

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

KATHY HOLT WEEDMAN,)
JACK SANDERS HOLT, JANELLE)
HOLT, JUDY BAUMAN and)
DONNA ETHERIDGE,)

Plaintiffs,)

vs.)

No. 16-464-BC

SANDERS MANUFACTURING)
COMPANY, OWEN SANDERS,)
JAMES J. SANDERS III, ERIC)
O. SANDERS, and LOREN G.)
KIRKPATRICK,)

Defendants.)

**MEMORANDUM AND ORDER GRANTING IN PART DEFENDANTS’
RULE 41.02 MOTION FOR INVOLUNTARY DISMISSAL**

The following is the ruling on the Defendants’ Tennessee Civil Procedure Rule 41.02 motion made at the conclusion of the Plaintiffs’ proof.

After considering the evidence adduced in trial thus far, the law, the summary judgment orders entered February 2, June 13, and October 30, 2017, and argument of Counsel, Defendants’ motion for involuntary dismissal is granted in part.

It is ORDERED that pursuant to Rule 41.02 of the Tennessee Rules of Civil Procedure, the following claims of the *First Amended Complaint* filed March 29, 2017 are dismissed with prejudice: Paragraphs 1, 10, and to the extent paragraph 12 pertains to the February 2016 Resolution, it is dismissed as well.

It is further ORDERED that with respect to the remainder of Plaintiffs' claims: paragraphs 5, 6, 7, 8, 9, and part of paragraph 12 as stated in the Prayer for Relief of the Derivative Action of the *First Amended Complaint* filed March 29, 2017 (which overlaps and concerns the advancement of fees), Defendants' Rule 41.02 motion is denied, the trial shall proceed with Defendants' proof in defense of these claims.

It is additionally ORDERED that the Defendants' Rule 41.02 motion is denied as to paragraph 4 of the Prayer for Relief of the Dissolution Action (for the dissolution to proceed under court supervision pursuant to Tennessee Code Annotated sections 48-24-301(4) and 303) of the *First Amended Complaint*, and the trial shall proceed with Defendants' proof in defense of these claims.

The reasoning and authorities on which these orders are based is provided below.

February 2016 Resolution – Alleged Conflicting Interest Transaction

Pages 7 and 21 of the February 2, 2017 Summary Judgment ruling identified for the parties the genuine issue of fact for trial as it relates to the February 2016 Resolution. In the summary judgment ruling competing inferences were identified that could be drawn from the timing of the Resolution and whether the timing of the adoption of the Resolution provided a basis to conclude it was a conflicting interest transaction. The question at trial then was whether the Plaintiffs put on enough proof to show that the premature adoption of the Resolution was a conflicting interest transaction pursuant to TCA 48-18-701, *et al.* – The answer is NO for these reasons.

Other Creditors

Since the time of the summary judgment, substantially all of the assets of the Corporation have been sold. There is no evidence that the Corporation is not paying creditors and/or that the adoption of the Resolution in February 2016 was a mechanism to prefer the SERP participants over other creditors.

Projected Cost To Fund SERP

The Plaintiffs argued that circumstantial evidence of a conflict of interest was that the liability for the SERP stated on previous financial statements in Exhibit 4 was about \$600,000 or more less than the projections being made for funding the SERP. This argument was not supported by competent proof. No expert such as an accountant or retirement plan consultant was provided, and the testimony of Plaintiffs' witness on these matters, Board Member Sam Weedman, established that he does not have the expertise to prove that any pretext based on any difference in the financial statements and the documents.

Additionally, the proof established from the Exhibit 4 Financial Statements is that the \$896,000 stated in paragraph 2 of the Resolution as a potential negotiated payment on the SERP is within the range of the liability information contained in the financial statements on Exhibit 4.

No Funding Has Occurred

No funding of the SERP has been attempted. As to any risk of surreptitious or prioritized funding, that is not possible. The Court has put in place that notice be given in the event the Company proceeds to fund the SERP.

Resolution Does Not Authorize Funding

The Resolution by its terms does not say that it will be funded. It references future events occurring.

SERP Is A Corporate Debt

On the financial statements, Exhibit 4, the SERP is shown as a liability that is calculated and forecasted. The Plaintiffs provided no proof to the contrary to demonstrate that this was not a predetermined obligation that was not susceptible to quantification. The SERP has not been admitted into evidence and there is no expert proof on this. The only reasonable finding from the proof is that the SERP is a predetermined liability which must be funded in the winding down.

No Conflict Of Interest

While Exhibit 7 does establish that the persons who voted in favor of the February 2016 Resolution are beneficiaries under the SERP the Court concludes that the Plaintiffs failed to establish the essential elements of a conflicting interest transaction. The proof establishes that the participants and beneficiaries under the plan are general unsecured creditors of the Corporation and have a superior right to the Plaintiff shareholders distribution and that there is an obligation under 48-24-109 to pay creditors before distributing to the shareholders. So the only issue at trial had to do with the timing of the Resolution and whether the Plaintiffs could show that the timing was evidence of a conflicting transaction and the Plaintiffs failed to show that.

Advancement of Fees

The Court has already ruled in the June 13, 2016 Summary Judgment that the advancement of attorneys fees by the Corporation to the individual Defendants violated TCA 48-18-504(c) and 48-18-506 because the Corporation did not have a board vote, appointed committee vote, or independent legal counsel before advancing the payment of litigation defense costs and fees of directors. The Plaintiffs' proof continues to show that the Corporation did not comply with TCA 48-18-504(c) and 48-18-506. Additionally, Mr. Weedman and Mrs. Bauman's testimony about their feelings about how the Directors were handling corporate affairs provides sufficient competing inferences with regard to this claim, and is sufficient to overcome the Rule 41.02 motion and have the Defendants explain their actions in advancing the fees.

For this reason, the Defendants Rule 41.02 motion with regard to the claims on the advancement of attorneys fees is denied. The Rule 41.02 motion with regard to the Plaintiffs' request to judicially supervise the winding up of the corporation judicially winding up of the corporation is also denied.

/s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc by U.S. Mail, email, or efileing as applicable to:

William B. Hawkins III
Eric G. Evans
Ronald H. Pursell
Edward Hadley
James P. Catalano