EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW Joanne Schwartz, Plaintiff, vs. The Camden Hunt, Ltd., Susan Sensor, and Amy Cantey, Defendants.	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2020-CP-28-00926 ORDER DISMISSING CLAIMS AGAINST DEFENDANT THE CAMDEN HUNT, LTD.; DENYING MOTION TO RECONSIDER DISMISSAL OF CLAIMS AGAINST SUSAN SENSOR AND AMY CANTEY; AND DISMISSING CASE WITH PREJUDICE

Before the court are a motion by Plaintiff, Joanne Schwartz, to reconsider this court's order of August 17, 2021, dismissing her claims against Defendants Susan Sensor and Amy Cantey and a motion by The Camden Hunt, Ltd., asking the court to reconsider its decision to deny the Camden Hunt's motion to dismiss the claims Ms. Schwartz brought against it. For the following reasons, Plaintiff's motion is denied, the Camden Hunt's motion is granted, and this case is dismissed with prejudice.

ALLEGATIONS

Plaintiff brought this lawsuit on Friday, October 16, 2020, alleging that Susan Sensor and Amy Cantey had failed to act on credible allegations of hound mistreatment, failed to properly maintain landowner relationships and subscriber relationships, and misappropriated assets of the Camden Hunt, and alleging that Ms. Sensor had discharged a firearm on school property while on an activity of the Hunt. Ms. Schwartz asked that Ms. Sensor and Ms. Cantey be relieved from any responsibility for the hounds, kennels, and stables of the Hunt, that Ms. Sensor and Ms. Cantey be relieved from any duties and responsibilities as directors or purported directors for the Hunt, and that Ms. Sensor and Ms. Canty be taxed and assessed improper expenditures. She also asked the

court to otherwise craft the best way to protect the interests of the subscribers of the Hunt as a mutual benefit corporation. She also sought to enjoin the Hunt's only fulltime employee from being around the Hunt's hounds. Notably, the relief she seeks is for the benefit of the Hunt and not for herself, and the suit is brought under the South Carolina corporate dissolution statute (rather than the statute for removing directors) and does not seek dissolution of the corporation. Also of note is the fact that Plaintiff did not allege whom she would suggest would take care of the hounds if her injunction were granted.

By a Form 4 order entered June 2, 2021, the court denied the Camden Hunt's motion to dismiss the claims against it, and no formal order was entered. On June 7, 2021, a Form 4 order was entered dismissing Plaintiff's claims against Ms. Sensor and Ms. Cantey on the grounds that Plaintiff was no longer a director and therefore had no standing to bring this suit. On June 11, the Camden Hunt filed a motion to reconsider the Form 4 order denying the Hunt's motion to dismiss the claims against it, stating that the bases for the dismissal of Ms. Schwartz's claims against Ms. Sensor and Ms. Cantey applied equally as well to her claims against the Hunt. A formal order was entered as to the dismissal of Ms. Schwartz's claims against the Hunt on August 17, 2021. On August 20, Ms. Schwartz filed a motion to reconsider the dismissal of the claims she had brought against Ms. Sensor and Ms. Cantey. The court heard arguments on both motions to reconsider on September 14, 2021.

STIPULATION MADE AFTER SUIT WAS FILED

The parties have stipulated that Ms. Schwartz ceased being a director of the Camden Hunt four days after filing the suit, on October 20, 2020. For that reason, the court at the hearing held on May 19, 2021, questioned whether Ms. Schwartz lost her standing to sue Ms. Sensor and Ms. Cantey for the benefit of the Hunt.

Ms. Schwartz does not contend that her removal from the Hunt's board at the Tuesday, October 20, 2020, meeting was an ineffective or illegal removal that she did not acquiesce in. Nor does she contend that her removal from the board was in direct response to this lawsuit (filed Friday, October 16, 2020). Ms. Schwartz does not contend that her removal was carried out in violation of the Articles of Incorporation or By-Laws of The Camden Hunt.

LAW

Sua Sponte Relief

First, Ms. Schwartz argues a case should not be dismissed *sua sponte* for lack of standing. The Court may raise standing *sua sponte*. *Carolina All. for Fair Emp. v. S.C. Dep't of Labor, Licensing, & Reg.*, 337 S.C. 476, 486-87, 523 S.E.2d 795, 800-01 (Ct. App. 1999). The theory is that courts will only consider actual cases or controversies and will not issue advisory opinions. Hence, standing is a matter of subject-matter jurisdiction that may be raised by the court *sua sponte*.

Secondly, Ms. Schwartz argues that the Camden Hunt had no right to bring a 59(e) motion when it had not raised the matter of standing either by motion or at the hearing. What Ms. Schwartz overlooks, however, is the position of all parties that the legal issues involving standing apply to both the dismissal of her claims against the Camden Hunt and to her claims against Ms. Sensor and Ms. Cantey. Neither side argued that the claims should be analyzed differently. Even the arguments were presented at the hearing on the 59(e) motion that way. And Ms. Schwartz's briefs in opposition to the Camden Hunt's motion to reconsider the denial of its motion to be dismissed from the case and the one in support of her motion to reconsider the court's decision to dismiss her claims against Ms. Sensor and Ms. Cantey are virtually identical. The court *did* consider the

standing argument as to both the Camden Hunt and Ms. Sensor and Ms. Cantey, and it is free to reconsider both arguments now.

Standing After Removal as a Director

The court will now move to the merits of the question of whether a person who is no longer a director may maintain a suit such as this even after she is no longer a director. And the court finds that she may not.

The starting point is whether this is a derivative action in the first place, and the court concludes that it is.

A derivative action is one where a suit is brought against the directors of a corporation for the benefit of the corporation; the plaintiff does not seek a remedy for herself, only for the corporation. "An action seeking to remedy a loss to the corporation is generally a derivative one." *Brown v. Stewart*, 348 S.C. 33, 557 S.E.2d 676 (Ct. App. 2001). "An action regarding the fiduciary obligation of a director is ordinarily enforceable through a derivative action." *Patterson v. Witter*, 425 S.C. 213, 821 S.E.2d 677 (2018). "Although South Carolina recognizes a duty between officers and directors of a corporation and that corporation's shareholders, this court has held that the fiduciary obligation of dominant or controlling stockholders or directors is ordinarily enforceable through a stockholder's derivative action." *Rice-Marko v. Wachovia Corp.*, 398 S.C. 301, 728 S.E.2d 61 (Ct. App. 2012). "The liability of directors for loss to a corporation due to their mismanagement is an asset of the corporation and any recovery on such a cause of action belongs solely to the corporation. The stockholder in an action of this kind is only a nominal plaintiff, the corporation being the real party in interest." *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952).

And that is what we have here: Ms. Schwartz has sued the Camden Hunt and directors Ms. Sensor and Ms. Cantey *not* because *she* was allegedly harmed but because *the corporation* was allegedly harmed. And the remedies she seeks (removal of Ms. Sensor and Ms. Cantey and the Hunt's only fulltime employee) would not personally benefit Ms. Schwartz. Hence, this is a derivative suit and will be analyzed that way.

As the court pointed out in its original order dismissing the claims against Ms. Sensor and Ms. Cantey, the dispositive case on the issue of standing is *Johnson v. Baldwin*, 221 S.C. 141, 69 S.E.2d 585 (1952). There, the South Carolina Supreme Court analogized shareholder derivative suits with director derivative suits. Quoting from a case (*Kehaya v. Axton,* D.C., 32 F. Supp. 266 (S.D.N.Y. 1940)) where a director was found not to possess standing for a claim of negligence and waste against directors of a corporation after he was no longer a director, the South Carolina Supreme Court held, "[i]f he is ousted as a director he no longer represents the corporation, and the only role which he can thereafter assume is that of a kind of self-appointed *dominus litus*, without interest, present or potential, in his subject matter, which is an anomalous situation involving gratuitous inquisition into the business of another, and fraught… with the dangerous possibilities always inherent in irresponsibility." Justice Oxner went on to state, "[t]o hold that if a director, who has sued, loses his status as director further maintenance of the suit by him is barred, does not mean that the cause of action, if there is one, has disappeared. It merely means that that particular plaintiff cannot further pursue it."

Subsequent South Carolina cases have continued to apply the reasoning laid out in *Johnson v. Baldwin,* and no subsequent South Carolina case law has altered the Supreme Court's findings in the *Baldwin* case as they relate to shareholder's or director's derivative suits. *See Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020); *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361,

409 S.E.2d 340, 342 (1991), overruled on other grounds by *Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995). *See also Kreischer v. Kerrison Dry Goods Co.*, 172 F.3d 863 [published in full-text format at 1999 U.S. App. LEXIS 1097] (4th Cir. 1999) (unpublished table decision). Ms. Schwartz has not shown that the case at hand can be distinguished from these South Carolina cases.

Ms. Schwartz relies on the Arizona case of *Workman v. Verde Wellness Center, Inc.*, 382 P.3d 812 (Ariz. Ct. App. 2016), for the assertion that a director who initiates a suit while still on the board of directors and then is subsequently removed does not lose standing to continue the suit after it is commenced under Arizona's Nonprofit Corporations Act, A.R.S. § 10-11430(B)(2), (4). Ms. Schwartz states that Arizona's statute is substantively similar to S.C. Code Ann. § 33-31-1430 and thus, this court should follow the reasoning set out in *Workman*.

In *Workman*, a director filed suit on June 17, 2015, for judicial dissolution of the company because the directors had "acted, are acting or will act in a manner that is illegal, oppressive or fraudulent" and had wasted corporate assets. Only hours after filing the action, the board held a Special Meeting to have her removed as a director. They then moved to dismiss her suit because she lacked standing. However, the meeting notes showed the board actually adopted amended bylaws and resolutions to effectuate the removal. Plaintiff argued this was an ineffective removal and in response, the board held another Special Meeting in August 2015, where she was again voted off.

The Arizona Court of Appeals inferred she had been removed from her position on the board as a tactical maneuver and, therefore, expelling her from the board could not moot her claim. In reaching this conclusion, the court analogized derivative suits by shareholders, which have been understood to require a plaintiff to maintain his or her shareholder status for the duration of the suit. As the court states, "[t]he reason for the requirement is because the derivative plaintiff

essentially stands in the shoes of the corporation to enforce the rights of the corporation, and the primary interest the shareholder has in doing so is by virtue of the related interest in protecting his or her shares." The court acknowledged there is a narrow exception for when a shareholder is deprived of his shares as "the result of corporate action in which the holder did not acquiesce." Consequently, because the court believed she had been removed from the board solely because of her claims against the corporation, "[u]nder such circumstances, [the company's] conduct cannot render the action moot."

There is no allegation here that Ms. Schwartz was removed as a director because she brought this lawsuit.

Ms. Schwartz also cites a New York case, *Tenney v. Rosenthal*, 6 N.Y.2d 204 (N.Y. Ct. App. 1959), for support. In that case the court stated that a director's derivative suit is a right "based on public policy declared by the Legislature upon enactment of the statute. We may assume that the right … has been granted in order to facilitate and improve the director's performance of the "stewardship obligation" which he owes to the corporation." Similar to *Workman*, the court takes note that a director who "insists that the corporation be managed for the benefit of all" and then is not re-elected because of the director's desire to "expose wrongdoing by the same dominant directors who actually cast the votes" should not thereafter lose standing as this could be an additional sign of "unhealthy corporate condition[s]." The case goes on to say that directors who succeed "by trick or otherwise" should not be allowed to render an action abated and such a reading of the New York statute would make it "practically ineffectual."

However, as stated above, the policy reasons addressed in *Tenney* for allowing an exception for directors ousted from their position are not present in the case at hand. Ms. Schwartz does not claim that her removal from the board was a demonstration of "unhealthy corporate condition[s],"

and Ms. Schwartz does not claim that her removal was based on her insistence that the Hunt be "managed for the benefit of all." Ms. Schwartz has also failed to allege that the South Carolina judicial dissolution statute (S.C. Code Ann. § 33-31-1430) would be "ineffectual" in instances where improper director removal practices are administered by the sitting board, let alone "ineffectual" in instances where there is proper director removal that is conducted without "tricks or otherwise."

On reconsideration, the court is especially concerned that in fact Ms. Schwartz may have been acting as a kind of self-appointed *dominus litus* (master of the suit), yet without interest, present or potential, in the operations of the Camden Hunt. And the court is concerned that Ms. Schwartz's continued pursuit of this case after she was removed as a director may have been some sort of gratuitous inquisition into the business of another and, as such, fraught with the dangerous possibilities always inherent in irresponsibility.

Because the South Carolina Supreme Court analogizes director's suits with shareholder's derivative suits, it would likely agree with the saying found in the *Grosset* case: "Allowing a plaintiff to retain standing despite the loss of stock ownership would produce the anomalous result that a plaintiff with absolutely no dog in the hunt is permitted to pursue a right of action that belongs solely to the corporation."

Once Ms. Schwartz was removed as a director, she lost standing to complain about how the corporation was run.

Dissolution and Director-removal Statutes

At the hearing on the motion to reconsider, the Hunt, Ms. Sensor and Ms. Cantey pressed the argument raised in their motion to dismiss – that S.C. Code Ann. § 33-31-1430 only

authorizes a court to remove directors as part of a suit to dissolve a corporation (and the Plaintiff has not asked this court to dissolve The Camden Hunt, Ltd.).

The court agrees.

Ms. Schwartz tells us this lawsuit is brought pursuant to SC Code § 33-31-1430 (Grounds for Judicial Dissolution). That section goes into great detail as to under what circumstances a court of common pleas may dissolve a corporation and at whose request (the Attorney General, a percentage of members or by a director) and under what circumstances (deadlock, illegal, oppressive or unfair conduct , and the like), and it lays out the court's powers in a dissolution suit, including the power to "order any other form of relief which it deems proper in the circumstances." Ms. Schwartz has not asked the court to dissolve the Camden Hunt, so this cause of action fails. The fact that the dissolution statute allows the court to "order any other form of relief which it deems proper in the circumstances" simply cannot be read as empowering a court to do whatever it wants in a suit where dissolution is not even requested.

"The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). It is well-established that the appellate courts of South Carolina will not construe a statute by concentrating on an isolated phrase. *Laurens Cnty. Sch. Dists. 55 & 56 v. Cox*, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992) ("The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose. In applying the rule of strict construction the courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole, or destructive of its obvious intent."); *see also Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 370

S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006) ("A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.").

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). Moreover, statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result. *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). Because the court must presume that the General Assembly is familiar with existing legislation, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000)" (internal citations omitted).

To have a director removed where dissolution is not sought, the court would have to turn to SC Code § 33-31-808. Section 33-31-810 describes the removal of directors by judicial proceeding, but that section does not apply here, either.

Section 810 provides that a circuit court can remove a director in a proceeding, but it has to be a proceeding commenced either by:

a) The corporation (yet Ms. Schwartz's lawsuit was not commenced by the Camden Hunt); or

b) Its members holding at least five percent of the voting power of any class to elect directors (yet The Camden Hunt does not have members); or

c) The Attorney General (yet this proceeding was not commenced by the Attorney General).

So no statute authorizes this court to remove Ms. Sensor or Ms. Cantey from the board of directors.

CONCLUSION

Ms. Schwartz's motion to reconsider is denied, The Camden Hunt's motion to reconsider is granted, and this case is dismissed with prejudice.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Presiding Judge
South Carolina Business Court

Anderson, South Carolina

October 25, 2021.