

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2007-CP-11-00802

DAVID L. O'SHIELDS,)

Plaintiff,)

v.)

ORDER

PIEDMONT GLASS & MIRROR)
COMPANY, INC., JULIE)
TAYLOR, DAVID TAYLOR and)
CAROLINA STOREFRONT)
SYSTEMS, INC.,)

Defendants.)

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SC Court of Appeals

This case involves a disagreement between a bother (David Lynn O'Shields), plaintiff, and his sister (Julie Taylor) and her husband (David Taylor), defendants. The dispute involves ownership of a small family glass installation business (Piedmont Glass and Mirror, Inc. later known as Carolina Storefront Systems, Inc.), also defendants. The plaintiff asserts that he is a shareholder as prescribed by the provisions of the South Carolina corporate code and, as such, that he is a 50% owner in the defendant corporations. He asserts this 50% ownership interest as a shareholder is based upon an alleged oral agreement made with his sister in 1996 for services he performed for the glass company. At the time of the alleged oral agreement, Julie was the sole proprietor of the business. The business was incorporated at the end of 1998. The oral agreement is denied by the defendants.

The financial viability of Piedmont Glass and Mirror, Inc. (PMG), and Carolina Storefront System, Inc. (CSS), was not in genuine dispute in the case. PMG was administratively closed by the government for failing to pay its taxes and CSS, which remains in debt, is currently struggling to meet its tax obligations. The management of PMG and CSS was

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also not in dispute in this case. At all times relevant to this case, Julie and/or David Taylor ran both of the companies. The plaintiff made no management decisions. Therefore, the financial difficulties now facing CSS are solely due to decisions and directives made by the Taylors. Nevertheless, the merit and wisdom, or lack thereof, of the Taylor's management of PMG and/or CSS is not an issue upon which this Court will pass judgment. While certain actions taken by the Taylors in running these business are questioned as being ultra vires, this Court cannot change the financial fate of these companies and nothing was presented to suggest that, had the plaintiff been actively involved in making the management or policy decisions of PMG or CSS, a different financial outcome would have occurred. The plaintiff presented nothing to indicate how his participation in management, or lack thereof, would have resulted in a different financial outcome than that in which the defendant company currently finds itself, wherein debt and government liabilities are two of its chief financial characteristics.

The present litigation started in 2007 after the plaintiff was terminated from his job subsequent to suffering a work-related accident. The plaintiff's workers' compensation claim was denied by the defendants. As a result of the severity of his injury, the plaintiff's doctor placed him on a six (6) month medical leave. The defendants offered the plaintiff a new position as an office worker. When he refused the new position, he was terminated. Unknown to this Court is why the plaintiff's workers' compensation claim was denied. Likewise, unknown to this Court is the reasoning behind the defendants' refusal to allow the plaintiff to remain on medical leave for six (6) months as his doctor had prescribed. As a result of these two decisions, a Summons and Complaint containing fourteen (14) causes of action was filed in circuit court. Included in the causes of action were claims based in negligence related to the personal injuries that the plaintiff suffered on the job and a wage claim. Summary judgment was granted,

removing the personal injuries claims due to workers' compensation preemption and the wage claim was removed because the plaintiff admitted during a deposition that all wages had been paid to him. This Court is informed that the plaintiff's workers' compensation claim was litigated but the outcome is unknown. This Court is also informed that the Plaintiff's injury was so severe that his foot was eventually amputated and that he was declared permanently disabled.

With the acute reason for the dispute between the parties removed from this litigation, the remaining causes of action required the parties and this Court to examine the relationship between the parties through facts dating back to 1996. The discovery process and trial revealed, at worst, the parties' chronic disrespect and nonchalance toward the responsibilities and rights of corporate governance, or, at best, their ignorance of the same.

Even though originally filed in 2007, the trial of this matter did not occur until 2019. During the trial, it was explained that, because of this litigation, the family relationship between these parties was breached. In an effort to minimize further damage to the family relationship, this Court has on numerous occasions attempted to have the parties reach an amicable resolution, knowing that any decision by this Court will most likely serve to widen the breach in the family. Regrettably, such resolution was not accomplished. As will be explained herein, this Court finds that the plaintiff has failed to meet his burden of proof as to any of the remaining causes of action and, likewise, the defendants have failed to meet their burden of proof as to any relevant counter claim raised against the plaintiff. Therefore, this case is dismissed with prejudice as to all claims.

RULING

Foundational to the plaintiff's remaining claims is his assertion that he was a shareholder in the defendant corporations. He alleges that, as a shareholder, he was entitled to invoke the

provisions of the South Carolina Business Corporations Act of 1988 (BCA), S.C. Code Ann. § 31-1-101, et seq., as a sword against his sister and brother-in-law for alleged breaches of the duties mandated by the BCA. He also attempts to use his alleged status as a shareholder under the BCA to assert two common law theories of liability against his sister and brother-in-law. For reasons described herein, this Court cannot find that the plaintiff met his burden of proof to show that he is a shareholder as contemplated by the BCA.

Discussion

The plaintiff's role in PMG could best be described as a that of a crew leader for the company's installation teams. The plaintiff first came to work for PMG in 1996. His job performance appears to have been rocky at times, as testimony was presented that he walked off the job, quit, or was fired six (6) to eight (8) times during his tenure. Nevertheless, the defendants always hired the plaintiff back or allowed him to return to his job; accordingly, the quality of his work was presumably adequate by PMG's standard. Even the plaintiff's reported use of marijuana while working did not lead to his termination – the allegation came from a credible source, but was only raised as an issue related to his job performance as part of the present litigation. No action was taken against him at the time.

The plaintiff remained a crew leader until 2007 when he suffered a workplace injury. The injury was serious enough that the plaintiff's doctor placed him on work restrictions. As previously indicated, even though the causes of action related to the workers compensation claim asserted as part of the original fourteen (14) causes of action in this suit were removed at the summary judgment stage, this Court believes that the defendants' act of denying his injury claim and then firing the plaintiff when he refused to do office or customer-service work during his period of work restriction was the original domino that set off the events

that have led to the present litigation, and, collaterally, the demise of the family relationship between the parties.

Julie was an employee of a company known as Piedmont Glass when she purchased it. In 1996, when the plaintiff began working for the business, PMG could have best been described as sole proprietorship owned by Julie. In December of 1998, PMG was incorporated. The original incorporation documents list shares of the corporation being held by Julie (40%), David (20%) and plaintiff (40%). Tax returns from 1999 to 2006 also listed the plaintiff as having 400 shares or 40%.

The plaintiff's chief assertion in the present litigation is that he is a 50% owner of PMG and, subsequently, CSS because he and Julie had an agreement in 1996 providing that, in exchange for the plaintiff leaving his former job at Cone Mills and coming to work for PMG for a year at a lower rate of pay, the plaintiff would become a 50% owner of PMG. Julie denies the 1996 agreement. The agreement, if it existed, was only an oral agreement.

The plaintiff asserts that this year of employment with PMG gave him a 50% partnership in PMG and made him a 50% owner of PMG when it was incorporated. Similar to the lack of documentation of the 1996 agreement, the partnership is denied by the defendants and is unverifiable by any documentation. He further asserts that he is entitled to ownership in CSS by reason of the underlying circumstances involving PMG's assets being transferred to CSS in 2011. CSS was incorporated prior to PMG being forfeited and administratively dissolved in 2013 for failure to pay taxes.

Again, Julie denies the 1996 agreement. Everyone agrees that the plaintiff did not pay consideration for the shares of stock listed under his name. None of the parties dispute the fact that Julie's consideration given for her shares were the assets she owned in PMG while her

husband's consideration given for his (20%) shares of PMG was his investment of \$42,231.56 into PMG, funds that were withdrawn from his retirement account. There is no dispute that the alleged 1996 agreement is not documented. The plaintiff's assertion that Julie and her husband promised the plaintiff a 50% ownership interest in PMG after it was incorporated is also undocumented.

There is no dispute that the shareholder agreement provided that the subscriptions offered to the plaintiff were conditioned "upon payment." The plaintiff admitted that he signed the shareholder agreement without reading it. The plaintiff admitted in his deposition that he never paid for any shares, never gave any consideration in exchange for his shares, and never accepted and/or accounted for receiving any shares as a gift.

This Court has reviewed the applicable code sections and case law. This Court has considered the testimony, as to both substance and credibility, and the evidence presented during the trial and the arguments, both written and oral, from counsels. This Court notes that, in the course of the past twelve (12) years of litigation, numerous lawyers have worked on this case. The Court notes, and compliments, trial counsels' excellent advocacy and thorough briefing on issues that were framed in large part by other lawyers.

This Court cannot rule that the plaintiff was a shareholder of PMG for the purposes of judicially enforcing the rights of a shareholder under the BCA or at common law as pled in the amended complaint. Based on the evidence presented in this case, the oral agreement, if it existed, cannot be judicially enforced by this Court. Additionally, even if this Court could enforce the oral agreement that, in exchange for a year of work at a reduced rate, the plaintiff would receive 50% partnership/ownership in the sole proprietorship, the subscription agreement is clear on its face and the plaintiff acknowledged he paid no consideration for his stock

subscription. Additionally persuasive to the Court is the fact that the plaintiff asks the Court to construe his 40% stock subscription agreement as bonafide ownership, despite the fact that the plaintiff has never claimed 40% ownership – the plaintiff has solely alleged 50% ownership. Even after receiving the stock subscription indicating 40% ownership, he contends that Julie and David assured him that he was 50% ownership. Even if the oral assurance was made, the plaintiff took no action. If such statements were made by Julie and David in 1998, that Plaintiff was a 50% owner in the newly incorporated enterprise, the stock subscription agreement gave the plaintiff actual notice that David and Julie did not intend for the plaintiff to be a 50% owner in the new enterprise. Again, he took no action for nine (9) years, until the present action was filed in 2007. The alleged assurance of 50% ownership was denied by the defendants.

Furthermore, the plaintiff's allegation that the board of directors "authorized" the issuance of shares to the plaintiff as compensation for past services is not supported by the preponderance of the evidence, if for no other reason than the extreme absence of corporate formalities that might tend to indicate that the board intended such an action. The Statute of Frauds and Statute of Limitations issues prevent the Court from enforcing the alleged 1996 oral agreement or the 1998 alleged promise that the plaintiff was a 50% shareholder in the newly incorporated PMG. The Plaintiff has not met his burden of proof necessary to show that he is a valid shareholder in either corporation, and lacks standing to claim an injury to himself as a shareholder or to claim derivatively a harm to either of the corporate entities.

This Court notes that one of the remedies sought by the plaintiff was an accounting. This Court's opinion is that even if an accounting was a remedy that this Court could properly order, the discovery process in this litigation has produced all the documents that this Court could have ordered the defendants to produce.

This Court pauses as to the negligent misrepresentation claim. Even though the plaintiff represented to the Court that all causes of action were dependent upon his status as a shareholder, this Court *sua sponte* examined the negligent misrepresentation claim. In examining the allegation in the complaint, the negligent misrepresentation claim appears to be the only cause of action that could be construed as not dependent upon the plaintiff's status as a shareholder of either of the corporations. This hesitancy owes itself to certain revelations uncovered in the course of discovery. This process has clearly shown that none of the parties were sophisticated as to the rules related to corporate governance. At best, it appears compliance with basic formalities were half-heartedly attempted. This Court doubts that any of the parties adequately understood the consequences of failing to meet the corporate formalities and is certain that none of the parties understood the obligations and duties which flow from attempting to invoke "corporate status." The plaintiff himself, when approached by the tax department about the business' unpaid taxes, stated "I do not control what they pay and what they do not pay, and [I] am not liable." Assuming that the plaintiff had standing as a shareholder, he did nothing as a shareholder to act on any of his suspicions that the Taylors were misusing corporate assets; he similarly took no action in his role as an officer of the corporation. In fact, the plaintiff did not even have a discussion with the Taylors. This Court also notes a lack of the type of evidence which is customarily presented in shareholder/corporate litigation, of detailed, documented evidence of prior efforts by the parties to obtain relief prior to the filing of litigation, to support its belief as to the lack of sophistication of the parties. The plaintiff had no concern about corporate governance and the ramifications and responsibilities of corporate affairs until he had the significant injury to his foot, his claim was denied, he was terminated, and the present litigation began. If the parties had been more sophisticated as to the rules of corporate



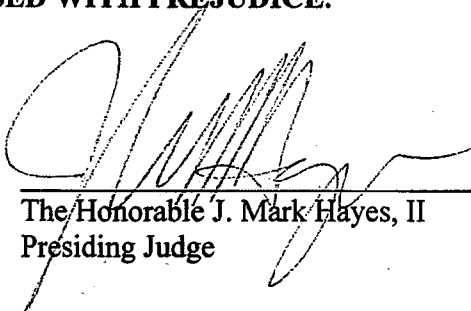
governance, judicial remedies through the corporate code perhaps may have been obtained at a time closer to that at which the alleged deviation or wrong occurred. If the parties had been more sophisticated and acted in a timely manner, judicial resources may have made the present claim of 50% ownership, or the lack thereof, more understandable to the parties and more appropriately clarified the business relationship. And, more broadly speaking, the damage to the family relationship might have been minimized after the plaintiff suffered his worker's compensation injury and was terminated when he failed accept a job working in the office. Nevertheless, after an exhaustive review of the facts and the legal arguments this Court cannot find that the record before it supports the conclusion that every element of a negligent misrepresentation claim was met by the plaintiff.

Does a lack of sophistication justify the defendants' conduct when the evidence more-likely-than-not establishes that all the parties felt that the plaintiff had a vested interest in the business? It does not. As previously stated, the financial hallmarks of the corporations are debt and unpaid governmental liabilities. The accounting indicates an uncomfortable lack of regard and respect for the division between the corporate entities and the personal interests of the Taylors. The records also reflect the fact that the Taylors felt the plaintiff had a vested interest in the company when he was referred to a "partner" and "owner" during the worker's compensation hearing. The defendants listed the plaintiff in numerous corporate documents as a shareholder. The plaintiff was, at the least, considered a significant member of PMG by the defendants – he was given a title and his personal financial worth was leveraged by PMG to secure a loan used to buy real estate. Exposing the plaintiff to debt liability and credit risk while, at the same time, claiming he is not a shareholder is wrong. For the same reason, it is wrong to have him listed on tax returns. Fortunately for the plaintiff, no evidence was presented as to any

specific damages or injury as a result of these individual actions. Nevertheless, this Court's opinion is that the provisions of the BCA as pled and the record before this Court does not allow a judgement for the plaintiff as to the remaining causes of action raised in the complaint.

With the finding that the plaintiff has failed to meet his burden of proof, this Court also finds that the counterclaims are moot as they may relate to shareholder conduct or that the burden of proof has not been met as to conduct related to corporate officers.

IT IS SO ORDERED, THIS CASE IS DISMISSED WITH PREJUDICE.



The Honorable J. Mark Hayes, II
Presiding Judge

Date: June 4, 2019.