

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 15, 2015 Session

SHARPER IMPRESSIONS PAINTING CO., ET AL. v. DEAN YODER

**Appeal from the Circuit Court for Davidson County
No. 14C2703 Hamilton V. Gayden, Jr., Judge**

No. M2015-00841-COA-R9-CV – Filed September 19, 2016

This interlocutory appeal involves the failure of an Ohio corporation to obtain authorization to transact business in Tennessee prior to filing suit. The Ohio corporation filed this action against a former employee, seeking monetary damages and injunctive relief for breach of contract, unjust enrichment, and misappropriation of trade secrets. The former employee moved for partial summary judgment on the ground that the Ohio corporation had not obtained a certificate of authority from the Tennessee Secretary of State, as required by law, and thus was barred from maintaining an action in Tennessee court. The trial court granted the motion but allowed the Ohio corporation thirty days to obtain the certificate. After obtaining the certificate, the Ohio corporation filed a motion to reinstate its claims against the former employee. The trial court denied the motion, ruling that the certificate of authority only allowed the Ohio corporation to maintain an action on claims that arose after the date the certificate of authority was issued. We granted the Ohio corporation's application for an interlocutory appeal. We conclude, based on the plain language of Tennessee Code Annotated § 48-25-102, that a foreign corporation who has filed an action in a Tennessee court without a certificate of authority may obtain a certificate during the pendency of the case and then prosecute the action. Therefore, we reverse the decision of the trial court and remand for further proceedings.

**Tenn. R. App. P. 9 Interlocutory Appeal; Judgment of the Circuit Court Reversed
and Case Remanded**

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which ANDY D. BENNETT and THOMAS R. FRIERSON, II, JJ., joined.

Michael Parks Mills, Brentwood, Tennessee, for the appellants, Sharper Impressions Painting Co., and Sharper Impressions Painting of Nashville, LLC.

James G. Stranch, III, and Seamus T. Kelly, Nashville, Tennessee, for the appellee, Dean Yoder.

OPINION

I. BACKGROUND

Sharper Impressions Painting Co. (“Sharper Impressions”), an Ohio corporation, and Sharper Impressions Painting of Nashville, LLC (the “LLC”), an Ohio limited liability company, filed a verified complaint in the Circuit Court for Davidson County, Tennessee, against Dean Yoder, a former employee. According to the complaint, Sharper Impressions hired Mr. Yoder in 2008 as district manager of its Nashville operations. Mr. Yoder worked for Sharper Impressions until 2012, when he was fired for alleged embezzlement. After his termination, Mr. Yoder started a painting business in direct competition with his former employer, which Sharper Impressions alleged violated the noncompete provisions of his employment agreement and the Tennessee Trade Secrets Act.

After filing an answer and a counterclaim, Mr. Yoder moved for partial summary judgment, seeking dismissal of all of Sharper Impressions’ claims. Mr. Yoder asserted that Sharper Impressions had not obtained a certificate of authority to transact business in Tennessee as required by Tennessee Code Annotated § 48-25-101 (2012). Under the Tennessee Business Corporation Act, “[a] foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.” Tenn. Code Ann. § 48-25-102(a) (2012).

The relevant facts are undisputed. Sharper Impressions is an Ohio corporation incorporated in 2003. The LLC is also organized under Ohio law and is wholly owned and operated by Sharper Impressions. Although the LLC has a certificate of authority to conduct business in Tennessee, Mr. Yoder’s employment agreement was with Sharper Impressions. At the time the partial summary judgment motion was filed and heard, Sharper Impressions had not obtained a certificate of authority to do business in Tennessee.

After a hearing, the trial court granted Mr. Yoder’s motion based solely on the lack of a certificate of authority. The court, however, gave Sharper Impressions thirty days to cure the defect. Less than thirty days later, Sharper Impressions obtained a certificate of authority and filed a motion to reinstate its claims, which the court denied.

The court denied the motion to reinstate based on the legal conclusion that the certificate of authority only allowed Sharper Impressions to transact business and file suit in Tennessee from and after the date of qualification. The court explained its reasoning as follows:

The recently obtained Certificate of Authority obtained by Plaintiff establishes that the company was formed on January 02, 2003 in the state of Ohio; however, it establishes a “Formation/Qualification Date of 01/09/2015” for purposes of conducting business in the state of Tennessee. Plaintiff has indeed cured its defective status in this state and may now legally transact business here, and Plaintiff has successfully established that all taxes and fees have been paid dating back to 2008. However, such “cure” does not bestow upon a foreign corporation that has never before filed for its certificate the ability to apply for such a certificate and have it rectify all previous transactions made before the qualification date established therein.

Beyond the language of the Certificate of Authority, the trial court also relied on two federal district court cases decided before enactment of the Tennessee Business Corporation Act. *See In re Leeds Homes, Inc.*, 222 F. Supp. 20, 29 (E.D. Tenn. 1968) (holding contracts executed by unqualified foreign corporations, although not void, were unenforceable by the unqualified corporations in Tennessee courts); *Paisley Prods., Inc. v. Trojan Luggage Co.*, 293 F. Supp. 397, 401 (W.D. Tenn. 1968) (holding an unqualified foreign corporation could not obtain a certificate of authority during the pendency of an action and maintain action). Both of the cases interpreted Tennessee statutes that have since been repealed.¹

Sharper Impressions filed a motion to reconsider, which the court also denied, but the court granted permission to seek an interlocutory appeal to this Court. We granted the application for permission to appeal.

II. ANALYSIS

A. STANDARD OF REVIEW

Sharper Impressions contends it has complied with Tennessee law and the trial court’s order and should be allowed to proceed with its claims against Mr. Yoder. To determine whether the trial court erred in refusing to reinstate Sharper Impressions’ claims after it obtained a certificate of authority, we must interpret Tennessee statutes governing foreign corporations. Statutory interpretation and the application of a statute to undisputed facts present a question of law, which we review de novo with no presumption of correctness.

¹ Effective July 1, 1969, the General Assembly enacted the General Corporation Act and repealed all previous statutes regarding foreign corporations. 1968 Tenn. Pub. Act 260 (ch. 523).

Kyle v. Williams, 98 S.W.3d 661, 663-64 (Tenn. 2003).

“Every application of a text to particular circumstances entails interpretation.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 53 (2012) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed 60 (1803)). When interpreting statutory provisions, our goal is to “ascertain and effectuate the legislature’s intent.” *Kite v. Kite*, 22 S.W.3d 803, 805 (Tenn. 1997). When a statute’s language is unambiguous, we derive legislative intent from the statute’s plain language. *Carson Creek Vacation Resorts, Inc. v. Dep’t of Revenue*, 865 S.W.2d 1, 2 (Tenn. 1993).

B. AUTHORITY FOR FOREIGN CORPORATIONS TO TRANSACT BUSINESS IN TENNESSEE

The Tennessee Business Corporation Act devotes a chapter to foreign corporations transacting business within the State. *See* Tenn. Code Ann. §§ 48-25-101 to -305 (2012 & Supp. 2016). A foreign corporation is defined as a for-profit² corporation incorporated under a law other than the law of Tennessee. *Id.* § 48-11-201(19) (Supp. 2016). Under the Act, a foreign corporation must be authorized to transact business in Tennessee, as evidenced by a certificate of authority issued by the Tennessee Secretary of State. *Id.* § 48-25-101 (2012).

The statutory consequences for failing to obtain a certificate of authority are set forth in Tennessee Code Annotated § 48-25-102, which reads as follows:

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

² The activities of nonprofit foreign corporations are governed by the Tennessee Nonprofit Corporation Act. *See* Tenn. Code Ann. §§ 48-65-101 to -305 (2012 & Supp. 2016).

(d) A foreign corporation which transacts business or conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business or conducted affairs in this state without a certificate of authority, in an amount equal to treble the amount of all fees, penalties and taxes, plus interest, which would have been imposed by the laws of this state upon such corporation had it duly applied for and received a certificate of authority as required by this chapter, and thereafter had failed to file all reports required.

(e) An application for a certificate of authority by a foreign corporation which has transacted business in this state without a certificate of authority shall not be filed by the secretary of state until all amounts due under subsection (d) shall have been paid.

(f) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Id. § 48-25-102.

Under the plain language of the statute, Sharper Impressions could not maintain an action in a Tennessee court “until it obtain[ed] a certificate of authority.” We conclude that the statute is equally clear that, once it obtained a certificate of authority, Sharper Impressions was authorized to maintain its action against Mr. Yoder. We base our conclusion on the language of the statute as a whole and its place in the statutory scheme. *See Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) (directing courts to give effect to the entire statute and construe each provision consistently and reasonably).

We begin with the plain language of subsection (a), giving the words “their natural and ordinary meaning.” *Id.* at 526. The statute does not bar a foreign corporation without a certificate of authority from filing an action in Tennessee. Instead, the statute provides that the foreign corporation may not “maintain” a proceeding. Tenn. Code Ann. § 48-25-102(a). Black’s Law Dictionary defines “maintain” as “to continue (something).” Black’s Law Dictionary 1097 (10th ed. 2014). Thus, the foreign corporation may file suit but cannot continue the proceeding until it obtains a certificate of authority. The use of the word “until” in subsection (a) instructs that this prohibition on access to Tennessee courts is merely conditional. Once a foreign corporation meets the condition, it enjoys full access to the courts. *See CPB Mgmt., Inc. v. Everly*, 939 S.W.2d 78, 83 (Tenn. Ct. App. 1996) (holding

that “[a] corporation that is in noncompliance with the statute may file its lawsuit, cure its noncompliance, and continue its litigation.”); *see also Am. Bldgs. Co. v. White*, 640 S.W.2d 569, 575 (Tenn. Ct. App. 1982) (decided under 1968³ version of the statutes addressing foreign for-profit corporations).

This interpretation is further supported by the discretionary stay provision in subsection (c). *See Lee Med., Inc.*, 312 S.W.3d at 530 n.37 (“[I]ndividual subsections of a single statute should not be read in isolation but rather should be considered in the context of the statute as a whole.”). Subsection (c) allows the court to stay the proceedings to determine whether a foreign corporation is required to obtain a certificate of authority⁴ and, if so, to grant an additional stay until the foreign corporation obtains a certificate. Tenn. Code Ann. § 48-25-102(c). The only reasonable purpose for granting a stay is to provide the foreign corporation with time to obtain the required authorization so that the proceeding can continue.

Obtaining authorization is a straightforward process. The foreign corporation must pay three times the amount of fees, penalties and taxes, plus interest, that it would have paid if it had obtained the certificate before transacting business in Tennessee. Tenn. Code Ann. § 48-25-102(d). The corporation then files with the Tennessee Secretary of State an application for certificate of authority containing the required information, a certificate of existence from the state in which it was incorporated, and a confirmation of good standing⁵ from the Tennessee Commissioner of Revenue. *Id.* § 48-25-103 (Supp. 2016); *see also id.* § 48-25-102(e). Payment of the monetary penalty places the foreign corporation in the same position vis-à-vis the State as the corporation would have been in had it obtained the certificate before transacting business in Tennessee.

A fair reading of the statute convinces us that, in this context, any focus on the date of issuance of the certificate of authority is misplaced. The statute simply requires a foreign

³ The 1968 version of the statute is similar to the current statute. *See* Tenn. Code Ann. § 48-1106 (Supp. 1968).

⁴ A foreign corporation is only required to obtain a certificate of authority if it is transacting business in Tennessee as defined in the statute. *See* Tenn. Code Ann. § 48-25-101.

⁵ In cases such as this one, in which the foreign corporation applying for a certificate of authority has been transacting business in Tennessee without a certificate of authority “for a period of one (1) year or more, then the secretary of state shall not file the application until the foreign corporation submits a confirmation of good standing.” *Id.* § 48-25-103(c). “Confirmation of good standing” is defined as “confirmation by the commissioner of revenue . . . that at the time such confirmation is issued a domestic or foreign corporation is current on all taxes and penalties to the satisfaction of the commissioner.” *Id.* § 48-11-201(5). The confirmation of good standing is commonly known as a “Certificate of Tax Clearance.” *See* Instructions for Application for Certificate of Authority For-Profit Corporation, available at <http://sos.tn.gov/products/business-services/application-certificate-authority-ss-4431>.

corporation to obtain “a” certificate of authority. It does not require a certificate of authority with a particular date of issuance. “A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate [as provided in the statute].” *Id.* § 48-25-105(a) (2012). A certificate of authority, such as the one Sharper Impressions submitted to the court, is the documentary proof “that the . . . foreign corporation . . . is authorized to transact business in this state and is in good standing.” *Id.* § 48-11-309(c) (2012).

Finally, our conclusion that the suit may proceed is consistent with the rulings of other states with similar statutes. Our current statute was based on the Revised Model Business Corporation Act, as were the statutes in many other states. *See Kradel v. Piper Indus., Inc.*, 60 S.W.3d 744, 749 (Tenn. 2001) (explaining that the Tennessee Business Corporation Act is patterned after the Revised Model Business Corporation Act); *see also* 17A William Meade Fletcher et al., *Fletcher Cyclopedic of the Law of Corporations* § 8504, Westlaw (database updated September 2016) (explaining that many states based their business statutes on the model act). “When examining provisions derived from uniform or model acts, we may appropriately use interpretations of similar provisions in other jurisdictions as a guide to interpreting our law.” *Kradel*, 60 S.W.3d at 752 n.2. The general rule in other states is that once the foreign corporation has successfully obtained authorization to conduct business, the suit may continue. *See, e.g., Capin v. S & H Packing Co.*, 636 P.2d 1223, 1224 (Ariz. Ct. App. 1981) (holding “compliance after the action has been commenced is sufficient to enable the corporation to maintain the action”); *Hudson Farms, Inc. v. McGrellis*, 620 A.2d 215, 221 (Del. 1993) (agreeing with the majority rule); *York & York Constr. Co. v. Alexander*, 296 A.2d 710, 714 (D.C. 1972) (holding “compliance after an action has commenced is sufficient to enable the corporation to proceed with its suit”); *Shannon Sales Co. v. Williams*, 490 N.W.2d 436, 441 (Minn. Ct. App. 1992) (reversing lower court’s dismissal with prejudice because foreign corporation “may bring the lawsuit after obtaining a certificate of authority”). We see no basis in the language of our statutes to depart from the general rule.⁶

⁶ Mr. Yoder argues that allowing a foreign corporation to enforce contracts executed before the corporation obtained a certificate of authority would violate Tennessee Code Annotated § 48-25-105(b), which provides that a foreign corporation with a valid certificate of authority has the same but no greater rights than a domestic corporation. According to Mr. Yoder, “a domestic corporation would not be able to bring an action in Tennessee courts for business transacted prior to filing the appropriate paperwork establishing its existence with the Tennessee Secretary of State, and accordingly a foreign corporation must be held to the same standard.” Mr. Yoder’s argument fails to appreciate the distinction between a charter and a certificate of authority. While a domestic corporation’s legal existence begins when a charter is filed, a foreign corporation exists by virtue of the law of another state. Tenn. Code Ann. §§ 48-12-103 (2012), 48-11-201(19)(Supp. 2016). A certificate of authority is merely the means by which the state regulates legally existing foreign corporations doing business in Tennessee.

III. CONCLUSION

For the foregoing reasons, we reverse the dismissal of Sharper Impressions' claims against Mr. Yoder and remand this case for further proceedings consistent with this opinion.

W. NEAL MCBRAYER, JUDGE