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SJC rules disgruntled shareholder can't use derivative action to relitigate claims

By Roger L. Smerage | September 16, 2021

The Supreme Judicial Court has some words of wisdom for the overly litigious shareholder of a closely held corporation. Specifically, the old adage "[i]f at first you don't succeed, try, try again" does not apply "in litigation."

Thus begins the court's Aug. 26 decision in Mullins v. Corcoran, SJC-13049, in which the SJC affirmed the Superior Court's entry of judgment in favor of the controlling defendant shareholders in a derivative action involving a real estate development company.

The decision makes clear that a disgruntled shareholder of a closely held corporation cannot use the mechanism of a derivative action to revive claims that were previously adjudicated in a personal shareholder action that the shareholder filed against co-shareholders and lost.

BACKGROUND

Joseph Mullins was a minority shareholder of Corcoran, Mullins, Jennison, Inc., a Massachusetts closely held corporation comprised of three shareholders. Although the business had developed and owned residential apartment projects dating back to the early 1970s, in 1987 the shareholders executed an agreement governing both CMJ business and each of the shareholders' non-CMJ business going forward, which agreement required the shareholders to conduct their business "in scrupulous good faith."

The manner in which CMJ and the shareholders approached a redevelopment project in Somerville, however, put the agreement to the test.

Although Mullins originally provided his consent to CMJ's proposal for redeveloping the Somerville site, a few months later he sent a letter to the defendants stating that he did not consent to the development.

CMJ nevertheless proceeded with the project. Mullins, in turn, filed a lawsuit against his co-shareholders of CMJ in 2014, alleging personal claims (as opposed to derivative ones on behalf of CMJ) for breach of the 1987 agreement and breach of fiduciary duty. His co-shareholders counterclaimed in light of Mullins' about-face.

In 2018, the parties tried their claims on a jury-waived basis, with the court finding that Mullins had failed to prove his claims but that his co-shareholders had successfully proved Mullins' own breaches of the 1987 agreement and his fiduciary duties by interfering with CMJ's redevelopment of the Somerville site.

After applying an offset for the co-shareholders' failure to mitigate part of their damages by passing on the opportunity to sell the site for $15 million in 2015, the court awarded the controlling shareholders $12 million in total damages.

In 2017, after the court denied Mullins' request to amend his pleadings, Mullins filed a separate complaint that, among other things, asserted derivative claims on behalf of Cobble Hill Center LLC, the special-purpose entity that owned the Somerville site and was owned (indirectly but wholly) and operated by the CMJ shareholders.

The defendant shareholders moved for judgment on the pleadings, a form of summary disposition that tests the legal grounds for a claim without trial, arguing that the rulings in the 2014 action precluded the new lawsuit.

The Superior Court allowed the motion, dismissing the case.

ANALYSIS

After spending several pages affirming the Superior Court's reasoning that the legal and factual issues brought in the two actions were the same, the SJC turned to the issue of whether the judgment in the 2014 action precluded Mullins' derivative claims against his co-shareholders on behalf of Cobble Hill.