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FOR PUBLICATION

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

FILED
December 22, 1997
Cecil W. Crowson
Appellate Court Clerk

WILLIAM A. HALL AND BEEF (
TRANSPORT, INC., (
 (
Plaintiffs-Appellees-Appellants, (

v. (
(

TENNESSEE DRESSED BEEF CO. AND (
RICHARD N. HALL, (
(Davidson Chancery
Defendants-Appellants-Appellees, (

and (Hon. Robert S. Brandt,
Chancellor

WILLIAM A. HALL, DERIVATIVELY (S. Ct. No. 01S01-9611-CH-00236
ON BEHALF OF TENNESSEE DRESSED (
BEEF CO., (
(

Plaintiff-Appellee, (
(

v. (
(

RICHARD N. HALL, (
(
Defendant-Appellant. (

For Plaintiffs-Appellees-Appellants:

Jeffrey A. Greene
Alvin L. Harris
Greene & Greene
Nashville

For Defendants-Appellants-Appellees:

John S. Hicks
Darwin A. Hindman, III
Brigid T. Miller
Baker, Donelson, Bearman
& Caldwell
Nashville

O P I N I O N

JUDGMENT OF TRIAL COURT REVERSED;
JUDGMENT OF COURT OF APPEALS REVERSED
IN PART AND AFFIRMED IN PART.

REID, J.

This case presents appeals by all parties from the

1 decision of the Court of Appeals affirming in part and reversing in
2 part the order of the trial court granting summary judgment in
3 favor of the defendants on all issues. The decisions granting
4 summary judgment are reversed and the case is remanded.

5
6 **I**

7
8 William A. Hall, individually and derivatively on behalf
9 of Tennessee Dressed Beef Co., and Beef Transport, Inc. brought
10 suit against Hall's brother, Richard N. Hall, and Tennessee Dressed
11 Beef Co. alleging numerous causes of action based on transactions
12 whereby Richard N. Hall gained control of Tennessee Dressed Beef
13 Co. and subsequent actions taken by that corporation.

14
15 For purposes of summary judgment the facts are not
16 disputed. Plaintiff William A. Hall and defendant Richard N. Hall
17 each were issued one-third of the shares of stock in the defendant
18 Tennessee Dressed Beef Co. when it was incorporated in 1962. The
19 remaining one-third shares were divided equally between Louis and
20 Patrick McRedmond. Tennessee Dressed Beef Co. is engaged in the
21 business of brokering, slaughtering, and processing cattle. In
22 1965, another corporation, Beef Transport, Inc., was incorporated
23 with William A. and Richard N. Hall as its sole and equal
24 shareholders. Beef Transport, Inc. provides transportation
25 services to Tennessee Dressed Beef Co., as well as to other
26 customers. From 1962 until 1992, when the McRedmonds sold their
27 interests in Tennessee Dressed Beef Co., the Halls used their

1 majority voting power to control the business of the corporation.
2 The McRedmonds frequently disagreed with the Halls and even brought
3 an unsuccessful suit alleging that the Halls received secret
4 profits through the formation of Beef Transport, Inc. Tennessee
5 Dressed Beef Co. v. Hall, 519 S.W.2d 805 (Tenn. Ct. App. 1974),
6 cert. denied, (Tenn. 1975).

7
8 In the late 1960s or early 1970s, William A. and Richard
9 N. Hall began to disagree about management issues and corporate
10 policy. Although they continued to align themselves against the
11 McRedmonds, the relationship between the Halls deteriorated, and,
12 in 1988 William A. Hall ceased to be active in the daily operations
13 of Tennessee Dressed Beef Co. He continued as president of Beef
14 Transport, Inc. In the early 1990s, each of the Halls undertook to
15 buy the other's stock in Tennessee Dressed Beef Co. When their
16 attempts to reach an agreement were unsuccessful, they each
17 approached the McRedmonds. A deal was struck between Richard N.
18 Hall and the McRedmonds whereby Richard N. Hall would acquire
19 control of a majority of the shares of stock of Tennessee Dressed
20 Beef Co. That transaction and subsequent actions taken by Richard
21 N. Hall and Tennessee Dressed Beef Co. are the basis for this case.

22
23 At that time, the bylaws of Tennessee Dressed Beef Co.
24 contained the following provision:

25
26 No stock shall be sold by any stockholder
27 unless he has given the corporation twenty days
28 notice of his intentions to sell, during which
29 time the other stockholders of record shall

1 have the privilege of purchasing same at the
2 lowest price at which said stockholder offers
3 to sell, but this restriction shall not apply
4 to sales by and between the four original
5 stockholders, or their heirs or the personal
6 representatives of their estates.
7
8
9

10 On October 26, 1992, Richard N. Hall, on behalf of
11 himself and as president of Tennessee Dressed Beef Co., executed a
12 Stock Purchase and Redemption Agreement with the McRedmonds. The
13 agreement provided that Richard N. Hall would purchase 100 shares
14 of the McRedmonds' stock at \$187.39 per share for a total cost of
15 \$18,739.15 and Tennessee Dressed Beef Co. would redeem the
16 remaining 7,400 shares of the McRedmonds' stock at the same price
17 per share, for a total cost of \$1,386,724. The agreement provided
18 that Tennessee Dressed Beef Co. would pay the McRedmonds \$280,000
19 in cash at closing and the balance of \$1,106,724 over seven years
20 at 8.75 percent interest. In addition, a company owned by the
21 McRedmonds, Nashville Recycling, which had an overdue account with
22 Tennessee Dressed Beef Co. of approximately \$500,000, would repay
23 the debt over five years at 6.25 percent interest. Pursuant to the
24 agreement, the McRedmonds designated Richard N. Hall as their
25 proxies to vote their shares at subsequent meetings of the
26 shareholders of Tennessee Dressed Beef Co.
27

28 The following day, Richard N. Hall gave notice of a
29 special meeting of Tennessee Dressed Beef Co.'s shareholders for
30 November 9, 1992, for the purpose of amending the bylaws. The
31 proposed amendment would repeal the above-quoted stock transfer
32 restriction, which granted shareholders the right of first refusal

1 before shares could be sold to someone other than the original four
2 shareholders. At the shareholders meeting, Richard N. Hall voted
3 his shares and those owned by the McRedmonds for the amendment,
4 which was adopted. William A. Hall voted his shares against the
5 proposal. At a subsequent shareholders meeting, Richard N. Hall
6 used his majority vote to add three new members to the board of
7 directors. At the board of directors meeting that immediately
8 followed, Richard N. Hall disclosed, for the first time, the
9 agreement between himself, the corporation, and the McRedmonds.
10 The newly elected board ratified the agreement. As a result,
11 Richard N. Hall became the owner of 50.3 percent of the outstanding
12 shares of Tennessee Dressed Beef Co., with William A. Hall owning
13 the remaining 49.7 percent.

14
15 Subsequently, Richard N. Hall terminated William A.
16 Hall's employment with Tennessee Dressed Beef Co. and thereby
17 eliminated William A. Hall's annual income from the corporation of
18 \$150,000; the corporation increased Richard N. Hall's annual income
19 by the same amount; and Tennessee Dressed Beef Co. unilaterally
20 modified the contract between it and Beef Transport, Inc. to
21 substantially eliminate Beef Transport, Inc.'s profits and increase
22 Tennessee Dressed Beef Co.'s profit, causing an additional annual
23 loss of income to William A. Hall of approximately \$250,000.

24
25 **II**

26
27 **A**

1 The complaint alleges several causes of action in
2 contract and tort and seeks, in addition to money damages, removal
3 of Richard N. Hall as a director of Tennessee Dressed Beef Co. and
4 Beef Transport, Inc. and judicial dissolution of both corporations.
5

6 The record presents three determinative and interrelated
7 issues. The first is whether the corporation was obligated by the
8 provision in its bylaws to give notice to all its shareholders of
9 the McRedmonds' offer to sell their shares of stock; the second is
10 whether William A. Hall can bring a derivative action on behalf of
11 Tennessee Dressed Beef Co. against Richard N. Hall; and the third
12 is whether William A. Hall has a cause of action against Richard N.
13 Hall for breach of a fiduciary duty. All three issues will be
14 answered in the affirmative.
15

16 B
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18 William A. Hall claims that Tennessee Dressed Beef Co.
19 breached the first refusal provision of the corporation's bylaws by
20 not notifying him that the McRedmonds had offered to sell their
21 stock to a non-shareholder, the corporation itself. This Court has
22 not previously addressed the issue, but the weight of authority
23 from other jurisdictions holds that properly adopted bylaws
24 constitute a binding contract between the corporation and its
25 shareholders. See, e.g., Elisian Guild, Inc. v. U.S., 412 F.2d
26 121, 124 (1st Cir. 1969); Gross v. Texas Plastics, Inc., 344 F.
27 Supp. 564, 566 (D. N.J. 1972); Schraft v. Leis, 686 P.2d 865, 872

1 (Kan. 1984); Mass. Charitable Mechanic Ass'n v. Beede, 70 N.E.2d
2 825, 829 (Mass. 1947); Appeal of Two Crow Ranch, Inc., 494 P.2d
3 915, 919 (Mont. 1972); Golden v. Oahe Enterprises, Inc., 240 N.W.2d
4 102, 108 (S.D. 1976). To suggest that a corporation has no legal
5 duty to follow its own bylaws "would be to reduce the bylaws to
6 meaningless mouthing of words." Lewisburg Community Hosp., Inc. v.
7 Alfredson, 805 S.W.2d 756, 759 (Tenn. 1991) (citation omitted).
8

9 In this case, Tennessee Dressed Beef Co. had notice of
10 the proposed sale of stock. In order to give effect to the right
11 of first refusal, the bylaw provision must be read to obligate
12 Tennessee Dressed Beef Co. to notify the other shareholders of the
13 proposed sale. Otherwise, the other shareholders would be unaware
14 of the opportunity to buy the stock, which would render the right
15 of first refusal meaningless, a result contrary to the clear
16 purpose of the bylaw provision. See Smithart v. John Hancock Mut.
17 Life Ins. Co., 71 S.W.2d 1059, 1063-64 (Tenn. 1934).
18

19 The defendants contend that William A. Hall had no right
20 of first refusal to purchase the McRedmonds' stock because the
21 bylaw provision was amended before the transaction was closed.
22 Regardless of the validity of the action to repeal the bylaw
23 provision, as of October 26, 1992 when the Stock Purchase and
24 Redemption Agreement was executed, the bylaw provision was in
25 effect. At that time, Tennessee Dressed Beef Co. had a duty to
26 notify William A. Hall of the intention of the McRedmonds to sell
27 their stock. This Court holds that William A. Hall may proceed

1 with his claims against Tennessee Dressed Beef Co. and Richard N.
2 Hall based on the alleged breach of the bylaw provision.

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4 C

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6 The second issue is whether William A. Hall has
7 standing to bring a derivative action on behalf of Tennessee
8 Dressed Beef Co. against Richard N. Hall, despite the fact that
9 William A. Hall is the only affected shareholder and has brought an
10 independent action against Tennessee Dressed Beef Co. A
11 shareholder may bring a derivative action in the name of the
12 corporation to enforce the rights of the corporation. Tenn. Code
13 Ann. § 48-17-401(a) (1988). In order to bring the action, the
14 shareholder must have been a "shareholder of the corporation when
15 the transaction complained of occurred." Id. Also, the
16 shareholder must allege with particularity that the shareholder
17 made a demand that was refused by the board of directors or that
18 such a demand was not given for sufficient reason. Tenn. Code Ann.
19 § 48-17-401(b) (1988). Finally, Tenn. R. Civ. P. 23.06 provides
20 that the shareholder must "fairly and adequately represent the
21 interests of the shareholders or members similarly situated."
22

23 Rule 23.06 refers to "a derivative action brought by one
24 or more shareholders." (Emphasis added.) Rule 23.06 does not
25 require a specific number of similarly situated shareholders.
26 Other jurisdictions addressing this issue have held that the class
27 of shareholders represented in the derivative action may consist of

1 only one person. Larson v. Dumke, 900 F.2d 1363, 1368-69 (9th
2 Cir.), cert. denied sub nom. Round Table Pizza, Inc. v. Larson, 498
3 U.S. 1012, 111 S. Ct. 580, 112 L. Ed. 2d 585 (1990); Jordan v.
4 Bowman Apple Prods. Co., Inc., 728 F. Supp. 409, 412-13 (W.D. Va.
5 1990); Halstead Video, Inc. v. Guttillo, 115 F.R.D. 177, 179-80
6 (N.D. Ill. 1987); Brandon v. Brandon Constr. Co., Inc., 776 S.W.2d
7 349, 353-54 (Ark. 1989); Eye Site, Inc. v. Blackburn, 796 S.W.2d
8 160, 161-63 (Tex. 1990). This Court agrees with the Court of
9 Appeals that the class of shareholders contemplated by Tenn. R.
10 Civ. P. 23.06 may consist of one shareholder. Otherwise, as the
11 court below noted, a shareholder of a closely held corporation
12 might be deprived of the ability to bring a derivative action.
13 Thus, the fact that William A. Hall is the only affected
14 shareholder does not preclude him from maintaining a derivative
15 action in this case.

16
17 Citing an unreported decision of the Court of Appeals,
18 Richard N. Hall claims that William A. Hall lacks standing because
19 of a conflict of interest. Maintaining a derivative action on
20 behalf of a corporation while at the same time asserting an
21 individual claim against the corporation may constitute a conflict
22 of interest; and, if there is a conflict of interest, the
23 shareholder is disqualified from maintaining a derivative action
24 pursuant to Tenn. R. Civ. P. 23.06. However, there is no conflict
25 of interest in this case. William A. Hall is not attempting to
26 represent the interests of any other shareholders. He is the only
27 similarly situated shareholder. Shareholders may bring derivative

1 and individual actions simultaneously. See In re TransOcean Tender
2 Offer Securities Litig., 455 F. Supp. 999, 1014 (N.D. Ill. 1978).

3 While there is always a theoretical conflict of interest, the great
4 weight of authority rejects a per se rule prohibiting such
5 representation. Id. Because there is no evidence in the record to
6 support a finding that William A. Hall is incapable of fairly
7 representing the interests of the corporation in the derivative
8 action while maintaining his individual suit, the existence of both
9 is no reason to deny him standing.

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11 D
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13 In the final issue, William A. Hall asserts several
14 claims that Richard N. Hall breached a fiduciary duty owed William
15 A. Hall. Recently, in Nelson v. Martin and Gammon, ___ S.W.2d
16 ___ (Tenn. 1997), the Court addressed the relationship between
17 shareholders in a close corporation. In that case, a shareholder
18 sued the two remaining shareholders alleging the wrongful
19 termination of his employment by the corporation and also his
20 wrongful removal as an officer and a director. The Court stated:

21
22 The shareholders of a close corporation
23 share a fiduciary relationship which imposes
24 upon all shareholders the duty to act in good
25 faith and fairness with regard to their
26 respective interests as shareholders. Officers
27 and directors of a corporation owe a similar
28 duty to the corporation. In order to withstand
29 a motion for summary judgment, allegations that
30 the fiduciary duty has been violated must be
31 supported by material evidence that the action
32 was not in the best interests of the
33 corporation and further that it was motivated

1 by malice, avarice, or self-interest.
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5 Id. at ___ [slip op., p. 20]. In Nelson, the Court found that the
6 evidence in the record did not present a disputed issue of material
7 fact. Consequently, the motions for summary judgment were
8 sustained, and the suit was dismissed.
9

10 In the present case, there is evidence that the
11 execution and performance of the Stock Purchase and Redemption
12 Agreement was in violation of the duty owed by Richard N. Hall.
13 Richard N. Hall stresses that legitimate business considerations
14 supported every act about which William A. Hall has complained and
15 that it is not a breach of fiduciary duty for one shareholder of a
16 close corporation to attempt to acquire controlling interest in the
17 corporation. He relies on Johns v. Caldwell, 601 S.W.2d 37, 45
18 (Tenn. Ct. App.), cert. denied, (Tenn. 1980). A transaction
19 whereby an officer or director uses his position with the
20 corporation, uses the corporation, or uses corporate funds for the
21 purpose of promoting his personal interest at the expense of
22 another shareholder may be the basis for a cause of action against
23 the officer or director. Johns v. Caldwell does not support Richard
24 N. Hall's position. See Nelson v. Martin and Gammon, ___ S.W.2d at
25 ___ [slip op., pp. 12-13]. There is sufficient evidence in this
26 case to withstand a motion for summary judgment on this issue.
27

28 **III**
29

