Interoffice Memorandum of Law
Case Brief

TO: Mr. Dudley Knox; Advanced Legal Research and Writing LGLA-2331-53500
FROM: Mr. Chris Rainbolt
DATE: February 19, 2015
IN RE: *Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012).

Assignment: To brief the Court of Appeals opinion of the case.

CITATION:	*Argo Data Resource Corp. v. Shagrithaya*, 380 S.W.3d 249 (Tex.App.—Dallas 2012, pet. denied).
PARTIES:	Argo Data Resource Corporation and Max Martin / defendants below / appellants here. v. Balkrishna Shagrithaya and Argo Data Resource Corporation / plaintiffs below / appellees here.
OBJECTIVES OF PARTIES:	Shagrithaya wants to prove Martin, and therefore Argo, is liable for damages involving the management and profit sharing of a corporation controlled by Martin. Martin and Argo want to avoid liability for damages.
HISTORY OF LITIGATION Prior Proceeding:	1. TRIAL: Shagrithaya, individually, sued Argo in the 162nd District Court, Dallas, TX for damages caused by minority shareholder oppression, breach of contract, malicious suppression of dividends, fraud, breach of fiduciary duty, and defamation. In addition, the breach of fiduciary duty, fraud, and malicious suppression of dividend claims were asserted derivatively, on behalf of Argo. RESULT: Based on a jury finding in favor of Shagrithaya, the trial court ordered Martin to cause Argo to issue a dividend of $85,000,000 and awarded Shagrithaya damages totaling $1,361,100.
Present Proceeding:	2. APPEAL: Argo and Martin now appeal the trial court's judgment based on insufficiency of evidence and that the facts found by the jury do not support the jury's verdict as a matter of law.
THEORIES OF LITIGATION:	1. TRIAL: Shagrithaya claimed that Martin reduced Shagrithaya's salary and withheld dividends to remove Shagrithaya from ownership of the jointly held Argo Data Resource Corporation constituting minority shareholder oppression, breach of contract, breach of fiduciary duty, and other causes of action. Martin argued that Shagrithaya had suffered no damages from Martin's actions and that there was no employment contract. 2. APPEAL: Argo and Martin appeal the trial court's judgment for Shagrithaya claiming insufficiency of evidence to support the findings of fact and that the findings of fact do not support the conclusion of minority shareholder oppression. In addition, Argo argues there was no implied contract that established Shagrithaya and Martin would maintain equal salaries.

FACTS: Martin and Shagrithaya formed Argo Data Resource Corporation to provide software services in 1980 with Martin owning a controlling interest. The two men operated the corporation as its only board members. They planned to grow the business by retaining the company's earnings. However by 2008, over $25 million in dividends had been issued, all of which were split proportionately. Additionally, they consistently voted themselves equal salaries for over twenty years. Disagreements over each man's role and succession plans for the company began in the early 2000s. In 2006, efforts to divest Shagrithaya's interest in the company were unsuccessful. That same year, Martin unilaterally reduced Shagrithaya's salary from $1 million to $300,000 annually. From 1980 to 2008, the capital of the company grew from $1,000 to $152 million.

ISSUE 1: Did defendant's act of withholding dividends constitute oppressive conduct?

HOLDING 1: No.

REASONING 1: "The cause of action for shareholder oppression was codified in 1955 by the Texas Legislature in article 7.05 of the Texas Business Corporation Act and it can now be found in section 11.404 of the Texas Business Organization Code. … (Current version at TEX. BUS. CODE ANN. §§ 11.402, .404 (West 2012)). The statute authorizes the court to fashion an equitable remedy if the actions of those in control of a corporation are illegal, oppressive, or fraudulent. *See id. Ritchie v. Rupe*, 339 S.W.3d 275, at 289. Although the statute does not define the term 'oppressive,' Texas courts have recognized two non-exclusive definitions:

1. Majority shareholder conduct that substantially defeats the minority's expectations that, objectively viewed, were both reasonable under the circumstances and central to the minority shareholder's decision to join the venture; or
2. Burdensome, harsh, or wrongful conduct; a lack of probity and fair dealing in the company's affairs to the prejudice of some members; or a visible departure from the standards of fair dealing and a violation of fair play on which each shareholder is entitled to rely.

See Rupe, 339 S.W.3d at 289. Depending on the facts of the case, conduct found by the jury could be oppressive under either or both definitions. *Id.*" (265).

"Shagrithaya testified at trial that his plan with Martin when they started ARGO was to build the company, in part, by retaining all of the company's earnings. … The evidence is clear, therefore, that Shagrithaya joined ARGO with no expectations of receiving dividends and Martin's conduct did not defeat Shagrithaya's specific expectations." (270).

"In addition, the evidence shows that ARGO did, in fact, issue over $25 million in dividends during the time period that Shagrithaya claims Martin was wrongfully causing ARGO to retain its earnings. … Because Shagrithaya participated proportionately in the earnings of the company by receiving over $11 million in dividends, we conclude his general reasonable expectations were not substantially defeated." (*See Gibney*, 2008 WL 1822767, at *18).

"Finally, we must determine whether the acts found by the jury, and supported by the evidence, constitute burdensome, harsh, or wrongful conduct. … Buying out a minority shareholder's interest is not an improper purpose for retaining a company's earnings. Such a purpose becomes improper only if it negatively impacts the minority shareholder's rights. As Shagrithaya notes in his brief, the

two ways a minority shareholder's rights may be impacted are if he is prevented from sharing in the profits of the company or the sale value of his shares in the marketplace is depreciated." *Patton v. Nicholas*, 279 S.W.2d 848, at 853. "But … neither of these things occurred."

"Because Martin's 'suppression of dividends' did not substantially defeat Shagrithaya's expectations or prejudice his rights as a shareholder, we conclude this conduct did not amount to minority shareholder oppression."

ISSUE 2: Did an implied contract exist between the parties that they would maintain equal salaries?

HOLDING 2: No.

REASONING 2: "For a contract to be formed, the minds of the parties must meet with respect to the subject matter of the agreement and all its essential terms. See *Effel v. McGarry*, 339 S.W.3d 789, 792 (Tex.App.-Dallas 2011, pet. denied). The parties must assent to the same thing in the same sense at the same time. *Id*. Their assent must comprehend the whole proposition, and the agreement must comprise all of the terms that they intend to introduce into it. *Id*." (274).

"In this case, Shagrithaya conceded at trial that he never had any discussions with Martin about compensation when they formed ARGO and he never made any oral or written agreements with Martin concerning the issue. The sole basis of Shagrithaya's contract claim is that, once he and Martin began receiving compensation from ARGO, they voted each year as board members to receive the same amount. The simple fact that a party has consistently done something in the past does not, standing alone, demonstrate an agreement to continue performing the same act in the future." (275).

"We conclude, therefore, that Shagrithaya failed to present sufficient evidence of a legally enforceable agreement to support the jury's verdict in his favor for breach of contract. We reverse the trial court's judgment on this claim and render judgment in favor of Martin and ARGO." (275).

DISPOSITION: "We reverse the trial court's judgment in its entirety and render judgment that Shagrithaya take nothing by his claims." (276).