

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

C. MICHAEL GRABY, individually and as)
a shareholder of FLOORED INC,)
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Petitioner/Counter-Respondent,)
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v.)
)
WAYNE NEWELL, and FLOORED INC,)
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Respondents/Counter-Petitioners.)
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Case No. 23-0599-BC

**ORDER DENYING IN PART AND GRANTING IN PART PETITIONER GRABY'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

This matter came before the Court on August 4, 2023, upon Petitioner's Motion for Judgment on the Pleadings pursuant to Tenn. R. Civ. P. 12.03. Specifically, Michael Graby ("Petitioner") seeks a judgment on the judicial dissolution of Floored Inc and the Respondent's¹ (Wayne Newell) counterclaim of breach of fiduciary duty to obtain a finding that Mr. Newell made an illegal distribution of Floored Inc's (the "Corporation") corporate funds and failed to properly join the Corporation to the counterclaim. The Respondent objects to the Petitioner's motion, denies that there was an improper withdrawal of corporate money, and posits that the Corporation was properly joined.

The Parties agree that the shareholders are deadlocked, and that Corporation should be judicially dissolved. It is also undisputed that Mr. Newell withdrew \$38,770.55 from the Corporation's bank account in November 2022. The Petitioner asserts that the withdrawal of the

¹ Technically there are two respondents, Mr. Newell and Floored Inc; however, the Corporation is joined via a shareholder derivative suit, with Mr. Newell acting as the Respondent. Therefore, when this order references the Respondent, it is referring to Mr. Newell.

balance of the Corporation's account violated Tennessee law, which prohibits distributions that make corporations insolvent. Additionally, the Petitioner argues that the Respondent's counterclaim refers to "Floored, Inc.", not the legal name of the Corporation, "Floored Inc", thereby violating Tenn. R. Civ. P. 19 which requires the joinder of necessary parties. The Respondent asserts that the debts of the Corporation are unknown, which creates a genuine dispute of material fact, and that the Corporation had actual notice of the action, which makes the misnomer a nonissue and defeating the motion.

Rule 12.03 Standard

A motion for judgment on the pleadings may be filed "[a]fter the pleadings are closed but within such time as not to delay the trial." Tenn. R. Civ. P. 12.03. In reviewing a trial court's ruling on a motion for judgment on the pleadings, an appellate court must accept as true "all well-pleaded facts and all reasonable inferences drawn therefrom" alleged by the party opposing the motion. *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn.1991). In addition, "[c]onclusions of law are not admitted nor should judgment on the pleadings be granted unless the moving party is clearly entitled to judgment." *Id. See also Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004); *Lawson v. Hawkins Cty.*, 661 S.W.3d 54, 58 (Tenn. 2023).

A motion for judgment on the pleadings is effectively a motion to dismiss for failure to state a claim upon which relief can be granted. *Timmins v. Lindsey*, 310 S.W.3d 834, 838 (Tenn. Ct. App. 2009) (citing *Waldron v. Delffs*, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998)). "Such a motion admits the truth of all relevant and material averments in the complaint but asserts that such facts cannot constitute a cause of action." *Id.*

The complaint does not need to contain detailed allegations of all facts giving rise to the claims, but it "must contain sufficient factual allegations to articulate a claim for relief." *Webb v.*

Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422, 427 (Tenn. 2011) (quoting *Abshure v. Methodist Healthcare-Memphis Hosps.*, 325 S.W.3d 98, 103-104 (Tenn. 2010)). “The facts pleaded, and the inferences reasonably drawn from these facts, must raise the pleader’s right to relief beyond the speculative level.” *Id.* (quoting *Abshure*, 325 S.W.3d at 103-104). Under Rule 12.03, the Court should “deny the motion unless it appears that the plaintiff can prove no set of facts in support of the claim that would entitle him to relief.” *Waller v. Bryan*, 16 S.W.3d 770, 773 (Tenn. Ct. App. 1999).

Proper Parties under Tennessee Rule of Civil Procedure 19

Tennessee Rule of Civil Procedure 19.01 provides:

A person who is subject to service of process shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest.

Tenn. R. Civ. P. 19. Rule 19 is not a formality, but instead the requirements of joinder are “absolute and inflexible.” *Pope v. Kelsey*, No. 86-17-II, 1986 Tenn. App. LEXIS 3079, at *6 (Ct. App. June 13, 1986). Failure to join necessary parties is a significant error and any “order entered without jurisdiction of indispensable parties is null and void.” *Id.* at 6-7 (citations omitted.) Corporations are necessary parties in cases concerning the dissolution of the entity. *Id.*

Amendment under Tennessee Rule of Civil Procedure 15

Under Tennessee Rule of Civil Procedure 15.01, “a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires.” Tenn. R. Civ. P. 15.01. Similarly, under 15.03, “[a]n amendment changing the party or the naming of the party by or against whom a claim is asserted relates back to the date of the original pleading” when the claim arose out of the conduct of the original pleading

and if, within 120 days, the party “(1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party.” Tenn. R. Civ. P. 15.03. The Tennessee Supreme Court allowed party names to be amended, and the complaint to relate back, under Rule 15, when the misnamed party had sufficient notice. *Grantham v. Jackson-Madison Cty. Gen. Hosp. Dist.*, 954 S.W.2d 36, 37 (Tenn. 1997). In *Grantham*, the plaintiff mislabeled the defendant hospital as “Jackson-Madison County General Hospital” rather than the legal name, “Jackson-Madison County General Hospital District.” *Id.* The Supreme Court noted that “the plaintiffs did not select the wrong defendant but simply mislabeled the right defendant.” *Id.* Further, the plaintiff identified the defendant accurately via a description of the business, proper service, and the close approximation of the name. *Id.* The Court held that the plaintiff’s attempt to correct the mislabeling via Rule 15 was appropriate because the “approximation in the original complaint was sufficiently close to prevent prejudice by apprising the defendant it was being sued.” *Id.* Thus, if a party has sufficient notice and its name is mislabeled, the error can be corrected under Rule 15, without disturbing the legality of the proceedings. *Id.*

Judicial Dissolution of a Corporation

Under the Tennessee Code Annotated, the Court can dissolve a corporation in a proceeding by a shareholder for four reasons: (1) “[t]he directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock”; (2) the directors have or are acting “in a manner that is illegal, oppressive, or fraudulent;” (3) the shareholders are deadlocked in voting and “have failed, for a period that includes at least two

consecutive annual meeting dates, to elect directors;” or (4) “the corporate assets are being misapplied or wasted.” Tenn. Code Ann. § 48-24-301(2).

Legal Analysis

The Petitioner contends, as a matter of law, that the Respondent’s withdrawal of funds from the Corporation’s account is an illegal disbursement that left the Corporation unable to fulfill its debts, violating Tennessee Law. Further, the Petitioner argues that the Respondent failed to join a necessary and indispensable party as required by the Tennessee Rules of Civil Procedure because the Respondent misspelled the name of the Corporation in the Answer and Counterclaim. The legal name of the Corporation is “Floored Inc”, the Respondent referred to “Floored, Inc.” including an additional comma and period. This misnaming, according to the Petitioner, makes the Counterclaim and Response legally deficient; thereby entitling the Respondent to a Motion for Judgment on the Pleadings. The Petitioner also argues that the Counterclaim should be a shareholder’s derivative suit, properly citing to *Keller v. Estate of McRedmond*, 495 S.W.3d 852, 882 (Tenn. 2016), which establishes that breach of fiduciary duty claims must be brought either by the corporation at issue or by shareholder derivative actions. The Respondent contends that the debt of the Corporation is unknown, creating doubt about the legality of the withdrawal. The Respondent further alleges that the Petitioner violated his fiduciary duty to the Corporation by impermissibly using Corporation resources to support a separate business entity (Restored, LLC) and that the Respondent’s withdrawal of funds was a proper means of protecting the Corporation from the Petitioner’s alleged breach of fiduciary duty.

Accounting of the Corporation’s Debt

The judgment on the pleading’s standard requires that the party opposing the motion “can prove no set of facts’ in support of a claim entitling her to relief.” *Lawson*, 661 S.W.3d 58. This

standard is not met because the Respondent stipulates that the Petitioner's accounting is unverified and the true debt of the Corporation is unclear. The Petitioner states, "[w]hile it is admitted that Newell [the Respondent] withdrew \$38,770.55 from Floored's business bank account, it is unknown what amount of debt and obligations are owed by Floored." Resp't's Resp. to Pet'r's Mot. for J. on the Pleadings at 3. The exhibits submitted in support of the Petitioner's accounting fail to prove the debts of the Corporation: the letter from Erie Insurance states the Corporation is entitled to a credit and one invoice is addressed to mike@tnrestored.com, an email address that appears to be associated with Restored (the Petitioner's business, not the Corporation). Pet'r's Pet. Ex. C. The Respondent's contention that the Corporation's true debts are unknown presents a clear dispute of material fact. There is sufficient doubt about the true debt of the corporation to overcome the motion for judgment on the pleadings standard that there is no plausible set of facts to support the opposing party. Therefore, the genuine dispute over the Corporation's debt requires that the motion, as it pertains to the Corporation's debt, be denied.

Joinder of the Corporation

The Petitioner's argument that the inclusion of an additional period and comma in the name of the Corporation prevents proper joinder, also fails. Tennessee Rule of Civil Procedure 19 requires that necessary parties are joined, without caveat. Tenn. R. Civ. P. 19.01. A corporation is always a necessary party in judicial corporate dissolution proceedings. *Pope*, No. 86-17-II, 1986 Tenn. App. LEXIS 3079, at *7-8. However, when an entity has proper notice, a mere typo is not sufficient to allege failure to join. *Grantham*, 954 S.W.2d 37. Tennessee has a clear body of law that holds proper joinder does not require that a name is wholly correct. *Id.* Rather, when the misnamed party has actual knowledge of the proceedings, a typo does not defeat an action. *Id.*

Here, the Corporation is necessary because the proceedings directly concern the dissolution of the entity. *See Pope*, No. 86-17-II, 1986 Tenn. App. LEXIS 3079. While the Respondent included unneeded punctuation, the Corporation has the requisite notice. The Corporation had sufficient notice because all shareholders and directors are parties to the case, the Corporation is accurately described, the full name of the Corporation is included in the filings, and the Respondent's Answer replies to the Petition in which the Corporation is properly named. These factors suggest that the inclusion of errant punctuation was a misnomer, rather than the failure to name a necessary party. *See Grantham*, 954 S.W.2d 37. Therefore, the Court finds that the Corporation was properly joined.² For these reasons the Court cannot grant the requested relief as it pertains to the joinder of the Corporation.

Judicial Dissolution of the Corporation

Pursuant to Tennessee Code Annotated § 48-24-301(2)(a) there are three requirements for judicial dissolution: (1) that the directors are deadlocked; (2) that the shareholders are unable to break the deadlock; and (3) the deadlock prevents the Corporation from conducting business. Tenn. Code Ann. § 48-24-301(2)(a). Here, the Parties, the only shareholders and directors of the Corporation, agree that they are deadlocked, that the Corporation has not conducted business since the withdrawal of funds from the Corporation's bank account, and that the Corporation should be dissolved. Thus, the three conditions for judicial dissolution are met. The Parties agreement on these facts ensures that there is no dispute of material fact. With no controversy or opposition to judicial dissolution, the motion for judgment on the pleadings standard is met. The Court grants, in part, the motion for judgment on the pleadings to effectuate judicial dissolution of the Corporation.

² If a party name needs to be corrected, Tenn. R. Civ. P. 15 provides the proper method for amending a filing.

Appointment of a Receiver and Discovery

To proceed with judicial dissolution, the parties agree that the Court should appoint a receiver to oversee dissolution because of the parties' acrimony. The parties should confer and submit notice to the Court about the selection of a receiver by August 18, 2023. If the parties cannot agree on a receiver, the Court will appoint one.

The Respondent must make the Corporation's books and financial records accessible to the Petitioner. The Respondent must also account for the funds withdrawn from the Corporation's account. The Petitioner must similarly provide any financial records to the Respondent. Any information about Corporation's inventory must be shared between the parties. Otherwise, discovery is stayed.

The Parties shall appear on August 25, 2023, at 3:00 PM for a Case Management Conference.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Petitioner's motion for a judgment on the pleadings is DENIED IN PART and GRANTED IN PART.

It is so **ORDERED**.

s/ Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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