

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

McMillan Pazdan Smith, LLC,)
)
Plaintiff/Counter-Defendant,)

Civil Action No. 2019-CP-23-00998

vs.)

Donza H. Mattison,)
)
Defendant/Counterclaimant.)

ORDER DENYING
MOTION TO RECONSIDER

Donza H. Mattison, in a Derivative)
Capacity on Behalf of McMillan Pazdan)
Smith, LLC,)

Third-Party Plaintiff,)

vs.)

Rondald G. Smith, Joseph M. Pazdan,)
Brad B. Smith, and Chad C. Cousins,)

Third-Party Defendants.)
_____)

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SC Court of Appeals

On September 30, 2020, this Court entered an Order granting McMillan Pazdan Smith, LLC (“MPS”) and the Third-Party Defendants’ Motion for Summary Judgment as to Defendant Donza H. Mattison’s (“Mattison”) derivative action. Mattison filed a Motion to Reconsider on October 12, 2020. Having heard the arguments and reviewed the submissions of the parties and the record in this case, Mattison’s Motion to Reconsider is hereby DENIED.

LEGAL STANDARD

Rule 59(e), SCRPC, allows a court to alter or amend a judgment upon a party’s timely motion. “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for

the court to reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). A party’s dissatisfaction with the outcome of the underlying litigation is not grounds for relief under Rule 59.

RULING

Mattison argues in her Motion to Reconsider that the Court erroneously granted summary judgment on her derivative action because she meets Rule 23(b)(1)’s requirement that a derivative plaintiff fairly and adequately represent the interests of the other members. Mattison raises eleven grounds in support of her Motion to Reconsider. The Court finds that these are the same grounds Mattison raised in opposition to the Motion for Summary Judgment, and the Court is not persuaded to change its ruling.

I. Every Other Member of MPS Opposes Mattison’s Derivative Action.

One factor that courts use to determine whether the representational requirement has been met is the degree of support the derivative plaintiff receives from the shareholders or members he or she purports to represent. *See Davis v. Comed, Inc.*, 619 F.2d 588, 593-94 (6th Cir. 1980). Here, every member of MPS signed a statement affirming that they do not join, or in any way support, Mattison’s derivative action. Mattison was permitted to depose six minority members of her choosing. During those depositions, the minority members affirmed under oath their member statements and their opposition to Mattison’s derivative action. Mattison did not cite any testimony from these depositions in her Memorandum in Support of the Motion to Reconsider. The Court reviewed the deposition transcripts and, based upon that testimony, determined that there was no testimony to support the continuation of the derivative action.

The Court does not accept Mattison’s argument that a 2% owner can, without some exceptional circumstance, bring a derivative action that is contrary to what 98% of the membership

thinks is in the best interest of the firm. Therefore, the Court stands by its prior ruling that Mattison cannot meet the requirements of Rule 23(b)(1).

II. Mattison Brought the Derivative Action to Gain Leverage in Her Dispute Regarding the Valuation of Her Membership Units.

The Court finds that Mattison's motivation in bringing the derivative action was to gain leverage in her dispute with MPS over the valuation of her equity interest. This finding is supported by counsel for Mattison's statements during the hearings held on May 12, 2020 and October 26, 2020. These statements, combined with the January 14, 2019 letter sent by Mattison's counsel to MPS threatening to bring a derivative action if the parties were unable to resolve the valuation of her membership units, confirm that Mattison pursued this derivative action to get a higher payout for her equity interest, and not to vindicate the interests of the other members of MPS. Case law is clear that derivative lawsuits brought for this purpose are improper. *See Palmer v. U.S. Sav. Bank of Am.*, 131 N.H. 433, 441, 553 A.2d 781, 786 (1989). The relevant case law and uncontroverted evidence in this case support the Court's dismissal of Mattison's derivative action.

III. Mattison Seeks Relief in the Derivative Action Contrary to the Interests of the Other Members of MPS.

The remedies Mattison seeks in her Amended Third-Party Complaint directly contradict what the other members of MPS want. Mattison cannot be a fair and adequate representative of the other members because she is trying to undo agreements, resolutions, and transactions that every other member voted on and supported. The relief sought in her Amended Third-Party Complaint is clear, and her views and beliefs about what is in the best interest of the company are completely divergent from the members she purports to represent.

The Court has carefully considered all of the points raised in Mattison's Motion to Reconsider. For the reasons set forth above, the Court affirms its September 30, 2020 Order Granting MPS and the Third-Party Defendants' Motion for Summary Judgment. Mattison's Motion to Reconsider is hereby DENIED.

IT IS SO ORDERED.

The Honorable R. Lawton McIntosh
Thirteenth Judicial Circuit

Greenville, South Carolina

_____, 2020



Greenville Common Pleas

Case Caption: McMillan Pazdan Smith LLC , plaintiff, et al vs. Donza H Mattison ,
defendant, et al
Case Number: 2019CP2300998
Type: Order/Other

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