant to interfere when a minority shareholder of a close corporation is "frozen out." *Id.*; *see also* Joseph E. Olson, *A Statutory Elixir for the Oppression Malady*, 36 MERCER L. REV. 627, 628 (1985) (discussing the ability of the controlling shareholder to use traditional corporate law principles to "confiscate" the capital of the minority group); *Thompson, supra* note 17, at 236 (stating that the traditional corporate notions of centralized control, majority rule, and the presumption of the corporation's permanence open the minority shareholders up to potential abuse); *Linda L. Shapiro, Note, Involuntary Dissolution of Close Corporations for Mistreatment of Minority Shareholders*, 60 WASH. U. L.Q. 1119, 1149 (1982) (asserting that the principle of majority rule conflicts with the nature of the close corporation).

21. *See* Robert W. Hillman, *The Dissatisfied Participant in the Solvent Business Venture: A Consideration of the Relative Permanence of Partnerships and Close Corporations*, 67 MINN. L. REV. 1, 38 (1982).

22. In response to calls for reform, courts gradually began to order relief based upon oppressive conduct. *See, e.g.*, *Miner v. Belle Isle Ice Co.*, 53 N.W. 218 (Mich. 1892); *Green v. National Advertising & Amusement Co.*, 162 N.W. 1056 (Minn. 1917). For an early discussion of the power of the courts to afford the minority shareholder a remedy, *see* George D. Hornstein, *A Remedy for Corporate Abuse—Judicial Power to Wind Up a Corporation at the Suit of a Minority Stockholder*, 40 COLUM. L. REV. 220 (1940).

elimination of minority shareholders from the directorate and from the day-to-day operations of the company deny the shareholder anything more than "a token return on his investment even though the investment may be substantial."<sup>23</sup> The terminated minority shareholders' capital is, in effect, held hostage by those in control of the corporation because there is no marketplace in which minority shareholders may sell their shares.<sup>24</sup>

Courts, recognizing the vulnerable position of minority shareholders, have called for state legislatures to provide remedies.<sup>25</sup> State legislatures have responded by increasing protection for oppressed minority shareholders.<sup>26</sup> Several state legislatures have authorized relief for shareholders subjected to "oppressive" or "unfairly prejudicial" conduct by the controlling interest.<sup>27</sup>

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23. O'NEAL'S OPPRESSION, *supra* note 12, § 3.06, at 37. Typically, a person acquiring an interest in a close corporation expects to participate actively in the corporation's affairs and may have no income other than salary. *Id.* Consequently, being squeezed out of the corporation constitutes an immediate financial crisis for the employee-shareholder. *Id.*

24. See Olson, *supra* note 20, at 628; see also *McCauley v. Tom McCauley & Son*, 724 P.2d 232, 236 (N.M. Ct. App. 1986) (noting that a minority shareholder may be "held hostage" by the controlling interest of the close corporation because of the lack of a marketplace for the stock).

25. See, e.g., *Villa Maria, Inc. v. Mondati (In re Villa Maria, Inc.)*, 312 N.W.2d 921, 923 (Minn. 1981); *Westland Capital Corp. v. Lucht Eng'g Inc.*, 308 N.W.2d 709, 712 (Minn. 1981).

26. See, e.g., MINN. STAT. § 302A.751 (1990); N.C. GEN. STAT. § 55-14-30 (1990); see also *Meiselman v. Meiselman*, 307 S.E.2d 551, 560 (N.C. 1983) (discussing the increasing number of states that have enacted more liberal statutes in response to calls for reform); *Balvik v. Sylvester*, 411 N.W.2d 383, 388 (N.D. 1987) (holding that state statute which mentioned only dissolution as a remedy for oppressive conduct allows alternative equitable remedies including buyout at the fair value); *Baker v. Commercial Body Builders, Inc.*, 507 P.2d 387, 395-96 (Or. 1973) (stating that the court is not limited to the dissolution remedy and listing ten alternative equitable remedies available to the court); Harry J. Haynsworth, *The Effectiveness of Involuntary Dissolution Suits as a Remedy for Close Corporation Dissension*, 35 CLEV. ST. L. REV. 25, 31-32 (1986-1987) (identifying states that have authorized involuntary dissolution in certain circumstances); Spratlin, *supra* note 12, at 418 (discussing statutes passed in several states). The Official Comment to § 40 of the Model Close Corporation Statute states that §§ 40-43 of the proposed statute, which protect minority shareholders, are based on provisions passed in California, Michigan, Minnesota, New Jersey, and South Carolina. MODEL STATUTORY CLOSE CORP. SUPP. § 40 official cmt. (1991).

27. See, e.g., MINN. STAT. § 302A.751 subd. 1(b)(2) (1990) (allowing relief upon a finding that "the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial"); N.Y. BUS. CORP. LAW § 1104-a(1) (1990) (allowing relief upon a finding of "illegal, fraudulent or oppressive conduct").

In applying statutes of this type, courts have developed a standard, known as the "reasonable expectations" standard, that defines which acts are oppressive and thus entitle minority shareholders to relief.<sup>28</sup> The reasonable expectations of minority shareholders in a closely held corporation often include salary and active participation in management as a key employee.<sup>29</sup> One authority has stated: "The shareholder purchases not stock, but a future. He is not investing in a legal entity, but embarking with his friends on a cooperative adventure. The reasonable expectations of such a shareholder are a job, a salary, a significant place in management, and economic security for his family."<sup>30</sup> Courts consequently have held that minority shareholders of a closely held corporation may obtain relief when their expectations are frustrated.<sup>31</sup>

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28. The North Carolina Supreme Court created a four-part test which plaintiffs must satisfy in order to prove they had reasonable expectations. The requirements are: (1) the plaintiff "had one or more substantial reasonable expectations known or assumed by the other [parties]"; (2) the expectation was frustrated; (3) "the frustration was without fault of the plaintiff" and "in large part beyond his control"; and (4) "under all the circumstances of the case" the plaintiff is entitled to "some form of equitable relief." *Meiselman*, 307 S.E.2d at 564. Professor O'Neal argues that the reasonable expectations of minority shareholders are the most reliable guide to a just solution of disputes among the shareholders in a close corporation and notes that courts are acting with increasing frequency to protect these expectations. O'NEAL'S OPPRESSION, *supra* note 12, § 7:15, at 88-92; *see also* *Topper v. Park Sheraton Pharmacy, Inc. (In re Topper)*, 433 N.Y.S.2d 359, 364-65 (N.Y. App. Div. 1980) (holding that the reasonable expectations of the minority shareholders are the appropriate standard to be used in defining whether the conduct of the controlling shareholders is "oppressive" within the meaning of the statute). Commentators also have criticized the reasonable expectations analysis by suggesting that it does not consider the possibility that participants may have private expectations which would not have been accepted by the majority had they become aware of them. Hillman, *supra* note 21, at 77-78. Only expectations resulting from express or implied understandings should be recognized. *Id.*

29. Olson, *supra* note 20, at 629; Olson, *supra* note 11, at 18. The expectations of investors in a closely held corporation are quite different than those of the typically passive investors in a publicly held corporation. Spratlin, *supra* note 12, at 408. Both types of investors expect appreciation in the value of their investment. Investors in publicly held corporations receive dividends as a form of return on this investment, while investors in closely held corporations may expect to receive a salary and a management position as a condition of their investment.

30. Olson, *supra* note 11, at 18.

31. Courts often define oppression broadly and hold that termination of employment frustrates minority shareholders' reasonable expectations, thereby qualifying the shareholders for equitable relief. *See, e.g., O'Donnell v. Marine Repair*, 530 F. Supp. 1199, 1208 (S.D.N.Y. 1982) (rejecting defendant's argument that the termination was for good cause); *Wilkes v. Springside Nurs-*



The reasonable expectations standard is designed to resolve conflicts among closely held corporate shareholders.<sup>32</sup> The standard grants shareholders a method of liquidating their investments without greatly disrupting the continuity of the business or crippling the entity.<sup>33</sup> Courts determine reasonable expectations by examining the entire history of the participants' relationship.<sup>34</sup> Thus, the adoption of the reasonable expectations standard ensures an opportunity for frozen-out minority shareholders in a closely held corporations to obtain an investment return, without financially devastating the corporation.

### C. MINNESOTA STATUTES SECTION 302A.751

Minnesota Statutes Section 302A.751, enacted in 1981, reflected the trend toward increasing recognition of and legal protection for the reasonable expectations of minority shareholders of close corporations.<sup>35</sup> By enacting Section 302A.751, the Minnesota Legislature made three major changes in the prior law.<sup>36</sup> The most significant change was to provide the courts with broad equitable powers of relief to remedy the wrongs suffered by oppressed minority shareholders.<sup>37</sup> Second,

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ing Home, 353 N.E.2d 657, 662-63 (Mass. 1976) (stating that the termination of the minority stockholder's employment constitutes frustration by the majority of the minority stockholder's purposes in entering the corporate venture and denies an equal return of investment); *Kemp & Beatley, Inc. v. Gardstein* (*In re Kemp & Beatley, Inc.*), 473 N.E.2d 1173, 1180-81 (N.Y. 1984); *In re Burack*, 524 N.Y.S.2d 457, 460 (N.Y. App. Div. 1988); *Taines v. Gene Barry One Hour Photo Process, Inc.* (*In re Taines*), 444 N.Y.S.2d 540, 544 (N.Y. App. Div. 1981); *Topper v. Park Sheraton Pharmacy, Inc.* (*In re Topper*), 433 N.Y.S.2d 359, 362 (N.Y. App. Div. 1980) (stating that whether the controlling shareholder discharged the petitioner for good cause or in good business judgment is irrelevant because the respondent's actions severely damaged the petitioner's reasonable expectations); *Balvik v. Sylvester*, 411 N.W.2d 383, 388 (N.D. 1987) ("We find little relevance in whether Sylvester discharged Balvik from employment for cause.").

32. See Thompson, *supra* note 17, at 226. The breakdown of the personal relationships that serve as the foundation of the closely held corporation often results in conflicts which must be resolved by the courts.

33. Hillman, *supra* note 21, at 81-83.

34. See, e.g., *Meiselman v. Meiselman*, 307 S.E.2d 551, 563 (N.C. 1983). This includes the reasonable expectations at the inception of the corporation and as they develop over time. Privately held expectations, not made known to other participants, are not "reasonable." *Id.* at 564.

35. MINN. STAT. § 302A.751 (1981), amended by MINN. STAT. § 302A.751 (1990).

36. 1981 Minn. Gen. Laws, ch. 270, § 108; see MINN. STAT. § 301.49 (1980), repealed by MINN. STAT. § 302A.751 (1981).

37. The new provision provided: "A court may grant any equitable relief

the Minnesota Legislature broadened the standard for determining when relief was appropriate.<sup>38</sup> Third, it enacted a mandatory buyout available to shareholders at the discretion of the court.<sup>39</sup>

The Minnesota Legislature amended Section 302A.751 in 1983 to further strengthen the equitable remedies available to mistreated noncontrolling shareholders and to change the standard of conduct that gives rise to liability.<sup>40</sup> Minnesota Statutes Section 302A.751 subdivision 1(b)(2) now provides minority shareholders with equitable relief when it is established that the directors or those in control have acted "in a manner unfairly prejudicial" to the shareholders.<sup>41</sup> Additionally, the cur-

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it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business" when the appropriate grounds for relief exist. MINN. STAT. § 302A.751 (1981), *amended by* MINN. STAT. § 302A.751 (1990). The only remedy the former statute mentioned was dissolution. *See* MINN. STAT. § 301.49 (1980), *repealed by* MINN. STAT. § 302A.751 (1981). The current statute authorizes the court to order equitable relief or a mandatory buyout instead of involuntary dissolution. *See* MINN. STAT. § 302A.751 subd. 1 (1990). This significantly broadens the power of the courts to grant relief to oppressed shareholders.

38. Shareholders were entitled to relief when they established that the controlling persons acted "fraudulently, illegally, or in a manner persistently unfair." MINN. STAT. § 302A.751 subd. 1(b)(2) (1981), *amended by* MINN. STAT. § 302A.751 (1990). This wording was adopted from the previous provision, MINN. STAT. § 301.49 subd. 3 (1980), *repealed by* MINN. STAT. § 302A.751 (1981). However, the reporter's notes state that the 1981 provision was intended to be interpreted more liberally in light of the court's power to order equitable relief other than dissolution. MINN. STAT. ANN. § 302A.751, reporter's notes 1981 (West 1991). The standard for determining "persistent unfairness" should be less stringent than that required to authorize dissolution. *Id.* The policy behind this section is that "abuse of non-controlling shareholders is not to be tolerated." *Id.*

39. MINN. STAT. § 302A.751 subd. 2 (1990) (limiting the availability of the buyout to shareholders of closely held corporations). Under this provision, a court could order any party to sell its shares to the corporation or to the shareholders attempting to enforce the buyout; this is fully at its discretion. MINN. STAT. ANN. § 302A.751, reporter's notes 1981 (West 1991).

40. 1983 Minn. Gen. Laws, ch. 368, §§ 9 to 11; *see* MINN. STAT. § 302A.751 (1990) (amending MINN. STAT. § 302A.751 (1981)); *see also* Olson, *supra* note 11, at 10 (as the drafter of the 1983 amendments, Professor Olson gives a detailed analysis of Minnesota Statutes § 302A.751).

41. MINN. STAT. § 302A.751 subd. 1(b)(2) (1990). Minnesota Statutes § 302A.751 states that equitable relief is available in an action by a shareholder when "the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation." *Id.* "[U]nfairly prejudicial" conduct, unlike the "persistently unfair" standard of the previous statute, only requires one instance of abuse. MINN. STAT. ANN. § 302A.751, reporter's notes 1982-84 (West 1991).

rent provision refers to shareholders who are employees of the closely held corporation.<sup>42</sup> The reporter's comments to Section 302A.751 indicate that the termination of a shareholder-employee may be a ground for relief if found to be "unfairly prejudicial."<sup>43</sup>

To assist courts considering equitable relief, the Minnesota Legislature adopted the "reasonable expectations" standard as a basis for determining whether conduct is "unfairly prejudicial."<sup>44</sup> Termination of employment which frustrates a minority shareholder's reasonable expectations would qualify the shareholder for equitable relief in Minnesota. Under Minnesota Statutes Section 302A.751, the court's remedial discretion is unlimited.<sup>45</sup> In the few cases considering this issue, Minnesota courts have been willing to use this equitable power to protect terminated minority shareholders, particularly by providing relief in the form of a buyout.<sup>46</sup>

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42. *Id.*

43. *Id.*

44. Subdivision 3 provides that: "in determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration . . . the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other." MINN. STAT. § 302A.751 subd. 3 (1990). Professor O'Neal referred specifically to this provision as an example of the recent codification of judicial use of the reasonable expectations standard. O'NEAL'S OPPRESSION, *supra* note 12, § 7:15, at 88.

45. MINN. STAT. § 302A.751 (1990); *see* Olson, *supra* note 11, at 19. The goal in granting relief should be to achieve a balance so that the remedy is proportioned to the degree of harm suffered. Olson, *supra* note 11, at 19. "Flexibility and discretion are the hallmarks of section 751." *Id.* at 12. Despite this broad grant of equitable powers, the Minnesota Court of Appeals recently refused to order equitable relief pursuant to § 302A.751 when a plaintiff brought a claim of breach of fiduciary duty based on his discharge from a closely held corporation. *Kelley v. Rudd*, No. C7-91-1142, 1992 WL 3651, at \*3 (Minn. Ct. App. Jan. 14, 1992). The *Kelley* court refused to find that the defendant's discharge of the plaintiff constituted unfairly prejudicial conduct entitling the plaintiff to dissolve the corporation. *Id.*

46. *See, e.g.*, *Villa Maria, Inc. v. Mondati (In re Villa Maria)*, 312 N.W.2d 921 (Minn. 1981) (affirming the trial court decision, which gave the defendant the option of buying out the plaintiff's shares, when solid grounds for dissolution existed under MINN. STAT. § 301.49 (1980)); *Sawyer v. Curt & Co.*, Nos. C7-90-2040, C9-90-2041, 1991 WL 65320, at \*2 (Minn. Ct. App. Aug. 2, 1991) (upholding the trial court's order of buyout by the nonmoving shareholders); *Evans v. Blesi*, 345 N.W.2d 775, 781 (Minn. Ct. App. 1984) (providing a mechanism for a buyout). Professor Olson notes that the buyout is such an important remedy that it is spelled out in Minnesota Statutes § 302A.751 subd. 2(a). Olson, *supra* note 11, at 20. He explains that the buyout is the preferred remedy for shareholder disputes because it allows a return of the shareholder's capital while not crippling the business. *Id.* at 17 (quoting REPORT OF THE COMMITTEE

## II. PROTECTION FOR MINNESOTA EMPLOYEES UNDER THE LAW OF WRONGFUL TERMINATION

In addition to Minnesota Statutes Section 302A.751, which grants equitable relief to employees of close corporations in their capacity as minority shareholders,<sup>47</sup> the law of wrongful termination affords a remedy in the form of recovery of lost salary to employees of all corporations.<sup>48</sup> Employees of corporations, regardless of whether they are shareholders, also have limited protection from wrongful discharge under exceptions to the employment at-will doctrine. The at-will doctrine allows an employer to terminate an employee with or without just cause<sup>49</sup> in the absence of an agreement limiting the employee's discharge to just cause or specifying the term of employment.<sup>50</sup>

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ON CLOSE CORPORATIONS TO THE ADVISORY TASK FORCE ON CORPORATION LAW (Feb. 12, 1980)).

47. The equitable remedies granted to terminated shareholder-employees of close corporations under § 302A.751, such as the buyout, provide a method of returning the shareholder's capital. See Olson, *supra* note 20, at 646; Spratlin, *supra* note 12, at 418-19.

48. Discharged employees who successfully prove that they were wrongfully terminated are entitled to monetary damages for lost wages. See, e.g., Pine River State Bank v. Mettelle, 333 N.W.2d 622, 632 (Minn. 1983) (sustaining award of damages for lost wages); Bussard v. College of Saint Thomas, Inc., 200 N.W.2d 155, 163 (Minn. 1972) (allowing plaintiff to seek damages for wrongful termination but not specific performance); Kulkay v. Allied Cent. Stores, Inc., 398 N.W.2d 577, 579 (Minn. Ct. App. 1986) (upholding jury's award of monetary damages). In a publicly held corporation, terminated employees who are also shareholders do not require judicial or statutory protection in order to receive a return on investment. Thus, terminated employees of a publicly held corporation are not "frozen out" in the same way as a terminated employee of the close corporation, who can be denied all return on investment.

49. See O'NEAL'S OPPRESSION, *supra* note 12, § 3.06, at 39. The employment at-will doctrine has been embedded in employer-employee relationships since the late 19th century when it was first propounded by H.G. Wood in his treatise *Master and Servant*. See Kenneth T. Lopatka, *The Emerging Law of Wrongful Discharge—A Quadrennial Assessment of the Labor Law Issue of the 80s*, 40 BUS. LAW. 1, 4 (1984) (commenting that the at-will rule is a departure from English common law and traceable to the writing of legal commentator H.G. Wood, who based the rule on the turn-of-the-century rationales of mutuality and independent consideration); Charles A. Brake, Jr., Note, *Limiting the Right To Terminate at Will—Have the Courts Forgotten the Employer?*, 35 VAND. L. REV. 201, 202 (1982).

50. A "terminable-at-will" contract is one that expressly states that it is terminable at the will of the employer or the employee or fails to state that the agreement is for a specified duration, thereby being for an indefinite term. See 9 SAMUEL WILLISTON, A TREATISE ON THE LAW OF CONTRACTS § 1017 (3d ed. 1967). Williston states that a contract not for a fixed term is a contract terminable at will and that even when the employment is "permanent" or "for

In recent years, commentators have extensively criticized the traditionally rigid at-will doctrine.<sup>51</sup> Courts have responded and increasingly created exceptions to the rule by applying principles of tort and contract law.<sup>52</sup> For example, Minnesota employment cases firmly establish that a contract for a "permanent" or an indefinite term of employment is terminable at the will of either party.<sup>53</sup> However, the Minnesota Supreme Court created a narrow exception, holding that the presence of independent consideration beyond personal employment services can create an implied contract limiting discharge to good cause.<sup>54</sup>

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life," the majority of courts interpret this as being an agreement terminable by either party at will. *Id.* § 1017, at 131-32.

51. See, e.g., Lawrence E. Blades, *Employment At Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power*, 67 COLUM. L. REV. 1404 (1967); Cornelius J. Peck, *Unjust Discharges From Employment: A Necessary Change in the Law*, 40 OHIO ST. L.J. 1 (1979); Clyde W. Summers, *Individual Protection Against Unjust Dismissal: Time for a Statute*, 62 VA. L. REV. 481 (1976); Brake, *supra* note 49, at 202 (commenting on the recent growth of criticism of the traditional at-will rule).

52. The erosion of the at-will rule is attributable to several factors, including the nature of employment law, which has radically changed since the laissez-faire atmosphere of the early 1900s. Employees today, who are increasingly more dependent on corporate employers for economic survival, struggle with inferior bargaining power in nonunion situations. Lopatka, *supra* note 49, at 5. Judicial sympathy arising from inequitable corporate scenarios also has prompted courts to make exceptions. *Id.* at 5-6 (citing cases basing exceptions on inequitable corporate scenarios). In the 1980s, judicial activity increased significantly in the area of wrongful discharge, encouraged by a growing body of legislation. *Id.* at 4. For an extensive discussion of the employment at-will doctrine and exceptions in Minnesota, see Susan F. Marrinan, *Employment At-Will: Pandora's Box May Have an Attractive Cover*, 7 HAMLINE L. REV. 155 (1984); Sarah C. Steefel, Note, *At-Will Employment—Contractual Limitation of an Employer's Right to Terminate: Pine River State Bank v. Mettille*, 333 N.W.2d 622 (Minn. 1983), 7 HAMLINE L. REV. 463 (1984).

53. See, e.g., *Degen v. Investors Diversified Servs., Inc.*, 110 N.W.2d 863, 866 (Minn. 1961) (rejecting plaintiff's claim for breach of a lifetime employment contract because the contract was of an indefinite term and therefore terminable at will); *Skagerberg v. Blandin Paper Co.*, 266 N.W. 872, 874 (Minn. 1936) (holding that a contract for permanent or life employment is terminable at will without additional stipulation as to the duration of the employment or additional consideration).

54. See *Bussard v. College of St. Thomas, Inc.*, 200 N.W.2d 155, 161 (Minn. 1972) (plaintiff "purchased" a permanent employment promise with the agreement that he would give the employer stock). In *Skagerberg v. Blandin*, the Minnesota Supreme Court discussed cases in which the plaintiffs purchased employment within the meaning of the independent consideration exception: *Pierce v. Tennessee C.I.R.R.*, 173 U.S. 1, 9 (1899) (holding that the plaintiff who was injured on the job released the company from liability in exchange for a promise of permanent employment); *Carnig v. Carr*, 46 N.E. 117, 118 (Mass. 1897) (holding that the plaintiff "purchased" employment by ceasing to

The Minnesota Supreme Court created another limited contractual exception to the at-will rule in *Pine River State Bank v. Mettille*.<sup>55</sup> Mettille entered into an oral employment agreement with the defendant bank which said nothing about terms of employment.<sup>56</sup> The bank later provided its employees with a printed employee handbook containing sections on job security and disciplinary policy.<sup>57</sup> The court held that pledges made after employment begins may become enforceable as part of the original employment contract if they meet the requirements for the formation of a unilateral contract.<sup>58</sup> Subsequent Minnesota cases have construed the unilateral contractual exception narrowly, requiring sufficient definiteness in handbook

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work for the competition). *Skagerberg*, 266 N.W. at 874. The *Skagerberg* court held that rejecting another offer and giving up an established business does not constitute sufficient additional consideration to create an implied contract limiting discharge to good cause. *Id.* at 876-77; see also *Degen*, 110 N.W.2d at 867 (acceptance of a salary reduction is also not sufficient to constitute additional consideration).

Although Alfred Pedro brought a claim for "lifetime employment," the valuable consideration exception does not apply because he did not establish that he "purchased" his employment within the meaning of this exception. *Pedro v. Pedro*, 463 N.W.2d 285, 287 (Minn. Ct. App. 1990). Alfred Pedro did not furnish additional consideration for his employment beyond the normal services required by the job as the employee did in *Bussard. Pedro*, 463 N.W.2d at 287.

55. 333 N.W.2d 622 (Minn. 1983).

56. *Id.* at 624.

57. *Id.* According to the bank president, the handbook was intended only as a source of information and a guideline, not as part of the employees' employment contracts. *Id.*

58. *Id.* The court enunciated a four-part test for determining when a unilateral contract is formed by terms arising after employment has begun: (1) the terms must be definite in form; (2) they must be communicated to the offeree; (3) they must be accepted by the offeree; and (4) they must be enforceable by consideration. *Id.* at 626-27. It emphasized that the employee's continued performance is sufficient consideration. *Id.* at 630. The *Pine River* court distinguished this case from cases holding that additional, independent consideration is a requirement for employees seeking to prove "lifetime" or "permanent" employment. *Id.* The provision labelled "Job Security" was not considered sufficiently definite to constitute an offer. *Pine River*, 333 N.W.2d at 630. However, the court found that the section entitled "Disciplinary Policy" was a definite offer communicated to and accepted by the plaintiff. *Id.* The court, pointing specifically to the handbook, stated: "If an employee has violated a company policy, the following procedure will apply." *Id.* Therefore, the court found that the procedural disciplinary steps set out in the handbook should have been followed by the bank to give Mettille the opportunity to retain his job. *Id.* at 631. One commentator has characterized the holding in *Pine River* as limited because it applies only to employers who distribute handbooks with written provisions limiting termination to just cause. See Steefel, *supra* note 52, at 464.

terms prior to finding them to be part of the employment contract.<sup>59</sup>

The Minnesota Court of Appeals recognized another type of implied-in-law contractual exception in *Eklund v. Vincent Brass & Aluminum Co.*<sup>60</sup> When the plaintiff in *Eklund* accepted the defendant's job offer both parties intended it to be a permanent position until retirement as long as the plaintiff performed satisfactorily.<sup>61</sup> Without warning or explanation, a new president terminated the plaintiff four years later.<sup>62</sup> The court remanded the case for a determination of the "intentions of the parties, [and] to determine whether the contract was in fact indefinite as to duration."<sup>63</sup> In later cases the Minnesota Court of Appeals has distinguished *Eklund* and refused to apply it to similar oral employment agreement cases.<sup>64</sup>

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59. See, e.g., *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 857 (Minn. 1986) (rejecting the claim that an employment manual constituted an offer for a unilateral contract because the language on disciplinary action and termination was too indefinite to form the basis of an enforceable contract); *Kulkay v. Allied Cent. Stores, Inc.*, 398 N.W.2d 577, 578 (Minn. Ct. App. 1986) (recognizing that general statements of personnel policy do not meet the requirements for an offer according to *Pine River*, but holding the policy language at issue to be sufficiently definite); see also *Bakker v. Metropolitan Pediatric, P.A.*, 355 N.W.2d 330, 331 (Minn. Ct. App. 1984) (rejecting plaintiff's argument that there was an implied offer in her long term of service and good performance reviews). Courts in other jurisdictions are split on whether post-employment documents can create an enforceable contract. See *Marrinan*, *supra* note 52, at 187 (citing cases denying enforcement). Most courts which refuse to enforce contracts have found that the employment documents were too general or were unilaterally adopted only by the employer. See *id.*

60. 351 N.W.2d 371 (Minn. Ct. App. 1984).

61. *Id.* at 373. The president of Vincent Brass approached the plaintiff with the possibility of an offer for a job in another city. Though not seeking a change in employment, the plaintiff discussed the job opportunity with the president and informed him that he would consider the position only if it were permanent as long as he performed satisfactorily. *Id.* The plaintiff also informed the president that he would be quitting a 26-year career at his current place of employment and would have to relocate his family and sell his house in order to take the new position. *Id.* There was no written agreement confirming these terms. *Id.*

62. *Id.* at 374.

63. *Id.* at 377. The former president of Vincent Brass signed a statement asserting that the contract of employment included an understanding that the plaintiff would be retained as long as he performed satisfactorily. *Id.* at 374-75. He also stated that the plaintiff performed his responsibilities satisfactorily and was a valuable team member. *Id.* at 375.

64. See *Dumas v. Kessler & Maguire Funeral Home, Inc.*, 380 N.W.2d 544 (Minn. Ct. App. 1986). In *Dumas*, the defendant discharged the plaintiff after 30 years of service. The plaintiff alleged that his employment contract included implicit promises and covenants that he would not be discharged except

Another exception to the at-will rule is the doctrine of promissory estoppel.<sup>65</sup> This exception applies when a promise induces the promisee to act and the promisor should reasonably expect to induce the action.<sup>66</sup> The Minnesota courts have limited the application of this doctrine to cases in which actual reliance on an employer's promises has caused the promisee to quit a former job.<sup>67</sup>

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for just cause. *Id.* at 545. His supervisor informed him, furthermore, that they would "retire together." *Id.* The *Dumas* court distinguished this case from *Eklund* on the basis that the plaintiff in the latter case gave up other employment in reliance on promises of job security. *Id.* at 548. It emphasized that it must consider the outward manifestations, rather than the subjective intentions, of the parties as a matter of law. *Id.* at 547 (citing *Cedarstrand v. Lutheran Bhd.*, 117 N.W.2d 213, 221 (Minn. 1962)); see also *Harris v. Mardan Business Sys., Inc.*, 421 N.W.2d 350, 354 (Minn. Ct. App. 1988) (rejecting plaintiff's claim of an oral employment agreement based on defendant's statements that the employment would be permanent, and distinguishing *Eklund* on the basis that the employer in *Eklund* had stated in writing that they both had intended the employment to run until retirement).

65. See, e.g., *Grouse v. Group Health Plan, Inc.*, 306 N.W.2d 114 (Minn. 1981).

66. *Id.* at 116 (quoting RESTATEMENT OF CONTRACTS § 90 (1932)).

67. *Id.* (holding that the plaintiff's act of quitting another job in reliance on a promised offer was sufficient to allow recovery of damages for defendant's anticipatory repudiation of the contract); *Eklund v. Vincent Brass & Aluminum Co.*, 351 N.W.2d 371, 378 (Minn. Ct. App. 1984) (allowing plaintiff to bring promissory estoppel claim where he produced evidence that he relied on a promise of permanent employment when he terminated his 26-year career with his previous employer).

Despite the creation of these contract-based exceptions, the Minnesota Supreme Court has refused to imply a covenant of good faith or fair dealing in employment contracts. See, e.g., *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 857-58 (Minn. 1986) (refusing to impose a good faith requirement in employment contracts); *Mason v. Farmers Ins. Cos.*, 281 N.W.2d 344, 347 (Minn. 1979) (rejecting plaintiff's argument that the good faith requirement implied in sales contracts should be carried over to employment contracts); see also *Wild v. Rarig*, 234 N.W.2d 775, 790 (Minn. 1975) (holding that the bad faith termination of an employment contract is not an independent tort permitting tort recovery), *cert. denied*, 424 U.S. 902 (1976); *Eklund*, 351 N.W.2d at 378.

The Minnesota Supreme Court in *Hunt* refused to inject a duty to terminate in good faith into employment contracts because "we feel it unnecessary and unwarranted for the courts to become arbiters of any termination that may have a tinge of bad faith attached. Imposing a good faith duty to terminate would unduly restrict an employer's discretion in managing the work force." *Hunt*, 384 N.W.2d at 858 (quoting *Brockmeyer v. Dun & Bradstreet*, 335 N.W.2d 834, 838 (Wis. 1983)); see also *Mason*, 281 N.W.2d at 347 (rejecting plaintiff's argument that the good faith covenant implied in sales contracts should be carried over to employment contracts); *Bakker v. Metropolitan Pediatric, P.A.*, 355 N.W.2d 330, 331 (Minn. Ct. App. 1984) (rejecting plaintiff's claim for breach of an oral employment contract based on an implied limitation of good cause).



Although Minnesota courts have developed exceptions to the at-will rule, they are limited in scope and narrowly applied. In order to establish a wrongful termination in at-will employment, Minnesota courts have required an express agreement, an agreement implied by definite contractual terms, or a promise inducing reliance. Prior to *Pedro v. Pedro*, the Minnesota courts had not evidenced a willingness to erode the at-will employment rule with expansive exceptions.<sup>68</sup>

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68. Public policy exceptions to the at-will rule have also been recognized to a limited extent in Minnesota. See *Phipps v. Clark Oil & Ref. Corp.*, 408 N.W.2d 569, 571 (Minn. 1987) (recognizing the existence of a limited public policy exception in Minnesota). These exceptions allow employees to bring a cause of action for wrongful termination, despite the lack of an employment agreement, when the termination violates public policy. The *Phipps* exception is limited to a "clearly mandated public policy." *Id.* (stating that the plaintiff's discharge violated the "clearly mandated public policy" of the Clean Air Act to protect citizens and the environment). A 1989 decision by the Minnesota Court of Appeals also reflects the courts' caution in applying the public policy exception. See *Vonch v. Carlson Cos.*, 439 N.W.2d 406 (Minn. Ct. App. 1989). The *Vonch* court emphasized that "[i]f actions are allowed when the public interest is only marginally affected rather than where it is 'clearly mandated,' the law of at-will employment will be seriously jeopardized, and the public policy 'exception' to at-will employment will become the rule." *Id.* at 408.

Courts are cautious in creating an exception based on public policy considerations; they have avoided defining public policy themselves and have required that the policy violated be defined specifically in a statute or constitution before giving it application. See *Marrinan*, *supra* note 52, at 169 (stating that "[m]ost courts are cautious about finding a violation of an unarticulated public policy and are more reluctant to create such public policy"); *Steeffel*, *supra* note 52, at 468. *But see* *Monge v. Beebe Rubber Co.*, 316 A.2d 549, 551 (N.H. 1974) (holding that the employer's conduct contravened general public policy).

The Minnesota Legislature has given the courts some guidance by enacting several statutes that create specific public policy limitations on the employer's right to discharge. See, e.g., MINN. STAT. § 593.50 (1990) (forbidding employers from discharging employees for fulfilling their jury duty); *id.* § 176.82 (creating civil liability for employers who discharge an employee for filing a worker's compensation claim); *id.* § 363.03 subd. 1(2)(b) (forbidding employers from discharging on the basis of "race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, or age").

A public policy exception does not apply in *Pedro* because Alfred Pedro's brothers did not violate a statute or any specific public policy. Although the facts behind Alfred Pedro's termination implicate his two brothers in suspicious and greedy behavior, Alfred Pedro did not allege that he was terminated in response to his refusal to participate in an activity that he believed was unlawful. *Pedro v. Pedro*, 463 N.W.2d 285, 287 (Minn. Ct. App. 1990).

### III. PEDRO V. PEDRO: APPLYING WRONGFUL TERMINATION LAW TO CLOSELY HELD CORPORATIONS

In *Pedro v. Pedro*,<sup>69</sup> the Minnesota Court of Appeals went beyond the previously established exceptions to the at-will doctrine and adopted a new approach. Alfred Pedro discovered a large financial discrepancy in the financial records of his family-owned company.<sup>70</sup> Subsequently, Alfred's relationship with his brothers, who were also company shareholders, deteriorated, resulting in his termination.<sup>71</sup> Alfred Pedro then sought a dissolution of the corporation and damages for wrongful termination.<sup>72</sup> A jury awarded him the right to a buyout of his shares at the price provided for in a Stock Retirement Agreement, damages for breach of fiduciary duty, and wrongful termination.<sup>73</sup> The total award was \$756,740, of which \$256,740 was for the wrongful termination claim.<sup>74</sup>

The Minnesota Court of Appeals considered whether the trial court erred in awarding damages both for wrongful termination and the right to a buyout of shares.<sup>75</sup> The court concluded that the nature of closely held corporations and the standard of reasonable expectations gave the trial court authority to find liability for the wrongful termination of an employee-shareholder<sup>76</sup> despite the at-will doctrine.<sup>77</sup> It recognized that the general rule in Minnesota is that employ-

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69. 463 N.W.2d 285 (Minn. Ct. App. 1990).

70. *Id.* at 287.

71. *Id.* at 285. The court did not fully discuss the circumstances of his termination. *Id.*

72. *Id.* at 286.

73. *Id.* at 287.

74. *Id.* Along with the \$256,740 awarded for wrongful termination, the jury also awarded \$500,000 in damages for breach of fiduciary duty. *Id.*

75. *Id.* at 288. The court also considered whether the trial court erred in finding a breach of fiduciary duty, and whether the trial court disregarded the procedure for a buyout of shares provided for in Minnesota Statutes § 302A.751. *Id.* The buyout is not a controversial aspect of the *Pedro* decision, as the Minnesota Legislature expressly included it as an option for the court in granting relief to a frozen-out minority shareholder. MINN. STAT. § 302A.751 (1990); see Olson, *supra* note 11, at 20.

76. *Pedro*, 463 N.W.2d at 289-90.

77. *Id.* In remanding the case, the Minnesota Court of Appeals in *Pedro* directed that the trial court decide what impact there was on the plaintiff's right of employment until retirement. *Id.* The trial court previously found that Alfred Pedro had two separate property rights in the company, employment until voluntary retirement and a one-third share in the ownership of the company. *Id.*

ment for an indefinite term is "at-will."<sup>78</sup> However, the court focused instead on the special nature of employment in a closely held corporation without stating an at-will theory to support the claim of wrongful termination.<sup>79</sup>

At the trial level, the issue of wrongful termination centered on an interrogatory submitted to the jury which asked whether there was an "expectation" that the plaintiff would be employed by the Pedro Companies until he voluntarily retired.<sup>80</sup> The defendants contended that "agreement" should have been used instead of "expectation" because the former term erroneously suggested that a mere expectation of lifetime employment was a sufficient basis for a finding of wrongful termination.<sup>81</sup> The court of appeals rejected this argument, referring to Minnesota Statutes Section 302A.751, subdivision 3, which provides that a court should consider the reasonable expectations of the shareholders of a closely held corporation in granting equitable relief.<sup>82</sup> The *Pedro* court indicated that it considered the shareholder's reasonable expectations in a closely held corporation, rather than a contractual agreement with the corporation, to be an appropriate basis for a claim of wrongful termination.<sup>83</sup> The court stated that "[i]n a closely held corporation the nature of the employment of a shareholder may create a reasonable expectation by the employee-owner that his employment is not terminable at will."<sup>84</sup> *Pedro*

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78. *Id.* at 289.

79. *Id.*

80. *Id.* The defendants argued that this interrogatory erroneously suggested to the jury that Alfred's expectation of lifetime employment was a sufficient basis for a finding of wrongful termination. *Id.* The argument over this interrogatory constitutes the focal point of the controversy surrounding the *Pedro* decision. In allowing the interrogatory with the word "expectation," the Minnesota Court of Appeals applied the standard for relief found in Minnesota Statutes § 302A.751 to the law of wrongful termination. *Id.*

81. *Id.* at 289.

82. *Id.* at 289-90.

83. *Id.* Because the *Pedro* court did not extensively analyze the case, it is unclear whether it intended to establish a new exception to the at-will doctrine.

84. *Id.* The court emphasized that the employment relationship must be ascertained by considering the negotiations of the parties, the parties' situations, the type of employment, and the circumstances of the case. *Id.* (citing *Eklund v. Vincent Brass & Aluminum Co.*, 351 N.W.2d 371, 376 (Minn. Ct. App. 1984)). This limited discussion is the extent of the court's analysis of the at-will rule.

After its summary discussion of the at-will doctrine, the *Pedro* court focused on the reasonable expectations of shareholders in a closely held corporation. *Id.* At trial, the defendants argued that the employment relationship

is thus notable for its application of employment law to closely held corporations.<sup>85</sup>

#### IV. PEDRO GOES TOO FAR

In *Pedro*, the Minnesota Court of Appeals extended the law too far in its efforts to compensate a sympathetic plaintiff.<sup>86</sup> The court's interpretation of the law is not justified by the established law of wrongful termination, and the court lacked sufficient grounds for creating a new exception to the at-will doctrine based on the nature of closely held corporations.<sup>87</sup>

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was terminable at-will. *Id.* The jury nonetheless found that the respondent had a reasonable expectation of employment, creating the basis for a finding of wrongful termination. *Id.*

85. The "reasonable expectations" standard, as defined by courts and commentators, affords frozen-out minority shareholders of a closely held corporation the opportunity to obtain a return on investment. The Minnesota Legislature expressly enacted Minnesota Statutes § 302A.751 subd. 3 in order to grant relief to employee-shareholders of a closely held corporation. The *Pedro* court's use of the shareholder's "reasonable expectations" is not supported by the established law of wrongful termination, which focuses on the existence of express or implied contractual agreements between employees and employers. The *Pedro* court did not use the "reasonable expectations" standard to imply a contractual agreement. *Pedro*, 463 N.W.2d at 289. Instead, it used the standard to indicate that the nature of employment in a closely held corporation itself is sufficient to create a cause of action for wrongful termination, without regard to the existence of any agreement. *Id.*

86. Although the court's opinion gives few facts about the termination of Alfred Pedro, the plaintiff's brief emphasizes his sympathetic position. Alfred Pedro had been employed for 45 years by his family-owned business. Respondent's Brief and Appendix at 3, *Pedro v. Pedro*, 463 N.W.2d 285 (Minn. Ct. App. 1990) (No. C6-90-814). The business was started by Carl Pedro Sr. in the early 1900s and recently grossed over six million dollars a year. *Id.* In the fall of 1986, several large accounting discrepancies became apparent in the corporate records. *Id.* at 5. In February of 1987, a discrepancy of almost \$330,000 was discovered. *Id.* Alfred Pedro insisted on an investigation of the missing funds. *Id.* At the same time, his two brothers began criticizing his performance at work and told him to cooperate, resign, or be fired. *Id.* at 6. He was fired shortly thereafter, and all his pay and benefits were suspended. *Id.* at 7. The implication that can be drawn from these facts, left out of the opinion, is that the two brothers conspired against Alfred Pedro for personal financial gain.

87. Cases from other jurisdictions do not support the establishment of a special exception to the at-will doctrine based on the employee's status as a minority shareholder of a closely held corporation. *See, e.g., Ingle v. Glamore Motor Sales, Inc.*, 535 N.E.2d 1311, 1313 (N.Y. 1989) (expressly rejecting plaintiff's argument that employment was not at-will because of his status as minority shareholder of closely held corporation); *Landorf v. Glottstein*, 500 N.Y.S.2d 494, 499 (Sup. Ct. 1986) (stating that a minority shareholder of closely held corporation was clearly an at-will employee because there was no contract of employment), *aff'd*, 511 N.Y.S.2d 776 (App. Div. 1987).

Further, the decision was unnecessary because minority shareholder-employees of a closely held corporation are protected by existing law.

A. ESTABLISHED AT-WILL DOCTRINE DOES NOT SUPPORT A FINDING OF WRONGFUL TERMINATION IN *PEDRO*

*Pedro's* holding is not supported by the established law of wrongful termination.<sup>88</sup> Alfred Pedro did not have an oral or written employment agreement with his brothers which limited their right to discharge him to good cause or which specified his term of employment. His employment was therefore "at-will."<sup>89</sup> Further, the narrow exceptions to the at-will doctrine do not apply to *Pedro*. Employees must have given independent consideration in order to bring a claim for termination based on an oral agreement for "lifetime" or "permanent" employment.<sup>90</sup> Alfred Pedro did not "purchase" his employment within the meaning of this exception.

The unilateral contractual handbook exception also does not apply.<sup>91</sup> The *Pedro* court cited *Pine River State Bank v. Mettille*<sup>92</sup> for the proposition that the intent of the parties to the employment contract must be ascertained before the employment relationship can be terminated at-will.<sup>93</sup> However, the *Pine River* court based its decision on the parties' contract as reflected by written job security provisions in an employee handbook.<sup>94</sup> The *Pine River* court's narrow holding applied to written personnel handbook provisions. The four-part test adopted by the *Pine River* court requires a definite offer "determined by the outward manifestations of the parties, not by their subjective intention[s]."<sup>95</sup> There is no basis for concluding

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88. The court cited two at-will cases: *Pine River State Bank v. Mettille*, 333 N.W.2d 622 (Minn. 1983), and *Eklund v. Vincent Brass & Aluminum Co.*, 351 N.W.2d 371 (Minn. Ct. App. 1984). Both of these cases focused on contractually based exceptions to the at-will doctrine. However, the *Pedro* court did not base its decision on an express or implied contractual theory. *Pedro*, 463 N.W.2d at 289. The *Pedro* court did not give an at-will theory of law to support the claim of wrongful termination. *Id.*

89. *See supra* notes 49-50 and accompanying text (explaining the definition of at-will employment).

90. *See supra* notes 53-54 and accompanying text.

91. *See supra* notes 55-59 and accompanying text (explaining the unilateral contract exception created in *Pine River State Bank v. Mettille*, 333 N.W.2d 622 (Minn. 1983)).

92. 333 N.W.2d 622 (Minn. 1983).

93. *Pedro v. Pedro*, 463 N.W.2d 285, 287 (Minn. Ct. App. 1990).

94. *Pine River*, 333 N.W.2d at 627.

95. *Id.* at 626. The *Pine River* court emphasized that general policy state-

that a definite offer, within the restrictive standards articulated in *Pine River*, modified the status of Alfred Pedro's at-will employment.<sup>96</sup> Courts have construed the *Pine River* unilateral contract exception narrowly; therefore, it is not an appropriate justification for permitting a "reasonable expectations" standard to modify at-will employment.

Also, the *Pedro* court cited *Eklund v. Vincent Brass & Aluminum Co.*<sup>97</sup> for the proposition that courts must consider "the written and oral negotiations of the parties as well as the parties' situation, the type of employment, and the particular circumstances of the case."<sup>98</sup> In *Eklund*, however, the Minnesota Court of Appeals created a narrow implied-in-law contractual exception which is not applicable to *Pedro*.<sup>99</sup> In *Eklund*, the plaintiff produced a document written by his former employer stating that he was hired with the understanding that he could be discharged only for good cause.<sup>100</sup> Applying the implied contract theory, the *Eklund* court stated that this type of evidence may be sufficient to overcome the general presumption that an alleged permanent employment contract is not enforceable.<sup>101</sup> There is no basis in *Pedro* for applying this implied-in-law contractual exception. In contrast to the explicit promise required by this exception, the Pedro brothers apparently never agreed on the terms of their employment. Previous interpretations by the Minnesota courts of the implied-in-law exception do not support the position that "reasonable expectations," without a promise or agreement, imply a contract limiting discharge to

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ments do not meet the requirements of an offer, and cited as an example *Degen v. Investors Diversified Servs, Inc.*, 110 N.W.2d 863 (Minn. 1961) (upholding that an employer's statement to an employee that the employee could consider the job a "career situation" was not considered an offer). *Id.*

96. The brothers' expectation that they would be employed for their lifetimes is not sufficiently definite to be an offer. After *Pine River* was decided, the Minnesota Court of Appeals held that implicit oral promises and covenants that an employee would be terminated only for good cause do not modify an at-will employment contract. See *Dumas v. Kessler & Maguire Funeral Home, Inc.*, 380 N.W.2d 544, 548 (Minn. Ct. App. 1986). Further, a long term of service and good performance does not constitute an implied offer. See *id.* at 546; *Bakker v. Metropolitan Pediatric, P.A.*, 355 N.W.2d 330, 331 (Minn. Ct. App. 1984).

97. 351 N.W.2d 371 (Minn. Ct. App. 1984).

98. *Pedro v. Pedro*, 463 N.W.2d 285, 289 (Minn. Ct. App. 1990).

99. See *supra* notes 60-64 and accompanying text (explaining the *Eklund* implied-in-law exception).

100. *Eklund v. Vincent Brass & Aluminum Co.*, 351 N.W.2d 371, 374-75 (Minn. Ct. App. 1984).

101. *Id.* at 377.

just cause.<sup>102</sup>

Moreover, other exceptions to the at-will doctrine do not justify Alfred Pedro's claim of wrongful termination.<sup>103</sup> Although Alfred Pedro argued that the promissory estoppel doctrine applied,<sup>104</sup> Minnesota courts have applied this exception only when the promisee quit a job in reliance on an explicit promise of employment.<sup>105</sup> Alfred Pedro's argument that he never looked elsewhere for employment in reliance on his expectation of employment<sup>106</sup> is insufficient under current law to justify a claim of wrongful termination.<sup>107</sup> Alfred Pedro did not quit his job in reliance on a promise; therefore, this exception does not apply.

B. A STANDARD OF REASONABLE EXPECTATIONS AND THE NATURE OF CLOSELY HELD CORPORATIONS DO NOT JUSTIFY APPLICATION OF AT-WILL EXCEPTION IN *PEDRO*

The *Pedro* court linked the law of wrongful termination

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102. In fact, the courts have refused to hold that an employment contract was more than an at-will contract even when employees have received implicit promises of discharge only for good cause and have given years of satisfactory service to the company. *See, e.g., Dumas v. Kessler & Maguire Funeral Home, Inc.*, 380 N.W.2d 544, 547-48 (Minn. Ct. App. 1986); *Bakker v. Metropolitan Pediatric, P.A.*, 355 N.W.2d 330, 331 (Minn. Ct. App. 1984) ("If this contract has an implied term of good cause before termination, then all at-will contracts contain an implied limitation of good cause. That is not the law of Minnesota.").

103. The public policy exception in Minnesota, *see supra* note 68 and accompanying text, does not apply to *Pedro* because there was no apparent violation of a clearly expressed statutory public policy. Alfred Pedro did not argue that his brothers discharged him for refusing to violate a law or for threatening to expose any possibly illegal actions. If either of these circumstances existed, the plaintiff may have been protected by the public policy exception. Further, although his brothers may have been acting in bad faith when they terminated Alfred, there is no good faith requirement implied into employment contracts in Minnesota. *See supra* note 67 (describing why Minnesota has refused to imply a good faith requirement).

104. Respondent's Brief at 15-16, *Pedro v. Pedro*, 463 N.W.2d 285 (Minn. Ct. App. 1990) (No. C6-90-814).

105. *See supra* text accompanying notes 65-67 (describing the promissory estoppel doctrine as recognized in Minnesota).

106. Respondent's Brief at 16, *Pedro v. Pedro*, 463 N.W.2d 285 (Minn. Ct. App. 1990) (No. C6-90-814).

107. *See, e.g., Harris v. Mardan Business Sys., Inc.*, 421 N.W.2d 350, 354 (Minn. Ct. App. 1988) (rejecting plaintiff's claim that the promissory estoppel doctrine applies to an oral promise of "permanent" employment). Permitting this argument would broaden the scope of the limited exception to cover every employee who has chosen not to search for other employment while currently employed.

with a standard of reasonable expectations developed to protect minority shareholders of closely held corporations. This approach is justified neither by the law of wrongful termination nor by existing law on reasonable expectations and closely held corporations.

### 1. Section 302A.751 Does Not Apply to Wrongful Termination Analysis

The *Pedro* court relied on Minnesota Statutes Section 302A.751, which allows courts to consider the shareholder's "reasonable expectations" in granting a claim for wrongful termination.<sup>108</sup> The Minnesota Legislature adopted the "reasonable expectations" standard to address freeze-outs of minority shareholders of closely held corporations by the majority shareholders.<sup>109</sup> One of the Legislature's major goals in passing Section 302A.751, consistent with the trend in other jurisdictions, was to strengthen protection for minority shareholders subjected to abuse.<sup>110</sup> Accordingly, the statute provides for a buyout, which the Minnesota Legislature described as the preferred remedy because it returns the shareholder's capital while leaving the business entity intact.<sup>111</sup>

The *Pedro* court applied Section 302A.751 in approving the trial court's award of a buyout pursuant to the Stock Retirement Agreement.<sup>112</sup> Thus, the court itself recognized that a reasonable expectations analysis is appropriate under Section 302A.751 to ensure a return on investment to a minority shareholder of a closely held corporation. Although Alfred Pedro's expectations of job security as a closely held corporate shareholder may have been defeated by his termination,<sup>113</sup> the court

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108. *Pedro*, 463 N.W.2d at 289; see MINN. STAT. § 302A.751 subd. 3a. (1990).

109. See Olson, *supra* note 20, at 628 (discussing the abuse of the minority shareholder, whose "capital is held hostage to the generosity of those in control of the corporation").

110. Olson, *supra* note 20, at 631; Olson, *supra* note 11, at 10-11. Professor O'Neal has explained:

[O]bviously it is unjust to permit majority shareholders to oust the minority shareholder from the directorate . . . especially if the corporation is paying no dividends, as is usually the case. Surely the law in this situation should provide some remedy for the minority shareholder whose expectations . . . have been disappointed and who has been deprived of any return at all on his investment in the company.

O'Neal, *Existing Legislation*, *supra* note 12, at 887.

111. MINN. STAT. § 302A.751 (1990).

112. *Pedro*, 463 N.W.2d at 289.

113. The court did not analyze the jury's basis for its finding that the plaintiff had a reasonable expectation of employment. *Id.* at 289. Alfred Pedro's



compensated him appropriately by approving the buyout under Section 302A.751.<sup>114</sup>

The "reasonable expectations" standard protects the vulnerable position of minority shareholders in a closely held corporation. Section 302A.751 recognizes that shareholders in a closely held corporation legitimately expect a return of their investment, often in the form of a management position and a salary.<sup>115</sup> This expectation should not, however, affect existing employment law doctrine. The at-will doctrine concerns the relationship of the employer and the employee, exclusive of the role as shareholder. The at-will doctrine is premised on allowing the employer discretion to terminate with limited restrictions.<sup>116</sup> A shareholder's role is not the same as an employee's; shareholders hold different expectations, and their respective roles are protected by different standards. The reasonable expectations provision in Section 302A.751 should not be applied to the at-will doctrine.<sup>117</sup>

## 2. The Adaptation of a "Reasonable Expectations" Standard to the Law of Wrongful Termination May Erode the At-Will Doctrine

*Pedro* has created what may become an extremely broad exception to the at-will doctrine.<sup>118</sup> Under *Pedro*, courts could

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brief emphasized that he had an expectation of employment because the company was a family-owned business in which he had a 45-year career. Respondent's Brief at 16, *Pedro v. Pedro*, 463 N.W.2d 285 (Minn. Ct. App. 1990) (No. C6-90-814). The circumstances of his termination present a strong basis for characterizing his treatment by his brothers as "unfairly prejudicial," thus qualifying him for relief under the statute.

114. Courts in similar cases have consistently supported the application of a reasonable expectations analysis in awarding relief to a terminated shareholder who has been "frozen out" of the corporation. See *supra* note 31 and accompanying text (describing decisions of other courts using reasonable expectations to award a return of investment to the frozen-out shareholder).

115. See *supra* part I (discussing expectations of shareholders of closely held corporations).

116. See *supra* part II (discussing the at-will doctrine and its narrow exceptions).

117. In a case decided after *Pedro*, the Minnesota Court of Appeals declined to employ a reasonable expectations analysis to a wrongful termination claim brought by a minority shareholder of a closely held corporation. *Dullea v. Dullea Co.*, No. C8-91-498, 1991 WL 271479, at \*3 (Minn. Ct. App. Dec. 24, 1991). The court stated that "[u]nless the employee can prove the existence of a contract requiring dismissal for cause only, the employer may fire the employee for any reason at any time, and the employee may quit for any reason at any time." *Id.*

118. The reasonable expectations standard, as adopted by legislatures and

find that because of the nature of a closely held corporation, any shareholder of a closely held corporation has "reasonable expectations" of employment and therefore cannot be discharged without just cause. The adoption of this standard suggests an erosion of the at-will doctrine that sharply limits the rights of majority shareholders to terminate minority shareholders in a closely held corporation. Such a serious limitation on the majority shareholder's right to terminate could jeopardize the majority's control over the productivity of the employees and upset the balance between the interests of the shareholders. *Pedro* gives minority shareholders sufficient bargaining power to ensure their continued employment despite a breakdown in the working relationships of the shareholders which makes it unproductive to retain the minority shareholder. This bargaining power arises from the crippling effect that a claim for wrongful termination, in addition to a return of investment pursuant to Minnesota Statutes Section 302A.751, may have on the corporation's finances.<sup>119</sup>

Further, the Minnesota Supreme Court has recognized the importance of an employer's discretion to manage the work force and has suggested that employment law limitations on

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courts in the context of protecting minority shareholders against oppression, generally is applied to allow a terminated minority shareholder a return of investment. See *supra* note 31 and accompanying text. If applied in the same way to employment law, the standard could extend an exception to the at-will doctrine to all employee-shareholders of closely held corporations, based simply on the nature of the closely held corporation. Therefore, it is an easily abused standard in this context and could allow minority shareholders undue protection from termination that was never established by the traditional at-will doctrine or Minnesota Statutes § 302A.751.

119. The closely held corporation may not be financially capable of continuing its enterprise if shareholder-employees are afforded this type of broad at-will exception. Discharged employees may be able to establish this exception in many circumstances when they are not fired for just cause. They would have a significant incentive to bring a wrongful termination suit and receive large damages for wages and, in addition, receive a buyout of their shares under Minnesota Statutes § 302A.751. This could amount to a possible windfall for the employee and a financial disaster for the employer.

Professor Olson, the drafter of the 1983 amendments, has stated that the buyout motion provided for in § 302A.751 is desirable because it allows non-controlling shareholders to remove their investment while not granting them disproportionate gains. Olson, *supra* note 11, at 20. Other commentators have also suggested that the "reasonable expectations" analysis should provide shareholders with a method of liquidating their investment which is least disruptive to the continuation of the corporation. Hillman, *supra* note 21, at 81. Therefore, the balance of goals represented by § 302A.751 is not served by allowing courts to use its "reasonable expectations" provision in the context of employment law to cripple a closely held corporation.

this discretion are best left to the Legislature.<sup>120</sup> Employer discretion is especially important at the managerial level because of the necessarily subjective standards which govern a manager's decisions. Because closely held corporate shareholder-employees are likely to be managers, a major limitation on the majority shareholder's discretion to terminate could be especially harmful to the functioning of the corporation.

C. EXISTING LAW ADEQUATELY PROTECTS EMPLOYEE-SHAREHOLDERS OF CLOSELY HELD CORPORATIONS

Courts should not afford special protection to minority shareholder-employees of closely held corporations because they are sufficiently protected by existing law. The Minnesota Legislature has considered the vulnerability of minority shareholders and protected their rights in Section 302A.751, which prevents a "freeze-out" of the shareholder. The "reasonable expectations" standard in Section 302A.751 is broad enough to ensure that a terminated minority shareholder can receive a return on investment and, possibly, other equitable relief.<sup>121</sup>

Further, the law of wrongful termination protects shareholders of closely held corporations as employees just as it protects employees of publicly held corporations. Terminated minority shareholders may establish that an at-will exception applies to their termination, and, therefore, they may be eligible to receive damages for wrongful termination along with a return on investment under Section 302A.751. Closely held corporate employees endure the same economic hardships as publicly held corporate employees upon termination and should

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120. See, e.g., *Hunt v. IBM Mid Am. Employees Fed. Credit Union*, 384 N.W.2d 853, 858-59 (Minn. 1986) (refusing to impose a good faith duty to terminate on the basis that such an exception would restrict the employer's discretion to manage the work force, and endorsing the view that such a change in employment law should be left to the legislature); see also *Marrinan*, *supra* note 52, at 192-200 (arguing for legislative reform of the at-will doctrine in the interests of consistency and predictability).

121. Under § 302A.751, the court has authority to award broad equitable relief. See *supra* notes 37, 45 and accompanying text (discussing the equitable relief provision of Minn. Stat. § 302A.751 (1990)).

Additionally, a minority shareholder may be able to recover damages for a breach of fiduciary duty. For example, in *Pedro*, the Minnesota Court of Appeals authorized the trial court to award damages for a breach of fiduciary duty in addition to the damages for wrongful termination. *Pedro v. Pedro*, 463 N.W.2d 285, 288-90 (Minn. Ct. App. 1990); see also *Kelley v. Rudd*, No. C7-91-1142, 1992 WL 3651, at \*2 (Minn. Ct. App. Jan. 14, 1992) (discussing reasonable expectations of employment as a valid basis for a breach of fiduciary claim, citing *Pedro* as support).

not be given a favored status by the courts simply because of the form of their employment. In fact, this special treatment favors employees who are usually high-level managers and who are probably more financially stable than lower-level employees. Section 302A.751 takes reasonable expectations into account in compensating shareholder-employees of closely held corporations who are frozen out. Thus, the Legislature was aware of the vulnerability of minority shareholder-employees in closely held corporations and adjusted the law accordingly. *Pedro* over-protects the high-level employee at the expense of the stability of Minnesota law governing closely held corporations.

### CONCLUSION

The *Pedro* court over-extended the law in applying the law of wrongful termination to closely held corporations. The claim of wrongful termination in *Pedro* was not justified by the existing at-will doctrine. Moreover, the *Pedro* court had no basis for creating an exception to the at-will doctrine based on the nature of closely held corporations and a minority shareholders' reasonable expectations. Minority shareholder-employees of closely held corporations already are sufficiently protected by Minnesota law.

