Ingle v. Glamore Motor Sales, Inc.: The Battle Between Ownership and Employment in the Close Corporation

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NOTE

INGLE V. GLAMORE MOTOR SALES, INC.: THE BATTLE BETWEEN OWNERSHIP AND EMPLOYMENT IN THE CLOSE CORPORATION

I. INTRODUCTION

Labor is defined as "work, toil, service, mental or physical exertion." However, this definition fails to reveal the essential role labor plays in our society. Labor is the means by which we define ourselves, our ethics, morals, successes, and failures. Nonetheless, it is our labor, the source of our livelihood, that has become endangered in our present society.

As a nation of employees, we have become dependent upon others for our livelihood. The individual worker is relatively immo-

1. BLACK'S LAW DICTIONARY 786 (5th ed. 1979). Although the term labor "normally refers to work for wages," rather than "work for profits," it "is sometimes construed to mean service rendered or part played in production of wealth." Id.

2. "Employment is more than a source of income." COX, BOK, & GORMAN, CASES AND MATERIALS ON LABOR LAW 1 (10th ed. 1986). "One's sense of worth and of accomplishment is shaped largely by one's workplace responsibilities, performance, and rewards." Id.

3. E.H. PHELPS BROWN, THE ECONOMICS OF LABOR 9 (1962). Work is the key to membership in a society. Id. An individual's labor provides the means to live in the society as a productive participant. Id.

4. F. TANNENBAUM, A PHILOSOPHY OF LABOR 9 (1951). As our society's economic emphasis changed from an agricultural to an industrial state, the individual workers lost their freedom of expression and ability to be self-autonomous, and thus lost the control over their
bile and has become "highly vulnerable to private economic powers."56 "For our generation, the substance of life is in another man's hands."56

One response to the threats facing the individual workers and their job security has been the creation and protection of the labor organization through the development of the National Labor Relations Act.7 Through collective bargaining, individual workers gain economic power which affords them some control over their labor and therefore their livelihood.8 "But while unions have done much to correct the imbalance between employers and employees, the assumption that they stand as the universal protectors of all employees at every echelon of employment would be an obvious and gross exaggeration."9 Many workers are not afforded protection under the National Labor Relations Act, nor do they have sufficient bargaining strength to adequately ensure their means of survival.10 This is the plight of the employee at-will.11

A. Employment At-Will

Many commentators emphasize that "[e]mployment at-will has long been a major tenet of American contract law."12 It is understood that "[u]nder the traditional concept of employment at-will, a worker can quit or be fired [at any time and for any reason] without explanation."13 Approximately sixty-percent of the American workforce is governed by the doctrine of employment at-will which

livelhood. Cox, Bok, Gorman, supra note 2, at 11.
5. J. K. Galbraith, American Capitalism 114 (2d ed. 1956). For many individual workers the notions of capitalism and free enterprise are a farce set up by employers who can achieve these economic goals. Id.
7. Cox, Bok, & Gorman, supra note 2, at 8.
8. Kaynard, Deregulation & Labour Law in the United States, 6 Hofstra Lab. L.J. 2 (1988). In 1935, Congress enacted the National Labor Relations Act to address the disparity between the bargaining power of the individual workers and employers through direct intervention and regulation. Id.
10. Galbraith, supra note 5, at 114.
provides no job security for the individual workers and usurps any control they have over their livelihood.14

This Comment addresses the various applications of the employment at-will doctrine as it is applied to the minority shareholder15 in the close corporation16. The strict application of the employment at-will doctrine to the minority shareholder of a close corporation places the minority shareholder in a precarious position because the potential for abuse by the majority or controlling shareholders is great.17 In light of the minority shareholders’ weaker bargaining position, these “owners face the potential of complete loss of liquidity of their investment and an indefinite exclusion from profit sharing.”18

This Comment focuses on a New York case, Ingle v. Glamore Motor Sales, Inc.,19 in which the New York Court of Appeals strictly adhered to the rigid employment at-will doctrine rather than carve out an exception to this doctrine. New York’s employment at-will doctrine is referred to as “Wood’s Rule”20 and provides that “under New York law as it now stands, absent a constitutionally

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14. See Novosel, 721 F.2d at 902. The New York workforce is representative of the American workforce, for it has approximately the same number of employees governed by the employment at-will doctrine. See Minda, The Common Law of Employment At-Will in New York: The Paralysis of Nineteenth Century Doctrine, 36 Syracuse L. Rev. 939 (1982). However, the New York workforce faces special problems resulting from the lack of adequate protection in the close corporation. See text infra.


16. A close corporation is analogous to the closely held corporation and/or the private company. Afterman, Statutory Protection for Oppressed Minority Shareholders: A Model for Reform, 55 Va. L. Rev. 1043, 1045 (1969). In essence, it is a business enterprise usually operated in a fashion similar to the sole proprietorship, in that there is no division between management and ownership, but it is incorporated to limit potential liability. Donahue v. Rodd Electrotype Co., 367 Mass. 578, 584, 328 N.E.2d 505, 511 (1975).


20. Minda, supra note 14, at 939. Some commentators assert that the doctrine of employment at-will was created from Wood’s treatise on master and servant law which provoked the courts to abandon the former English rule that “in the absence of an agreement, a term of employment was presumed to be for a period of one year.” Bierman & Youngblood, Employment at Will and the South Carolina Experiment, 7 Indus. Rel. L.J. 28, 29 (1984); see also Feinman, The Development of the Employment at Will Rule, 20 Am. J. Legal Hist. 118 (1976). “[I]t is an indefinite hiring and is determinable at the will of either party.” H. Wood, The Law of Master and Servant 134 (1877).
impermissible purpose,\textsuperscript{21} a statutory proscription,\textsuperscript{22} or an express limitation in the individual contract of employment,\textsuperscript{23} an employer’s right at any time to terminate an employment at-will remains unimpaired.\textsuperscript{24}

Although this unconditional rule resembles the law of master and servant of early sixteenth century England,\textsuperscript{26} the doctrine of employment at-will was not intended to be oppressive towards the individual worker.\textsuperscript{28} However, oppression has been the result because the “individual employee in the modern work force [does] not have the bargaining power to negotiate”\textsuperscript{27} with the employer. To compensate for the injustices which result from the inequality of bargaining power, many courts outside of New York have been compelled to make exceptions to the doctrine of employment at-will to meet the

\textsuperscript{21} As stated in Novosel, the opinion that “the occurrence of an express or implied waiver or relinquishment of otherwise valid constitutional rights when an employee voluntarily engages in employment...” must consequently be rejected as a ruling that ‘simply persists from blind imitation of the past.’” Novosel, 721 F.2d at 898 (quoting HOLMES, The Path of the Law, 10 HARV. L. REV. 457, 469 (1897)). In the absence of a contractual relationship, employees have not been afforded protection under theories of common law nor constitutional law. See The Slaughterhouse Cases, 68 U.S. (16 Wall.) 36 (1872). In The Slaughterhouse Cases, the Supreme Court denied employees access to constitutional protection over their rights in the workplace by narrowly construing the Privileges and Immunities Clause of the Fourteenth Amendment. Id.

\textsuperscript{22} In NLRB v. Jones & Laughlin Steel Corp., the Supreme Court upheld a statutory exception to the Doctrine of Employment At-Will, even though it interfered with the principles of freedom of contracting. 301 U.S. 1, 46 (1937). This exception was created under the National Labor Relations Act and was permissible because it did not prohibit the right of an employer to discharge an employee but rather infringed upon the employer’s ability to use the doctrine as a “means of intimidation and coercion.” Id.

\textsuperscript{23} In Murphy v. American Home Prod. Corp., the court followed the principles of Weiner v. McGraw-Hill Inc. and held that “on an appropriate evidentiary showing, a limitation on the employer’s right to terminate an employment [relationship] of indefinite duration might be imported from an express provision... found in the employer’s handbook on personnel policies and procedures.” Murphy v. American Home Prod. Corp., 58 N.Y.2d 293, 305, 448 N.E.2d 86, 91, 461 N.Y.S.2d 232, 237 (Ct. App. 1983) (citing Weiner v. McGraw-Hill Inc., 57 N.Y.2d 458, 443 N.E.2d 441, 457 N.Y.S.2d 193 (1982)). However, it is interesting to note that in both cases, the court held that the evidence was insufficient to support the plaintiff’s assertion of an express limitation. Murphy, 58 N.Y.2d at 305, 448 N.E.2d at 91, 461 N.Y.S.2d at 237.

\textsuperscript{24} Murphy, 58 N.Y.2d at 305, 448 N.E.2d at 91, 461 N.Y.S.2d at 237.

\textsuperscript{25} Weiner, 57 N.Y.2d at 462, 443 N.E.2d at 443, 457 N.Y.S.2d at 195. Wood explained, “[w]ith the rule is inflexible, that a general or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof.” H. WOOD, THE LAW OF MASTER AND SERVANT 134 (1877).

\textsuperscript{26} Sabetay v. Sterling Drug, Inc., 69 N.Y.2d 329, 333, 506 N.E.2d 919, 921, 514 N.Y.S.2d 209, 211 (1987). The employment at-will doctrine was intended to balance employees’ rights to contract for their personal interests against employers’ rights to exercise their business judgment in employment practices. Id.

\textsuperscript{27} Murphy, 58 N.Y.2d at 302, 448 N.E.2d at 89, 461 N.Y.S.2d at 235.
new climate of the employer-employee relationship.28

B. The Close Corporation Conflict

The controversy present in Ingle v. Glamore Motors Sales, Inc.29 involves the employment rights of the minority shareholder in the close corporation.30 The investors in the close corporation do not intend to be passive; they want to take an active role in the management and participate in its operations.31 Thus, the non-controlling shareholders' interest, unlike the investors in a public corporation, is tied to their employment.32 Because the close corporation lies somewhere between the publicly-held corporation and the partnership,33 some states have made exceptions to the strict doctrine of employment at-will by imposing certain duties and responsibilities upon the actors of the close corporation. The purpose of these exceptions is to prevent oppression and to compensate the parties for the injuries


30. Defining a close corporation can be quite troublesome because "[t]here is no single, generally accepted definition." Donahue v. Rodd Electrotype Co. of New England, 367 Mass. 578, 328 N.E.2d 505, 511 (1975). "Some authorities emphasize the number of shareholders, some the presence of owner-management, some the lack of a market for the corporation's stock, and some the existence of formal restrictions on the transferability of the corporation's shares." CAREY & EISENBERG, CASES AND MATERIALS ON CORPORATIONS 329 (6th ed. 1988). The close corporation has been defined as "one in which the stock is held in a few hands, or in a few families, and wherein it is not at all, or rarely, dealt in buying or selling." Galler v. Galler, 32 III. 2d 16, 27, 203 N.E.2d 577, 583 (1965). The Massachusetts courts have deemed "a close corporation to be typified by: (1) a small number of stockholders; (2) no ready market for the corporate stock; and (3) substantial majority stockholder participation in the management, direction and operations of the corporation." Donahue, 367 Mass. at 578, 328 N.E.2d at 511. These characteristics, which provide a useful basis for defining the close corporation, are also the root of the problems facing the courts and society as the close corporation becomes engaged in business disputes.


32. Id.

which result from their special circumstances.\textsuperscript{34}

As our society grows, and business ventures become more complex, our lives become more dependent upon rules and doctrines to protect ourselves and our interests. The notion of limited liability under the corporate structure developed as a means to limit the individual's investment and to shield personal assets from unsuccessful business ventures.\textsuperscript{35} This protective structure became widely used and subsequently spread through our institutions from the largest manufacturers to the smallest "mom and pop" stores. However, the corporate structure had to be modified for the small business person to be able to take advantage of its benefits, hence the development of the close corporation. Under this variation of the corporate form, the parties were able to have limited liability and still own and operate the business in a manner similar to a sole proprietorship or partnership.

Unfortunately, the rigid applications of these doctrines, without the benefit of exceptions, can result in the oppression of others.\textsuperscript{36} Such conflicts develop within the close corporation when minority shareholders have different expectations than the majority shareholders.\textsuperscript{37} Because management, employment, and ownership become intermingled in the close corporation, the minority shareholder becomes dependent upon the majority shareholder or shareholders for


\textsuperscript{35} \textit{Cary} \& \textit{Eisenberg, Cases and Materials on Corporation 91} (6th ed. 1988).

\textsuperscript{36} The employment at-will doctrine was intended to allow the parties the freedom to bargain and negotiate contract terms, not to allow employees to terminate employment relationships and take advantage of their fiduciary position. Zimmer \textit{v.} Wells Management Co., 348 F. Supp. 540 (S.D.N.Y. 1972); Kirke La Shelle Co. \textit{v.} Paul Amstrong Co., 263 N.Y. 79, 87, 188 N.E.163, 167 (1933). Even New York courts recognize that at-will employees owe a duty to deal fairly and in good faith. E.W. Bruno Co. \textit{v.} Friedberg, 21 A.D.2d 396, 250 N.Y.S.2d 187 (1st Dept. 1964).

employment as a means of recouping the investment and providing a salary.

For a minority shareholder, "[a] guarantee of employment with the [close] corporation may have been one of the 'basic reason[s] why a minority owner has invested capital in the firm.' " Unlike the investor in the publicly held corporation, the investor in the close corporation normally places a "substantial percentage of his personal assets in the organization." The minority shareholder does not guard against corporate risks through diversification, as does the investor in the publicly held corporation. Therefore, the minority shareholder normally takes "an active interest in the day-to-day operation of the business and expect[s] it to be a principal source of [his] livelihood." As minority shareholders become personally and financially entrenched in the corporation, they become vulnerable to the wishes of the majority shareholders and are afforded relatively little career and investment protection. This is the controversy which erupts in Ingle v. Glamore Motor Sales, Inc.

II. INGLE v. GLAMORE MOTOR SALES, INC.

In 1964, Phillip Ingle approached James Glamore, then the sole shareholder of Glamore Motor Sales, Inc., a close corporation doing business as a Ford dealership, to acquire an equity interest in the corporation. Glamore declined Ingle's offer to invest in the enter-

38. See Wilkes, 370 Mass. at 842, 353 N.E.2d at 657.
39. Wilkes, 370 Mass. at 846, 353 N.E.2d at 662. In Wilkes, the court imposed a duty of good faith and loyalty upon the controlling shareholders with regard to the minority shareholder. Wilkes, 370 Mass. at 853, 353 N.E.2d at 664. This fiduciary duty was extended to prevent the majority from terminating the minority shareholder/employee's employment relationship, even in the absence of an employment contract setting forth the duration of the relationship, on a whim or without cause. Id.
41. Comment, supra note 40, at 595.
42. Id.
43. Id.
45. 73 N.Y.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. Based on the fact that Ingle initially wanted to purchase stock in Glamore Motor Sales, Inc. but instead agreed to take a position of employment in the corporation when his offer was refused, we can infer that Ingle intended to use his position as a shareholder as a means of building a working relationship with Glamore, the controlling shareholder. Ingle, 73 N.Y.2d at 197, 535 N.E.2d at 1319, 538 N.Y.S.2d at 779. If Ingle's desire were merely to invest his funds into a corporate entity, he certainly would have looked to a publicly held corporation. Id.

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prise but instead hired Ingle as a sales manager.48 "There was no express agreement between the parties establishing either the duration or conditions of employment."47

Two years later, James Glamore offered Ingle the opportunity to purchase 22 out of Glamore's 100 shares, with an option to buy 18 more shares over a five-year period.48 Ingle accepted and from 1973 through 1982 Ingle owned forty percent of the corporation.49 Upon the acquisition of corporate stock, Ingle was "nominated" and "voted" into the positions of director and secretary of the corporation by Glamore.50 Ingle continued his employment but now as a co-dealer with "full managerial authority and responsibility for the operating management."51 This relationship stemmed from the agreement between Glamore and Ingle, as the two shareholders of the dealership, and Ford.52 From 1966 until his termination, Ingle was active in the management and the day-to-day operations of the dealership.53 He held various offices including Vice President, and he personally guaranteed corporate loans.54

In 1982, Glamore Motor Sales, Inc. issued sixty new shares of stock which were purchased by Glamore and his two sons.55 As a result, Ingle's equity interest in the corporation decreased from forty to twenty-five percent.56 Within a year-and-a-half, Ingle, then owning twenty-five percent of the corporation's stock, was ousted from his corporate positions and was terminated from his employment relationship with the corporation by Glamore and his two sons.57

Although Ingle and Glamore never entered into a formal em-

46. Ingle, 73 N.Y.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772.
47. Id.
48. Id.
49. Id.
50. Id.
51. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776 (Hancock, J., dissenting).
52. Id.
53. Id.
54. Id.
55. Ingle, 73 N.Y.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. James Glamore purchased 22 shares of the corporation and his two sons bought 19 shares each. Id. The court did not address whether Ingle had the opportunity to purchase the newly issued shares of stock, but from the history of Ingle's prior acquisitions of stock, it appears that he would have purchased stock if Glamore had permitted such an arrangement. Id.
56. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776 (Hancock, J., dissenting).
57. Ingle, 73 N.Y.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. Ingle alleges that Glamore and his sons terminated his employment relationship with the corporation for the sole purpose of recaptinguring his stock for their personal gain. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776 (Hancock, J., dissenting).
ployment contract, other aspects of their business relationship, including Ingle's purchase of stock and placement into corporate posts of director and secretary, were governed by a shareholders agreement. The agreement included a provision which granted Glamore thirty days to repurchase the stock owned by a shareholder who "shall cease to be an employee of the Corporation for any reason."

Within thirty days after Ingle's termination, Ingle was informed that Glamore would exercise his repurchase upon termination option and in return Ingle would receive 96,000 dollars for his forty shares in Glamore Motor Sales, Inc. As emphasized in the majority opinion, Ingle accepted the payment and did not dispute the buyback price. However, to view this case as an attempt by the plain-

58. Ingle, 73 N.Y.2d at 187, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772.
59. Id. Historically, restrictions on a shareholder's ability to transfer corporate shares were seen as an unreasonable restraint on alienation. Allen v. Biltmore Tissue Corp., 2 N.Y.2d 534, 141 N.E.2d 418, 161 N.Y.S.2d 418 (1957). Today, courts are willing to uphold various constraints including "first refusals," "first options," and "consent restraints." See Carey & Eisenberg, supra note 30, at 421 (6th ed. 1988). The consent restraints on share transfers have been seen as the most restrictive of the three basic forms and have been held as an illegal restraint on alienation of personal property. Id. at 422. In Rafe v. Hindin, a provision which disallowed transfers of corporate stock to individuals other than present shareholders was viewed as an arbitrary award of power to the purchasing shareholders, thus unreasonable and void as it was contrary to public policy. 29 A.D.2d 481, 288 N.Y.S.2d 662 (App. Div. 1968).

At first glance, one would assume a buy-back provision, similar to clause 7(b) of the shareholders agreement present in Ingle v. Glamore Motor Sales, Inc., would also be held by the New York courts to be violative of public policy. However, the New York Court of Appeals has not extended this type of protection to minority shareholders under repurchase agreements. See Allen v. Biltmore Tissue Corp., 2 N.Y.2d 534, 141 N.E.2d 812, 161 N.Y.S.2d 418 (1957). In Allen, the court held that it was not the restriction on transferability but the prohibition against transfers that made the provisions unlawful. Id. The Allen case is distinguished from Ingle in that the former had made a choice to sell the corporate stock, whereas Ingle had the sale forced upon him.

60. Ingle, 73 N.Y.2d at 187, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. A buy-back right enables a corporation to repurchase the shareholder's stock when an event explicitly expressed in the agreement occurs. Carey & Eisenberg, supra note 30, at 423. The corporation's right is not subject to the wishes of the shareholder, and it occurs automatically even if the shareholder wants to retain the stock. Id. The rationale for allowing a repurchase agreement upon termination, death or the occurrence of another named event rests upon the similarities between the close corporation and the partnership structure. Id. at 421. Because the shareholders of the close corporation, like partners in a partnership, are interdependent upon each other in the daily operations of the business, there is a need to maintain a balance of control and to be able to veto the admission of a new colleague. Id. This type of special protection for the remaining shareholders is appropriate when a shareholder dies or chooses to terminate his business relationship, but it is not a proper exercise of power when a shareholder is terminated arbitrarily, without cause, and for the remaining shareholders' personal gain. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776 (Hancock, J., dissenting).

61. Ingle, 73 N.Y.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. The terms of the buy-back provision were set forth in the shareholder's agreement and included the repurchase price. Id.

62. Ingle, 73 N.Y.2d at 189, 535 N.E.2d at 1314, 538 N.Y.S.2d at 774.
to obtain a higher profit margin on his investment, is to completely misunderstand the purpose and intent of Ingle's complaint and the special circumstances surrounding the close corporation.\textsuperscript{63}

Ingle wanted to recover his shares and reinstate his employment relationship as a form of redress or compensation for the injury of "being involuntarily cashed out as a stockholder through the buy-back agreement and forced out of his investment and participation in Glamore Motor Sales, Inc."\textsuperscript{64} Ingle was granted an appeal by the New York Court of Appeals after an unsuccessful attempt to thwart the dismissal of his claims pursuant to the defendants' motion for summary judgment.\textsuperscript{65} Ingle alleged the following causes of action: (1) breach of contract,\textsuperscript{66} (2) breach of fiduciary duties,\textsuperscript{67} and (3) tortious interference with a contract.\textsuperscript{68}

In a motion for summary judgment, the New York Court of Appeals and the lower New York courts rejected Ingle's arguments that shareholders of close corporations should be treated as partners with special duties of good faith and loyalty.\textsuperscript{69} The court held that Ingle's employment relationship should be governed by the employment at-will doctrine and not be afforded any special treatment under tort or contract law.\textsuperscript{70}

\textbf{A. The Shareholder's Agreement: Provision 7(b)}

In 1964, when Ingle was hired as sales manager, "[t]here was no express agreement between the parties establishing either the duration or conditions of employment."\textsuperscript{71} In 1966, the parties entered...
into a shareholder’s agreement which was intended to primarily govern Ingle’s purchase of stock and position in corporate posts. When Ingle purchased the shares, he became a co-dealer with Glamore of Glamore Motor Sales, “under an agreement with Ford in which Glamore Motor Sales acknowledges that [Ingle] ‘substantially participate[s] in the ownership’ of the corporation and has ‘full managerial authority and responsibility for the operating management.’”

When the corporation issued the new shares of stock in 1982, the shareholders’ agreement, including the repurchase option which was present in the prior agreements, was signed by all four shareholders. The relevant provision states: “(b) Termination of employment. In the event that any Stockholder shall cease to be an employee of the Corporation for any reason, Glamore shall have the option, for a period of 30 days after such termination of employment, to purchase all of the shares of stock then owned by such Stockholder.”

The majority of the Court “adopted [the] defendants’ literal interpretation of phrase 7(b) of the stockholders’ agreement [stating that the clause] to ‘cease to be an employee of the Corporation for any reason’ [gave the] defendants the unfettered right to repurchase plaintiff’s shares by firing him, even if arbitrarily or in bad faith.” However, as noted in the dissenting opinion, the repurchase agreement was not perfectly clear and was not free of ambiguity.

“The plain wording of the buy-back provision and its sense, when read in the context of the entire agreement and the circum-

denied the stock and hired as a manager. Id. By interpreting the undisputed facts that Ingle “became [the] sales manager of Glamore Motor Sales in 1964 and later a co-owner of the business as a means of achieving his objective of becoming a franchised Ford dealer,” one can presume that Ingle’s intention in buying the shares was to get knowledge and experience in a Ford dealership and that he understood that a relationship of employment in the corporation would be tied to the ownership of the corporation. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776-77 (Hancock, J., dissenting).

72. Ingle, 73 N.Y.2d at 187, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. The agreement included the repurchase option. Id. The 1973 shareholder’s agreement was identical to the 1966 agreement at least to the extent of provision 7(b), which gave Glamore the right to buy back Ingle’s shares if “Ingle shall cease to be an employee of the Corporation for any reason.” Id.

73. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776 (Hancock, J., dissenting).

74. Ingle, 73 N.Y.2d at 187, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772.

75. Ingle, 73 N.Y.2d at 187, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772 (emphasis supplied). The prior buy-back agreements contained the same information except that it applied only to Ingle. Id.

76. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1317, 538 N.Y.S.2d at 777 (Hancock, J., dissenting).

77. Id.
stances surrounding its execution, by no means unequivocally supports [Ingle's] interpretation.\(^{78}\) Ingle contends that "the purpose and intent of paragraph 7(b) was to protect James Glamore in case the plaintiff chose to leave the business, not to give Glamore the right, at any time, for any reason or for no reason, to deprive plaintiff of all expectancies as co-principal in the agency.\(^{79}\)

In addition, the provision specifically states "if a shareholder shall cease to be an employee,"\(^{80}\) rather than if a shareholder's employment relationship is terminated.\(^{81}\) The plain meaning of these words supports Ingle's assertion that Glamore intended to protect himself and his corporation from outside influences in the event that Ingle left the employment of the corporation,\(^{82}\) rather than to permit Glamore, the majority shareholder, to terminate Ingle's employment relationship with the corporation, as a means to usurp the minority shareholder's corporate stock and thus his investment.\(^{83}\)

This provision is intended to govern when the majority shareholders may repurchase corporate stock, not to be a poor substitute for an at-will employment contract.\(^{84}\) "Contrary to what the majority claims the agreement 'expressly confirms,' this contractual provi-

78. Id. The uncertainty of the attending circumstances included Ingle's sworn statements that "the agreement was not intended to authorize James Glamore to terminate the business relationship on a whim without cause in order to force a buy-out of [Ingle's] interest." Id. The minority asserts that the appropriate standard of review of these allegations "must be read in the light most favorable to the plaintiff [to be] consistent with the rule that in opposing motions to dismiss for failure to state a cause of action and motions for summary judgment the plaintiff's submissions must be accepted as true." Id.

79. Id. (emphasis in original). As support for his contentions, Ingle points to two other provisions which gave Glamore the right to repurchase the shares. Id. Glamore retained the right to buy-back a shareholder's stock in the event that a shareholder wishes to sell under paragraph 7(a) and upon a shareholder's death under paragraph 7(c). Id. Ingle asserts that clause 7(b) is provided to protect Glamore against contingencies out of his control as in paragraphs 7(a) and (c). Id. Under this interpretation, 7(b) was included in the event that a shareholder voluntarily left the employment of the corporation. Id.

80. Ingle, 73 N.E.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772 (emphasis in original).

81. Id. (emphasis added).

82. Ingle, 73 N.Y.2d at 194, 535 N.E.2d at 1317, 538 N.Y.S.2d at 777 (Hancock, J., dissenting). It is appropriate for the majority shareholders in a close corporation to make holding shares in the corporation contingent upon the individual's continued employment. Kruger, 16 N.Y.2d at 805, 210 N.E.2d at 356, 263 N.Y.S.2d at 3 (Desmond, C.J., dissenting). The tie between the individual's ownership and employment results from the inherent structure of the close corporation as a combination of a corporation and a partnership. Ripin, 205 N.Y. at 447, 98 N.E.2d at 856.

83. Ingle, 73 N.Y.2d at 194, 535 N.E.2d at 1317, 538 N.Y.S.2d at 777 (Hancock, J., dissenting).

84. Ingle, 73 N.E.2d at 195, 535 N.E.2d at 1318, 538 N.Y.S.2d at 778 (dissenting opinion).
sion clearly says nothing about the conditions under which the corporation may terminate plaintiff's employment. The court should have examined the expectations and circumstances surrounding the agreement in order to give meaning to what is otherwise an ambiguous clause.

III. CURRENT STATUS OF NEW YORK LAW

While other states are making exceptions to the outdated, rigid law known as the doctrine of employment at-will, New York continues to refuse to disrupt the status quo. Although there has been some indication that the New York courts would eventually recognize such an exception, the New York courts continue to place the burden of reform upon the legislature. However, the New York courts are of the opinion that “[i]f the rule of nonliability for termination of at-will employment is to be tempered, it should be accomplished through a principled statutory scheme, adopted after opportunity for public ventilation, rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigants.”

85. Id. (emphasis in original). The majority contends that “[d]ivestiture of his status as a shareholder, by operation of the repurchase provision, is a contractually agreed to consequence flowing directly from the firing, not vice versa.” Ingle, 73 N.Y.2d at 189, 535 N.E.2d at 1314, 538 N.Y.S.2d at 774. As stated in the dissenting opinion, the majority supports its ruling by citing cases in which the employees through negotiations had bargained for other benefits in exchange for having their employment relationship governed by the doctrine of employment at-will. Ingle, 73 N.Y.2d at 195, 535 N.E.2d at 1318, 538 N.Y.S.2d at 778. In Coleman v. Taub, where the parties bargained for the at-will employment status and the repurchase agreement expressly stated that the corporation had the right to “buy-back” the plaintiff’s stock upon “termination of his employment,” the court denied the defendant’s motion for summary judgment because it found triable issues of fact. Ingle, 73 N.Y.2d at 196, 535 N.E.2d at 1318, 538 N.Y.S.2d at 778 n.2 (discussing the majority’s application of Coleman v. Taub, 638 F.2d 628 (3d Cir. 1981)).

86. See Savodnik v. Korvettes, Inc., 488 F. Supp. 822, 826 (E.D.N.Y. 1980) (discussing Chin v. American Tel. & Tel. Co., 96 Misc. 2d 1070, 410 N.Y.S.2d 737 (N.Y. Co. 1978), aff'd, 70 A.D.2d 791, 416 N.Y.S.2d 160 (1st Dept. 1979)). The court in Savodnik explained that the motion to dismiss in Chin was granted because the plaintiff failed to sustain his burden of proof, “not because the New York Supreme Court was unwilling to embrace the theory of abusive discharge.” See Savodnik, 488 F. Supp. at 826 (discussing Chin, 96 Misc. 2d at 1079, 410 N.Y.S.2d at 741; see also Weiner v. McGraw Hill, Inc., 57 N.Y.2d 458, 443 N.E.2d 441, 457 N.Y.S.2d 193 (1982) (discussing the potential to overcome the doctrine of employment at-will under the theory that the doctrine stands as a rebuttable presumption in the absence of a contract setting a fixed term of employment).

87. Murphy, 58 N.Y.2d at 303, 448 N.E.2d at 90, 461 N.Y.S.2d at 235. In Murphy, the court, when urged by the plaintiff to make an exception to the rigid employment at-will doctrine, declined the invitation, being of the opinion that such a significant change in the law is best left to the legislature because the issue of creating an exception to the employment at-will doctrine is embedded in “the perception and declaration of relevant public policy.” Id.

88. Murphy, 58 N.Y.2d at 302, 448 N.E.2d at 90, 461 N.Y.S.2d at 236. The Legislature has infinitely greater resources and procedural means to discern the
Unfortunately, the legislature has done little to remedy this situation and "New York’s common law of employment at-will has been placed in a ‘legislative deep freeze.’"\(^89\) In 1982, the court in *Weiner v. McGraw-Hill, Inc.*\(^89\) suggested that in the absence of legislative action, the court may act on its own to update its employment at-will doctrine to meet the present day socio-economic needs.\(^91\) Yet, the New York courts have continuously acted in a fashion that narrows the holding in the *Weiner* decision and keeps New York’s employment at-will doctrine entrenched in the past.\(^92\) In deciding whether to disrupt the status quo, it may be useful to remember the words of Oliver Wendell Holmes, Jr.:

> It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists

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89. Minda, *supra* note 14, at 944 (citing R. Keeton, *Venturing To Do Justice* 82 (1969)). Keeton describes a legislative deep freeze as:

> A court’s refusal to acknowledge its inevitably creative role in statutory interpretation is unrealistic and crippling even in the disposition of a single case. From a long range point of view, such refusal freezes reform. When legislatures intrude into an area of private law, the court considers itself no longer free either to overrule or to innovate interstitially. In view of the ever increasing impact of inertia in legislatures, the effect in most cases is a deep freeze.

Minda, *supra* note 14, at 944 n.16 (citing R. Keeton, *Venturing To Do Justice* 82 (1969)).

In New York, legislative deep freeze has been the result of a catch-22. The New York Court of Appeals has refused to alter the common law rule of employment at-will on legislative supremacy grounds, even though the rule was created by the judiciary and is presumably subject to judicial alteration. The Legislature, on the other hand, is unlikely to enact general unjust dismissal legislation because there is no lobby to promote new legislation or counteract the opposition of other interest groups.

Minda, *supra* note 14, at 944 n.16.


from blind imitation of the past. 93

IV. METHODS FOR CHANGE

There have been three principle methods that other state courts have employed in an attempt to neutralize the negative effects of the employment at-will doctrine. The first method has been a judicially-created exception to the doctrine based on notions of public policy. 94 In extreme cases, some courts, under a public policy exception, have imposed a duty of good faith and loyalty upon the parties in all employment relationships, similar to the fiduciary responsibilities between partners. 95 The second method looks to the doctrine of employment at-will as a rebuttable presumption which can be overcome if the employee can show that he reasonably relied on a promise of job security or that job security was implied in fact. 96 The final ap-

93. Savodnik, 488 F. Supp. at 826-27 n.5 (citing Holmes, Jr., The Path of the Law, 10 HARV. L. REV. 457, 469 (1897)).

94. See Monge v. Beebe Rubber Company, 114 N.H. 130, 316 A.2d 549 (1974). Under the public policy exception, "all employment contracts, whether at-will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two." Monge, 114 N.H. at 132, 316 A.2d at 551. The court in Monge held, under this public policy exception, that "a termination by the employer of a contract of employment at-will which is motivated by bad faith or malice or based on retaliation is not [in] the best interest of the economic system or the public good and constitutes a breach of the employment contract." Id. 95. See Wilkes v. Springside Nursing Home, Inc., 370 Mass 842, 353 N.E.2d 657 (1976). The Massachusetts' courts have extended the application of an implied duty of good faith and loyalty to the shareholders of the close corporation, holding that the "stockholders in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another." Donahue, 367 Mass. at 588, 328 N.E.2d at 515. Stockholders "may not act out of avarice, expediency or self-interest in derogation of their duty of loyalty to the other stockholders and to the corporation." Id. The Wilkes decision extended this duty to at-will employment relationships in a close corporation when the court held that the majority shareholders breached their fiduciary duty to a minority shareholder when he was voted out of office, and thus prevented from obtaining a return on his investment. Wilkes, 370 Mass. at 849, 353 N.E.2d at 664. Because the corporation paid out no dividends and the salaries paid to the board of directors was the only form of compensation, the majority shareholders breached their duty of good faith and loyalty when they severed the minority shareholder's employment relationship with the corporation. Id. 96. See Weiner, 57 N.Y.2d 458, 443 N.E.2d 441, 457 N.Y.S.2d 193. As early as 1895, when the employment at-will doctrine was adopted, it was afforded "no greater status than that of a rebuttable presumption." Weiner, 57 N.Y.2d at 467, 443 N.E.2d at 446, 457 N.Y.S.2d at 198. An employment at-will relationship will only be created "in the absence of circumstances showing a different intention." Weiner, 57 N.Y.2d at 467, 443 N.E.2d at 446, 457 N.Y.S.2d at 198 (quoting Martin v. New York Life Ins. Co., 148 N.Y. 117, 121, 42 N.E. 416, 420 (1895)). To determine if the doctrine of employment at-will was intended, the trier of fact must look "not [to the parties'] subjective intent, nor [to] 'any single act, phrase or other expression', but [to] 'the totality of all of these, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain.'" Id. Unfortunately, the
proach has created a new common-law tort called "abusive discharge." The causes of action present in Ingle's complaint are structured to encompass these three accepted exceptions to the employment at-will doctrine of other states, and Ingle should have been afforded the opportunity to have the facts considered before a trier of fact rather than being summarily dismissed.

Ingle's contentions and their relationship to the judicially-created exceptions to the employment at-will doctrine of other states must be examined. Nonetheless, it is important to keep in mind the language of the shareholder's agreement and to analyze the court's interpretations of provision 7(b) of the shareholder's agreement as it applies to judicially created exceptions. The focal point of the controversy in Ingle v. Glamore Motor Sales, Inc. is the failure of the New York Judiciary to recognize the need for exceptions to the doctrine of employment at-will.

A. The Public Policy Exception

“In many jurisdictions, careful assessments of 'the best interest[s] of the economic system' and the 'public good' have led courts virtually to re-write the traditional [employment at-will] doctrine.” Public policy “is the principle under which freedom of contract or private dealing is restricted by law for the good of the comm-

court in Ingle failed to examine the totality of the circumstances and thus did not allow the plaintiff the opportunity to rebut the presumption of an employment at-will relationship. Ingle, 73 N.Y.2d at 192, 535 N.E.2d at 1315-16, 538 N.Y.S.2d at 775-76 (Hancock, J., dissenting).

97. See Petermann v. International Bhd. of Teamsters, 174 Cal. App. 2d 184, 344 P.2d 25 (1959). Abusive or wrongful discharge is not equivalent to "just cause." Sheets v. Teddy's Frosted Foods, Inc., 179 Conn. 471, 427 A.2d 385, 386 (1979). Abusive discharge creates a cause of action "where the discharge contravenes a clear mandate of public policy." Id. The latter "limits employer discretion to terminate, by requiring the employer, in all instances, to proffer a proper reason for dismissal, by forbidding the employer to act arbitrarily or capriciously." Id.; see Petermann, 174 Cal. App. 2d at 184, 344 P.2d at 25 (discussing the existence of a proper claim for wrongful discharge where an at-will employee was terminated for refusing to commit perjury).

98. Ingle, 73 N.Y.2d at 201, 535 N.E.2d at 1321, 538 N.Y.S.2d at 782 (Hancock, J., dissenting). The dissent in Ingle states that there were triable issues of fact which could support Ingle's claims. Id.

99. See supra notes 71-85 and accompanying text.

100. Savodnik, 488 F. Supp. at 824. In Massachusetts and Missouri, the courts have modified contract law with regard to the employment at-will doctrine by implying "a covenant of good faith and fair dealing" upon the parties. See Rees v. Bank Bldg and Equip. Corp., 332 F.2d 548, 550 (7th Cir. 1964); Fortune v. National Cash Register Co., 373 Mass. 96, 364 N.E.2d 1251 (1974). “[E]ven in New York, courts have interpreted employment contracts to include an implied covenant of good faith where the compensation due the employee was based on length of service and the employee was discharged, apparently without cause, prematurely.” Savodnik, 488 F. Supp. at 825 (citing Zimmer v. Wells Mgt. Corp., 348 F. Supp. 540 (S.D.N.Y. 1972)).
munity."

Exceptions have been created to protect employees’ rights to file worker's compensation claims, to engage in union activity and to perform jury duty. While it may be true that these cases are supported by mandates of public policy derived directly from the applicable state statutes and constitutions, it is equally true that they serve at a minimum to establish the principle that public policy imposes some limits on unbridled discretion to terminate the employment of someone hired at-will.

Under the public policy exception, which avoids strict adherence to the employment at-will doctrine in the face of new needs and concerns, the New Hampshire Supreme Court in Monge v. Beebe Rubber Co., weighed the employee’s interest in job security against the employers’ needs to maximize their business potential and then balanced these competing interests in light of societal needs or what may be referred to as public policy. The court held that a discharge based on “bad faith or malice or based on retaliation is not

101. Petermann, 174 Cal. App. at 186, 344 P.2d at 27 (citing 72 C.J.S. Policy 212). “Another statement, sometimes referred to as a definition, is that whatever contravenes good morals or any established interests of society is against public policy.” Id.


103. See United States v. Hutcheson, 312 U.S. 219 (1941); Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940); Glenn v. Clearman's Golden Rock Inn, Inc., 192 Cal. App. 2d 793, 13 Cal. Rptr. 769 (1961) (protecting an employee’s right to engage in union activities as long as their actions conformed with the principles of the National Labor Relations Act and thus public policy).


105. Sheets v. Teddy’s Frosted Foods, Inc., 179 Conn. 471, 473, 427 A.2d 385, 387 (1980). The court in Sheets held that an at-will employee stated a redressible cause of action when he alleged that he was dismissed in retaliation for insisting that the company’s products conform with the standards of the Food, Drug, and Cosmetics Act. Id.


107. Monge, 114 N.H. at 132, 316 A.2d at 551. The court in Monge recognized the need to change outdated theories to make them applicable to the needs and concerns of the present society. Id. The Monge court did not extend this exception to the extent that the Massachusetts Supreme Court did in Wilkes v. Springside Nursing Home, Inc. when the Massachusetts court created a duty of utmost good faith and loyalty between shareholders in a close corporation. Compare Wilkes, 370 Mass. at 842, 353 N.E.2d at 657 with Monge, 114 N.H. at 133, 316 A.2d at 551.
[in] the best interest of the economic system or the public good and constitutes a breach of the employment contract.

In Ingle v. Glamore Motor Sales, the court failed to examine the special circumstances involved in the employment relationship to determine if an exception would be appropriate to support the public policy surrounding the close corporation. Ingle's sworn statements that the shareholder's agreement was not intended to give Glamore the right to buy out Ingle on a whim or without cause in connection with the circumstances surrounding the business endeavor, provided sufficient evidence to support the granting of a trial on the facts to determine if the majority shareholders had acted in bad faith or with malice. Ingle's personal liability for the corporation's debts, the timing of the buy-out and termination, and society's need for economic protection in minority shareholder ownership rights were some of the factors the court should have examined to gain a full understanding of the plight of this plaintiff and others like him. If the court considered these special circumstances, a public policy exception to the employment at-will doctrine could have been created if the trier of fact found the defendant to have acted in bad faith.

The Massachusetts Supreme Court recognized, in Wilkes v. Monge, 114 N.H. at 133, 316 A.2d at 551. The court expressly stated that it would afford the employer some protection to discharge employees under the business judgment rule while providing for some degree of stability in employment for the at-will employee. Monge, 114 N.H. at 134, 316 A.2d at 552.

In Ingle v. Glamore Motor Sales, Ingle, 73 N.Y.2d at 191, 535 N.E.2d at 1315, 538 N.Y.S.2d at 775 (Hancock, J., dissenting).

In Ingle v. Glamore Motor Sales, Ingle, 73 N.Y.2d at 194, 535 N.E.2d at 1318, 538 N.Y.S.2d at 778 (Hancock, J., dissenting). New York courts have recognized the special needs of the minority shareholder in the close corporation in prior cases; however, in Ingle the court seemed to lose sight of these needs in an attempt to uphold consistent applications of a judicial doctrine. Id.

In Ingle v. Glamore Motor Sales, Ingle, 73 N.Y.2d at 201, 535 N.E.2d at 1322, 538 N.Y.S.2d at 782 (Hancock, J., dissenting). Ingle's discharge was the result of a special meeting held with the purpose of voting Ingle out of his corporate posts and terminating his position as operating manager of the corporation by the majority shareholders. Ingle, 73 N.Y.2d at 186, 535 N.E.2d at 1312, 538 N.Y.S.2d at 772. Although the shareholders of a corporation have the right to join together to obtain control of the corporation, which includes having their choice of directors governing the board of the corporation, directors may not make agreements prior to a vote to govern how they will vote. McQuade v. Stoneham & McGraw, 263 N.Y. 323, 189 N.E. 234 (1934). The purpose of such a rule is to protect the corporation, for all directors owe a fiduciary duty to the corporation and its owners, including minority shareholders, to act in its best interests. Id. It appears that such an agreement was created in bad faith by Glamore and his sons prior to that special meeting of May 9, 1983, yet the court refused to afford Ingle the opportunity to show that bad faith on the part of the defendants existed when the court affirmed the defendants' motion for summary judgment. Ingle, 73 N.Y.2d at 201, 535 N.E.2d at 1322, 538 N.Y.S.2d at 782 (H Hancock, J., dissenting).
Springside Nursing Home, Inc., 114 that notions of public policy which govern these judicially-created exceptions differ between a typical at-will employee and a party who is a minority shareholder working under the status of an employee at-will. 116 In Wilkes, the court upheld its prior decision in Donahue 116 that “stockholder[s] in the close corporation owe one another substantially the same fiduciary duty in the operation of the enterprise that partners owe to one another.” 117 The Massachusetts court recognized that ownership and employment are interdependent for the shareholder of the close corporation and thus understood that “by terminating a minority shareholder’s employment or by severing him from a position as an officer or director, the majority effectively frustrate[d] the minority stockholder’s purpose in entering on the corporate venture and also den[jed] him an equal return on his investment.” 118

Some courts, including the New York Court of Appeals in Ingle, have refused to recognize that shareholders of a close corporation bear the “same relation[ship] of trust and confidence which prevails in partnerships.” 119 “[T]his view ignores the practical realities of the organization and functioning of a small ‘two man’ corporation organized to carry on a small business enterprise in which the stockholders, directors, and managers are the same persons.” 120 Although the close corporation has the advantages of limited liability and continuity of life, the close corporation changes neither the operations of the small business enterprise nor the opportunities for oppression of the minority shareholders.

If the courts do not impose a fiduciary duty upon majority shareholders in a close corporation, the organization gains all of the

116. Donahue, 367 Mass. at 578, 328 N.E.2d at 505. The court held that “[w]hen the corporation reacquiring its own stock is a close corporation, the purchase is subject to the additional requirement . . . that the stockholders, who, as directors or controlling stockholders, caused the corporation to enter into the stock purchase agreement, must have acted with the utmost good faith and loyalty to the other stockholders.” Donahue, 367 Mass. at 591, 328 N.E.2d at 518 (emphasis added).
117. Donahue, 367 Mass. at 588, 328 N.E.2d at 515. “Just as in a partnership, the relationship among the stockholders must be one of trust, confidence and absolute loyalty if the enterprise is to succeed.” Donahue, 367 Mass. at 585, 328 N.E.2d at 512.
118. Wilkes, 370 Mass. at 847, 353 N.E.2d at 662-63. Similar to Ingle’s case, Wilkes was terminated not for “misconduct or neglect of duties” but because of the defendants’ self serving desire to prevent the plaintiff from receiving corporate monies. Wilkes, 370 Mass. at 846, 353 N.E.2d at 661.
119. Donahue, 367 Mass. at 586, 328 N.E.2d at 513 (citing Helms v. Duckworth, 249 F.2d 482, 486 (1957)).
120. Id.
benefits of the corporate form without any of the burdens.\textsuperscript{121} For example, in a publicly-owned corporation the market controls the actions of the directors and controlling shareholders, but the minority shareholder of the close corporation lacks this protection because there is typically no market for the corporate stock.\textsuperscript{122} In some instances, when the market is determined to be an ineffective means of control, the courts have imposed limitations on the rights of directors and controlling shareholders when their actions hinder the corporation itself or its minority shareholders.\textsuperscript{123} The court in \textit{Ingle} did not even grant the plaintiff the opportunity to present the facts of the case to determine if the corporation's attributes were similar to that of a partnership, in which an imposition of a duty of good faith and loyalty would be appropriate to support public policy.\textsuperscript{124}

\textbf{B. Rebuttable Presumption}

Another approach which has been used to lessen the sting of the employment at-will doctrine has been to make the doctrine of employment at-will a mere presumption which can be rebutted by evidence of intentions to the contrary.\textsuperscript{125} Under the rebuttable presumption exception, "the trier of the facts will have to consider the 'course of conduct' of the parties, 'including their writings' and their antecedent negotiations."\textsuperscript{126} This approach is similar to the approach used in the public policy exception, to determine if the presumption of at-will status has been overcome.\textsuperscript{127} In order to overcome the pre-

\begin{itemize}
\item \textsuperscript{121} \textit{Ingle}, 73 N.Y.2d at 201, 535 N.E.2d at 1321, 538 N.Y.S.2d at 781 (Hancock, J., dissenting).
\item \textsuperscript{122} \textit{Id}.
\item \textsuperscript{123} There are many examples of judicial limitations on the rights of directors and controlling shareholders to act in their best interests. Although in general, controlling shareholders have a fundamental right to sell their shares at a profit, this right is limited when the shareholder knew or should have known that the buyer intended to loot the company's assets. \textit{See} Gerdes v. Reynolds, 30 N.Y.S.2d 755 (1941). A shareholder's right to receive a premium on the sale of his shares is not absolute and becomes a breach of a fiduciary duty if the sale is solely for a corporate post. \textit{See} Essex Universal Corp. v. Yates, 305 F.2d 572 (2d Cir. 1962). Another breach of fiduciary duty involves self-dealing transactions in which the director or controlling shareholder must show that the transaction was intrinsically fair to the corporation to be valid. \textit{See} Sinclair Oil Corp. v. Levien, 280 A.2d 717 (Del. 1971).
\item \textsuperscript{124} \textit{Ingle}, 73 N.Y.2d at 199, 535 N.E.2d at 1320, 538 N.Y.S.2d at 780 (Hancock, J., dissenting).
\item \textsuperscript{125} \textit{Weiner}, 57 N.Y.2d at 466, 443 N.E.2d at 446, 457 N.Y.S.2d at 198 (citing Martin v. New York Life Ins. Co., 148 N.Y. 117, 121, 42 N.E. 416, 420 (1895)).
\item \textsuperscript{127} \textit{Weiner}, 57 N.Y.2d at 467, 443 N.E.2d at 466, 457 N.Y.S.2d at 198. The court
\end{itemize}
sumption of an employment at-will relationship, the parties must prove that a contractual relationship was consummated based on mutual promises. This exemption from the absolute rule of employment at-will focuses on the “realization of [the parties] expectations” and the determination of their reasonableness. When the conflict involves the at-will status of an employee, the court can hold that the employer had an implied duty to discharge only for good cause and hence be able to protect the employee’s reliance interests.

The New York Court of Appeals undertook this approach in Weiner v. McGraw-Hill, Inc., holding that the employment relationship was not governed by the doctrine of employment at-will because the plaintiff had reasonably relied on oral and written statements which implied that the employee would only be discharged for cause. However, the court in Ingle refused to extend this principle to protect minority shareholders in close corporations who are subject to even greater harm than a typical employee at-will because of the minority shareholders’ personal investment and lack of

consider the entire situation including but not limited to “attendant circumstances, the situation of the parties, and the objectives they were striving to attain” to determine if the doctrine is rebutted. Id.

128. Minda, The Common Law of Employment At-Will in New York: The Paralysis of Nineteenth Century Doctrine, 36 Syracuse L. Rev. 939, 994 (1985). In Weiner, the court held that the plaintiff sustained his burden of proof to overcome the presumption of an at-will employment relationship through emphasizing “reasonable expectations” rather than “formalist claims of indefiniteness and lack of mirror image acceptance.” Minda, supra note 128, at 994. See Weiner, 57 N.Y.2d at 458, 443 N.E.2d at 441, 457 N.Y.S.2d at 193. The court recognized that “the fact that plaintiff was free to quit his employment at-will,” was not conclusive in and of itself. Weiner, 57 N.Y.2d at 464, 443 N.E.2d at 444, 457 N.Y.S.2d at 196. The court emphasized that the search for mutuality “is not necessary when a promisor receives other valid consideration.” Id. To satisfy the consideration requirement, “[i]t is enough that something is promised, done, forbore or suffered by the party to whom the promise is made as consideration for the promise made to him.” Weiner, 57 N.Y.2d at 464, 443 N.E.2d at 444, 457 N.Y.S.2d at 196 (citing Hamer v. Sidway, 124 N.Y. 538, 27 N.E. 256 (1891)).


131. Weiner, 57 N.Y.2d at 466, 443 N.E.2d at 445, 457 N.Y.S.2d at 197.

132. 57 N.Y.2d at 458, 443 N.E.2d at 441, 457 N.Y.S.2d at 193.

133. Weiner, 57 N.Y.2d at 466, 443 N.E.2d at 445, 457 N.Y.S.2d at 197. The breach of contract claim in Weiner was intended to compensate the plaintiff for actions commenced and opportunities lost due to the defendant’s assertions. Id. The courts must protect individuals who reasonably rely on other individuals’ promises, even when the promise was not explicit but was implied from the surrounding circumstances. Id. See Wood v. Lady Duff-Gordon, 22 N.Y. 88, 118 N.E. 214 (1917) (discussing the implied “best efforts” clause in an agency relationship).
mobility.134

As stated by Justice Hancock in his dissent in Ingle, "[t]he need for special protection of a minority shareholder could not be better illustrated than in the case at bar."135 To treat plaintiff's position in Glamore Motor Sales as though it entailed the same freedom to leave as that of mid-level employees in Murphy,136 Weiner,137 and Sabetay138 is to ignore the substantially different factors between Ingle as a shareholder/employee and the ordinary employee.139 It is the personal investments, lack of dividends, and lack of market for the close corporation stock which significantly curtail the minority shareholder's freedom.140

Oppression of a minority shareholder has been defined to include "conduct that substantially defeats the 'reasonable expectations' held by minority shareholders in committing their capital to the particular enterprise."141 "[S]hareholder[s] who reasonably expect ownership in the corporation [to] entitle [them] to a job, a share of corporate earnings, a place in corporate management, or some other form of security, would be oppressed in a very real sense when others in the corporation seek to defeat those expectations."142

The court in Ingle failed to fully examine the circumstances surrounding the employment relationship of the minority shareholder of the close corporation to determine if the presumption of an at-will employment relationship could have been rebutted through Ingle's

134. Ingle, 73 N.Y.2d at 192, 535 N.E.2d at 1319, 538 N.Y.S.2d at 779 (Hancock, J., dissenting).
135. Ingle, 73 N.Y.2d at 191, 535 N.E.2d at 1319, 538 N.Y.S.2d at 779 (Hancock, J., dissenting).
139. Ingle, 73 N.Y.2d at 193, 535 N.E.2d at 1321, 538 N.Y.S.2d at 781 (Hancock, J., dissenting).
140. Id.
142. In re Kemp & Beatley Inc., 64 N.Y.2d at 72-73, 473 N.E.2d at 1179, 484 N.Y.S.2d at 805. In In re Kemp & Beatley Inc., the plaintiff requested the involuntary dissolution of the corporation when minority shareholders were oppressed in a squeeze out at the hands of the majority shareholders. 64 N.Y.2d 63, 473 N.E.2d 1173, 484 N.Y.S.2d 799.
reasonable reliance on the existence of job security as a co-owner.\textsuperscript{143} The majority viewed the shareholders' agreement as conclusive evidence of an at-will employment relationship.\textsuperscript{144} However, as noted in the dissenting opinion, a variety of sworn statements by Ingle alleged that he had reasonably relied on the defendant's implied promises that discharge would be for cause and not on a whim or in bad faith. The agreement between the two co-owners, Glamore and Ingle, and the Ford Corporation stating that Ingle and Glamore would operate the dealership as joint owners, each with full authority and responsibility for the operations of the business enterprise, support Ingle's contentions of reasonable reliance on job security.\textsuperscript{145} In addition, Ingle's actions to personally guarantee the corporation's liabilities constitute consideration for the promise to act as co-dealers and rebuts the presumption of employment at-will under the majority's interpretation of the shareholders' agreement.\textsuperscript{146}

As the majority emphasizes, Ingle was compensated for the sale of his shares, but to believe that the dollar amount received met his expectations would be to dismiss his purpose in acquiring those shares.\textsuperscript{147} Ingle had reasonably expected his employment to continue until he chose to retire or to acquire his own Ford dealership at which time Glamore would be able to use the repurchase agreement.\textsuperscript{148} A more fact sensitive interpretation of paragraph 7(b) of the shareholders' agreement, considering the attendant circumstances, would have rebutted the presumption of an indefinite employment relationship and would have been afforded the plaintiff protection against oppression by majority shareholders.

\textsuperscript{143} Ingle, 73 N.Y.2d at 189, 535 N.E.2d at 1317, 538 N.Y.S.2d at 777 (Hancock, J., dissenting).

\textsuperscript{144} See supra notes 71-85 and accompanying text (discussing the interpretation of paragraph 7(b) of the shareholders' agreement).

\textsuperscript{145} Ingle, 73 N.Y.2d at 188-89, 535 N.E.2d at 1316-17, 538 N.Y.S.2d at 776-77 (Hancock, J., dissenting). The court in Weiner allowed the employees' policy manuals to be used to rebut the presumption of employment at-will. Weiner, 57 N.Y.2d at 465, 443 N.E.2d at 445, 457 N.Y.S.2d at 197.

\textsuperscript{146} Ingle, 73 N.Y.2d at 188-89, 535 N.E.2d at 1316-17, 538 N.Y.S.2d at 776-77 (Hancock, J., dissenting).

\textsuperscript{147} Ingle, 73 N.Y.2d at 183, 535 N.E.2d at 1311, 538 N.Y.S.2d at 771.

\textsuperscript{148} Ingle, 73 N.Y.2d at 189, 535 N.E.2d at 1317, 538 N.Y.S.2d at 777 (Hancock, J., dissenting). Ingle explained that "the purpose and intent of paragraph 7(b) was to protect James Glamore in case [the] plaintiff chose to leave the business, not to give Glamore the right at any time, for any reason or for no reason to deprive plaintiff of all expectancies as co-principal in the agency." Id.
C. Abusive Discharge

The final approach to ease the inherent problems of the doctrine of employment at-will is the creation of the abusive discharge limitation. "While no case in New York has yet recognized the tort of abusive discharge, precedent does suggest New York courts will do so when presented with the proper case." The doctrine of abusive discharge places upon the plaintiff the burden of persuading the court that (1) there is a public policy of this State that (2) was violated by the defendant.

The United States District Court recognized abusive discharge as a proper cause of action, stating that "[c]ourts cannot hide in ivory towers ignoring the economic and social realities of modern society." In Savodnik, the plaintiff sustained his burden of proof when he alleged that he was a model employee, and that the purpose of his termination was "solely to deprive him of his pension benefits." Under the assumption that the plaintiff's allegations were true, the court held that, under the state constitution and ERISA, the defendant had "clearly violated New York's policy favoring the integrity of pension plans to protect the interests of the participants in such plans." The United States District Court for the Eastern District of New York refused to dismiss the plaintiff's claim for abusive discharge holding that the defendant clearly violated New York's public policy "favoring the protection of the integrity of pension plans." The court views its role in society protecting these changing needs and as serving the society by adopting exceptions to ancient rules to conform to new notions of public policy.

149. Savodnik, 488 F. Supp. at 826 (quoting Chin v. American Tel. & Tel., 96 Misc. 2d at 707, 410 N.Y.S.2d 737 (N.Y.Civ.Ct. 1978), aff'd, 70 A.D.2d 791, 416 N.Y.S.2d 160 (1st Dept. 1979)). The court stated in dicta that "this court is not adverse to recognizing new causes of action . . . where clearly warranted." Savodnik, 488 F. Supp. at 826 (quoting Chin, 96 Misc. 2d at 707, 410 N.Y.S.2d 741). "The motion to dismiss in Chin was thus granted not because the New York Supreme Court was unwilling to embrace the theory of abusive discharge, but rather, because 'plaintiff ha[d] not sustained his burden of persuasion.'" Id.


151. Savodnik, 488 F. Supp. at 826. The court stated that the plaintiff successfully met his burden of persuasion when the defendant did not rebut these allegations. Id. The court permitted a claim against the defendant, even though under the strict doctrine of employment at-will the defendant would be allowed to dismiss the plaintiff in bad faith and would not be required to repudiate these allegations. Id.


153. Id. at 826. The court stated that the plaintiff successfully met his burden of persuasion when the defendant did not rebut these allegations. Id. The court permitted a claim against the defendant, even though under the strict doctrine of employment at-will the defendant would be allowed to dismiss the plaintiff in bad faith and would not be required to repudiate these allegations. Id.


155. Savodnik, 488 F. Supp. at 826. The court noted that the "[e]nactment of ERISA itself testifies to the great significance income security has for the millions of the country's retired population." Id.
District of New York felt convinced that "New York courts would recognize the abusive discharge doctrine on the facts of this case." 166

In 1983, the New York court explicitly stated its disapproval of the creation of the abusive discharge claim in the context of an employment at-will relationship. 167 The court's refusal to adopt the abusive discharge doctrine stemmed from its reluctance to "alter [its] long settled-rule that where an employment is for an indefinite term it is presumed to be a hiring at will which may be freely terminated by either party at any time for any reason or even for no reason." 168

In Murphy, the court refused to disrupt the strict application of the doctrine of employment at-will and was of the opinion that a claim based on wrongful termination was an attempt "to subvert the traditional at-will contract rule by casting [the] cause of action in terms of a tort [action]." 169

The dissent in Murphy emphasized that the doctrine of employment at-will was a judicially-created doctrine and hence can be modified by the judiciary. 170 The dissenters in Murphy also remark that the doctrine of employment at-will "has for at least a century been subject to the 'universal force' of the good faith rule," 171 and therefore the legislature, prior to this decision, had no reason to act. 172

With regard to the plight of the minority shareholder in the close corporation, the New York Legislature did act to afford the minority shareholder protection from oppression by the majority shareholders. 173 Ingle could have had a successful claim under a theory of wrongful discharge as pronounced by the United States Dis-

156. Id. at 827. The court based its decision heavily on the decision and accompanying dicta in Chin and its opinion of the "recent developments in the evolution of the 'wrongful firing' exception. Id.
157. See Murphy, 58 N.Y.2d at 293, 448 N.E.2d at 86, 461 N.Y.S.2d at 232.
158. Murphy, 58 N.Y.2d at 300, 448 N.E.2d at 89, 461 N.Y.S.2d at 235.
159. Murphy, 58 N.Y.2d at 302, 448 N.E.2d at 90, 461 N.Y.S.2d at 236. The court dismissed the claim holding that it is the role of the legislature to make reforms to meet the current expectations of public policy. Murphy, 58 N.Y.2d at 300, 448 N.E.2d at 90, 461 N.Y.S.2d at 235.
160. Murphy, 58 N.Y.2d at 314, 448 N.E.2d at 97, 461 N.Y.S.2d at 243 (Meyer, J., dissenting).
161. Id.
162. Id. The dissenting opinion states that there is "no compelling policy reason to read the implied obligation of good faith out of contracts impliedly terminable at will." Murphy, 58 N.Y.2d at 313, 448 N.E.2d at 96, 461 N.Y.S.2d at 242 (Meyer, J., dissenting) (discussing Section 205 of the Restatement of Contracts which imposes an obligation upon the parties in all contracts to act under a "duty of good faith and fair dealing").
163. Ingle, 73 N.Y.2d at 197, 535 N.E.2d at 1319, 538 N.Y.S.2d at 779 (Hancock, J., dissenting) (discussing Sections 1104-a and 1118 of the Business Corporation Law and how the legislative enactment can be used to protect minority shareholders); see infra notes 168-81 and accompanying text.
District Court in *Savodnik*, but the majority in *Ingle* dismissed the claim against Glamore and his sons “for wrongfully inducing the corporation to terminate [the] plaintiff as officer, director and employee,” without considering the special circumstances of the minority shareholder under the theory of employment at-will. As stated in the dissenting opinion in *Ingle*, “[b]y treating the essence of plaintiff’s complaints as a claimed breach of a hiring contract by the employer rather than an unfair squeeze-out of a minority shareholder in a close corporation by the majority, the court simply concludes that plaintiff has no rights at all.”

V. SQUEEZE OUT OF THE MINORITY SHAREHOLDER

In *Ingle*, Justice Hancock, in his dissenting opinion, states that


165. *Ingle*, 73 N.Y.2d at 191, 535 N.E.2d at 1315, 538 N.Y.S.2d at 775 (Hancock, J., dissenting).

166. *Id.* The court essentially disregards the factors which could provide guidelines to establish appropriate exceptions to the employment at-will doctrine under the tort cause of action known as abusive discharge. *See Minda, The Common Law of Employment At-Will in New York: The Paralysis of Nineteenth Century Doctrine, 36 Syracuse L. Rev. 939, 956 (1985).* “According to the *Restatement (Second) of Torts*, the concept of privilege is defined as a justification for removing liability for intentional interferences with prospective contractual relations.” *Id.*

Privilege is defined in terms of the following seven factors:

(a) the nature of the actor’s conduct,
(b) the actor’s motive,
(c) the interests of the other with which the actor’s conduct interferes,
(d) the interest sought to be advanced by the actor,
(e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other,
(f) the proximity or remoteness of the actor’s conduct to the interference and
(g) the relations between the parties.

*Id.* *See Restatement (Second) of Torts* 767 (1979). “As at least one court has pointed out, the first five of these factors are substantially identical to the factors that would be weighed in determining if the employer has justification for discharging an at-will employee [or acted in a manner violative of the abusive discharge exception as constructed in *Savodnik*].” *Minda, supra* note 14, at 956-57.

167. *Ingle*, 73 N.Y.2d at 190, 535 N.E.2d at 1315, 538 N.Y.S.2d at 775 (Hancock, J., dissenting).
the majority opinion extended the doctrine of employment at-will to a situation which "it was never intended to cover."\(^{168}\) The dissent explained that "the relationship of a minority shareholder to a close corporation, if fairly viewed, cannot possibly be equated with an ordinary hiring and, in the absence of a contract, regarded as nothing more than an employment at-will."\(^{169}\) However, this is the course taken by the majority of the court when they refuse to "address the multiple relationships and the expectancies and vulnerabilities peculiar to the status of a minority shareholder in [the] plaintiff's position—those very considerations which call for the relief that only a court of equity can give."\(^{170}\) According to the dissent, the plaintiff's claim is simply "one of an abuse of corporate power by the majority resulting in an unlawful squeeze-out of a minority shareholder."\(^{171}\)

In asserting a claim of an unlawful squeeze-out of a minority shareholder by the majority, the court seeks to protect the plaintiff's special situation in a manner that resembles all three of the exceptions to the doctrine of employment at-will.\(^{172}\) "A 'squeeze-out' has been defined as the controlling shareholders' use of their preeminent position in the business to drive out other less powerful participants in the business."\(^{173}\) Under Section 1104-a of the Business Corporation Law, the legislature has provided a "mechanism for the holders of at least 20% of the outstanding shares of a corporation whose stock is not traded on a securities market to petition for [the corpo-

168. *Id.* at 199, 535 N.E.2d at 1320, 538 N.Y.S.2d at 780 (Hancock, J., dissenting). "By simply considering the case as one at law for breach of contract, the majority makes defendants impervious to suit by placing them under the protective mantel of the *Sabatay, Murphy, Weiner,* and *Martin* rule." *Id.* In these cases, the defendants had the absolute and unfettered right to discharge at-will under the mutuality of obligation which stated "if the employee can quit his job at-will, then so, too, must the employer have the right to terminate the relationship for any reason or no reason." *Blades,* *supra* note 9, at 1419. See *Minda,* *supra* note 14, at 975-78.

169. *Ingle,* 73 N.Y.2d at 199, 535 N.E.2d at 1320, 538 N.Y.S.2d at 780 (Hancock, J., dissenting). The underlying purpose of the employment at-will rule does not adapt to the situation when the conflict involves parties in a closely held corporation because the minority shareholders are "not truly free to quit at any time," and thus consideration is given which would support termination for cause rather than at-will. *Id.* at 200, 535 N.E.2d at 1321, 538 N.Y.S.2d at 781 (Hancock, J., dissenting) (emphasis in original).

170. *Id.* at 199, 535 N.E.2d at 1320, 538 N.Y.S.2d at 780 (Hancock, J., dissenting). In general, minority shareholders invest a substantial amount of their assets in the corporation in the anticipation of continuing employment and receiving what is usually their sole source of income and their only investment scheme. *In re Kemp & Beatley, Inc.,* 64 N.Y.2d at 71, 473 N.E.2d at 1178, 484 N.Y.S.2d at 804.

171. *Ingle,* 73 N.Y.2d at 193, 535 N.E.2d at 1316, 538 N.Y.S.2d at 776 (Hancock, J., dissenting).

172. *Id.*

ration's] dissolution”¹⁷⁴ when the controlling shareholders are (1) acting in a manner that is illegal, fraudulent, or oppressive towards the minority shareholders; or (2) misappropriating corporate assets.¹⁷⁵

In regard to Ingle v. Glamore Motor Sales, Inc, the issue is whether the majority's behavior can be deemed as being oppressive towards Ingle as a minority shareholder. Oppressive behavior is generally defined as “conduct that substantially defeats the 'reasonable expectations' held by minority shareholders in committing their capital to the particular enterprise.”¹⁷⁶ This claim is “[p]redicated on the majority shareholders’ fiduciary obligation to treat all shareholders fairly and equally, to preserve corporate assets, and to fulfill their responsibilities of corporate management with 'scrupulous good faith.'”¹⁷⁷ Thus, minority shareholders are afforded an opportunity

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¹⁷⁵. Id. Section 1104-a of New York Business Corporation Law provides for the petition for judicial dissolution under special circumstances:

(a) The holders of twenty percent or more of all outstanding shares of a corporation, other than a corporation registered as an investment company under an act of congress entitled 'Investment Company Act of 1940,' no shares of which are listed on a national securities exchange or regularly in an over-the-counter market by one or more members of a national or an affiliated securities association, who are entitled to vote in an election of directors may present a petition of dissolution on one or more of the following grounds:

(1) The directors or those in control of the corporation have been guilty of illegal, fraudulent or oppressive actions toward the complaining shareholders;

(2) The property or assets of the corporation are being looted, wasted, or diversified for noncorporate purposes by its directors, officers or those in control of the corporation.

(b) The court, in determining whether to proceed with involuntary dissolution pursuant to this section, shall take into account:

(1) Whether liquidation of the corporation is the only feasible means whereby the petitioners may reasonably expect to obtain a fair return on their investment; and

(2) Whether liquidation of the corporation is reasonably necessary for the protection of the rights and interests of any substantial number of shareholders or of the petitioners.


¹⁷⁶. In re Kemp & Beatley Inc., 64 N.Y.2d at 73, 473 N.E.2d at 1179, 484 N.Y.S.2d at 805. To determine what constitutes oppression, it is useful to understand the legislature's purpose in enacting the statute. Id. at 71, 473 N.E.2d at 1178, 484 N.Y.S.2d at 804. The legislature wanted to protect the minority shareholders' reasonable expectations involving an equal and fair return on their investment and their expectation that they will be “actively involved in [the corporation's] management and operation.” Id.

A shareholder who reasonably expected that ownership in the corporation would entitle him or her to a job, a share of corporate earnings, a place in corporate management, or some other form of security, would be oppressed in a very real sense when others in the corporation seek to defeat those expectations and there exists no effective means of salvaging the investment.

Id. at 72-73, 473 N.E.2d at 1179, 484 N.Y.S.2d at 805.

¹⁷⁷. Id., 64 N.Y. 2d at 69, 473 N.E.2d at 1177, 484 N.Y.S.2d at 803. When the major-
to be heard because there is an appropriate cause of action which considers their special circumstances. The minority shareholder exhibits a proper claim through evidence that the majority shareholders' conduct "substantially defeat[ed] [the] expectations that, objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture." 7

In 1979, the legislature created Section 1104-a to address the power conflicts that can arise in the context of a closely held corporation. 179 However, the court in Ingle did not recognize this statute as a means of redress nor as a legislative grant of authority to circumvent the problems of the doctrine of employment at-will in its application to the minority shareholder/employee in the close corporation. 180 Ingle held over twenty percent of the corporation's stock and, in light of the actions of Ingle and Glamore in their business relationship which extended for almost twenty years, his expectation of job security was reasonable and central to his investing in the corporation. 181 The defendants breached their duty of good faith and fair dealing when they terminated Ingle's employment and repurchased his shares without cause. Yet the New York court was still unwilling to tamper with the doctrine of employment at-will even with the existence of Section 1104-a of the New York Business Corporation Law.

VI. CONCLUSION

Although the New York courts have expressed a desire to lessen the burdens of the doctrine of employment at-will, 182 they consist-

178. Id. at 72, 473 N.E.2d at 1179, 484 N.Y.S.2d at 805 (discussing the determination of oppression as being a fact sensitive process). It is important to note that the court can determine that oppression resulted from the frustration of the minority shareholder's reasonable expectations which the majority either knew or should have known existed. Id.

179. In re Pace Photographers, 71 N.Y.2d 737, 743, 525 N.E.2d 713, 716, 530 N.Y.S.2d 67, 70 (1988). "Prior to 1979, minority shareholders in close corporations who suffered abuse at the hands of the majority lacked the options available to business partners and shareholders in public corporations to extricate the value of their investments." Id.


181. Id. Glamore knew or should have known that Ingle expected to remain an active member of the corporation until he choose to leave or behaved in a manner that did not conform with the agreement as co-owners each with full authority and responsibility for the operations of the dealership. Id.

ently decline to do so when presented with the opportunity. In *Ingle v. Glamore Motor Sales, Inc.*, the court continued to place the burden of reform on the legislature, but as noted in the dissenting opinion, the legislature did indeed act. In 1979, the legislature enacted sections 1104-a and 1118 of the Business Corporation Law to explicitly provide protection for a plaintiff in Ingle's predicament, but it was overlooked by the majority of justices in the *Ingle* court when they once again conformed to the steadfast doctrine of employment at-will.

Other states have made exceptions which focus on (1) the public policies governing society as related to the doctrine of employment at-will; (2) the doctrine as a mere presumption which can be rebutted; and (3) the doctrine as a means to justify an abusive discharge. All of these exceptions attempt to adapt the doctrine to present societal needs and interests. The law must change with the times and cannot remain static in the face of controversies which are the result of outdated thoughts. It is the role of the court to afford the injured with a means of redress and not to encourage oppression created by legal doctrines. The employment at-will doctrine was judicially created and must be modified in the same manner to protect the interests which are presently endangered.

*Alyse J. Ferraro*

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agreements between the parties, as is generally the case in all contracts, there existed an implied covenant of good faith and fair dealing." *Pernet*, 20 A.D.2d at 784, 248 N.Y.S.2d at 135. "[T]he relationship between shareholders in a close corporation, viz-a-viz each other, is akin to that between partners and imposes a high degree of fidelity and good faith." *Fender*, 101 A.D.2d at 422, 476 N.Y.S.2d at 132 (citing *In re T.J. Ronan Paint Corp. [Doran]*, 98 A.D.2d 413, 469 N.Y.S.2d 931). As stated by Chief Justice Cardozo in *Meinhard v. Salmon*, "[a] trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." *Fender*, 101 A.D.2d at 422, 476 N.Y.S.2d at 132 (citing Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 546).

183. *See supra* notes 168-81 and accompanying text.