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McBride & Son Executives Must Face Lawsuit Alleging They Ripped Off Their Own Employees in Selling Themselves the Employee Owned Company at a Steep Discount

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AUGUST 25, 2020, CLAYTON, MO – On August 19, 2020, Judge Matthew F. Kennelly, US District Court for the Northern District of Illinois in *Godfrey et al. v. GreatBanc, et al.* (Case No. 18-cv-7918) found that McBride & Sons CEO John F. Eilermann, Jr. and former CFO Michael D. Arri must face a lawsuit brought by three former employees alleging that Eilermann and Arri improperly used their control as board members and executives to sell themselves the company in 2017. The employees allege the sale was for well below fair market value compared to what it was worth, and was done at the expense of McBride & Sons employees who owned the company through an ESOP, or employee stock ownership plan. The plaintiffs alleged they did so without engaging in any kind of competitive bidding process. In allowing the case to move forward, the Court denied virtually all of defendants' motions to dismiss and allowed the employees to proceed on all seventeen of their counts.

The lawsuit, brought under the Employee Retirement Income Security Act of 1974 (ERISA), further alleges that Eilermann and Arri also engaged in a complicated series of corporate transactions starting in 2013 that gave them, and other executives, ownership of over a third of the value of the assets of McBride & Son in addition to paying themselves excessive compensation that drained the value of the company. It is alleged that that the employees were not paid anything for the ownership given to Eilermann, Arri, and other executives between 2013 and 2017, were not told about the transactions, and ultimately received only a fraction of the value of McBride & Sons when the ESOP sold its remaining shares in November, 2017. The complaint further alleges that Eilermann and Arri failed to adequately protect the employees by hiring as the ESOP trustee, GreatBanc Trust Company, which has repeatedly been sued by the Department of Labor for failing to protect employees in other similar transactions. The former employees allege in the complaint that GreatBanc violated a previous agreement with the Department of Labor for their actions in the sale of McBride & Sons to Eilermann and Arri.

The former employees bringing the lawsuit are represented by Mark G. Boyko of Bailey Glasser, based in Clayton, Missouri. "The scheme was particularly unfair to the hard working McBride employees who carried the company through the financial crisis and were entitled to rely on the ESOP's fiduciaries to protect their retirement savings. We expect that employees and former employees of McBride will be surprised to learn of the wrongful transactions alleged in the complaint as we believe the facts at trial will show that steps were taken to hide the true nature of the transactions from the ESOP participants, the rightful owners of the company," said Boyko. The plaintiffs are also represented by Gregory Y. Porter and Patrick O. Muench, also of Bailey Glasser.

The ruling is a win for employee rights with national implications. Judge Kennelly found that corporate executives could be held liable under ERISA for decisions concerning corporate re-organization and executive compensation benefiting themselves at the expense of workers' retirement savings. The court's order also found that an ESOP's trustee could be liable for breaching their fiduciary duties for failing to stop the wrongful conduct of the executives.

Bailey Glasser's ERISA practice represents workers and retirees across the country seeking to protect their rights to prudently managed retirement plans, including 401(k)s, 403(b)s, pensions and ESOPs.

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Practice Areas

ERISA, Employee Benefits & Trust Litigation