

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 11, 2009 Session

ROB RENNELL v. THROUGH THE GREEN, INC., ET AL.

**Appeal from the Chancery Court for Williamson County
No. 31154 Jeffrey S. Bivins, Judge**

No. M2008-01906-COA-R3-CV - Filed July 31, 2009

This is the second appeal arising from the liquidation of a closely held corporation. The matters at issue in this appeal concern a claim, which was not ruled upon in the first trial of this matter, by a minority shareholder for breach of fiduciary duty against the majority, controlling shareholder. After this court resolved all issues on appeal in the first appeal and remanded the case back to the trial court, one claim – for breach of fiduciary duty – remained unresolved. On remand, the parties moved to resolve the breach of fiduciary duty claim based upon the transcript of the evidence in the first bench trial; thus, no additional evidence was introduced on remand. Thereafter, the trial court dismissed the plaintiff’s claim for breach of fiduciary duty against the controlling shareholder, John Doerr, upon the finding the “Court of Appeals has already determined the actions of the Doerrs were in furtherance of the interests of Through the Green, Inc, . . . and therefore this court cannot conclude that there was a separate breach of fiduciary duty owed to [the plaintiff] by . . . John Doerr.” Finding no error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Joseph A. Woodruff, Nashville, Tennessee, and P. Edward Schell, Franklin, Tennessee, for the appellant, Rob Rennell.

Gregory D. Smith, Elizabeth H. Ferguson, and Lauren Paxton Roberts, Nashville, Tennessee, for the appellee, John Doerr.

OPINION

Rob Rennell (Plaintiff) filed this action against John Doerr, Tom Doerr and Through the Green, Inc. (the “Company”), following the liquidation of the Company in 2004. Plaintiff was the director of golf and a minority shareholder in the Company. John Doerr was the incorporator, president, and majority shareholder in the Company. Tom Doerr, John’s brother, was also a shareholder.

In winding up the Company's operations, a dispute arose between Plaintiff and John Doerr as to the distribution of the proceeds from the sale of the Company's land, its only substantial asset. When they were unable to resolve their differences, Plaintiff filed suit against John Doerr and the Company.¹

In his Complaint, Plaintiff asserted ten separate causes of action. Following a six-day bench trial, the trial court entered a judgment on June 16, 2006, from which the Company and John Doerr appealed.² On March 18, 2008, this court issued its opinion in the first appeal. *Rennell v. Through the Green, Inc.*, No. M2006-01429-COA-R3-CV, 2008 WL 695874 (Tenn. Ct. App. March 14, 2008) (no Tenn. R. App. P. 11 application filed). The relevant facts and procedural history and the trial court's ruling were summarized by this court as follows:

This is an appeal from a bench trial for intentional procurement of breach of contract. Through the Green, Inc., a closely held for-profit corporation, was formed in 1994 by John Doerr, who served as both president and majority shareholder. Through the Green, Inc. operated as a golf course and driving range located in Franklin, Tennessee. Thomas Doerr, John Doerr's brother, served as the corporation's vice president. Rob Rennell, a professional golf instructor, entered into an oral employment contract with John Doerr in 1994 to work for Through the Green, Inc. A dispute over the terms of Rob Rennell's employment contract arose. Rob Rennell contended that he possessed a 20% ownership interest in the corporation because he had contributed five years of "sweat equity" through his work in accordance with the oral employment contract. Rob Rennell also alleged that he deferred salary in 2003 and 2004 in return for a 2 for 1 stock exchange. The corporation ceased operations in 2004, and John Doerr maintained that Rob Rennell had no company ownership interest. Rob Rennell brought suit, alleging several theories of liability, including procurement of breach of contract against John and Thomas Doerr. First, the trial

¹ Tom Doerr was also a party defendant; however, he is not a party to this appeal.

² The issues presented in the first appeal were identified by the court as:

1. Whether the trial court erred as a matter of law in holding John Doerr individually liable for procuring [the Company's] breach of contract with Mr. Rennell.
2. Whether the trial court erred in its calculation of compensatory damages and discretionary costs awarded to Mr. Rennell.
3. Whether Mr. Rennell properly pled or asserted the claim of vicarious liability to hold John Doerr liable for intentional interference with a business relationship based on Tom Doerr's conduct, and if so, whether the evidence is sufficient to hold Tom Doerr vicariously liable.
4. Whether John Doerr is entitled to an offset for any money recovered by Mr. Rennell from [the Company] on the underlying breach of contract claim.

Rennell v. Through the Green, Inc., No. M2006-01429-COA-R3-CV, 2008 WL 695874, *4 (Tenn. Ct. App. March 14, 2008).

court found that Through the Green, Inc. breached its employment contract with Rob Rennell. Next, the court found John Doerr individually liable for procurement of breach of contract and awarded Rob Rennell treble damages in the amount of \$1,524,000. Finally, the court found Thomas Doerr vicariously liable for John Doerr's conduct in the amount of \$508,000, jointly and severally with John Doerr.

Rennell, 2008 WL 695874, at *1. In the conclusion of that opinion, the court stated in pertinent part that it had reversed “the chancery court’s judgment as it concerns procurement of breach of contract and vicarious liability for intentional interference with business relationship,” and affirmed the award of compensatory damages. *Id.* at *11. Further, the court remanded the only unresolved issue, Plaintiff’s claim against John Doerr for breach of fiduciary duty, to the trial court for further proceedings.³

On remand, Plaintiff’s claim against John Doerr for breach of fiduciary duty was put at issue by the parties’ separate motions. Plaintiff moved the trial court to enter judgment against John Doerr while Doerr moved to dismiss the claim based on the findings made by this Court in the first appeal. Significantly, both parties agreed that no new evidence would be presented and that the trial court could rule on the claim based upon the transcript of the evidence from the first trial. After reviewing the relevant evidence from the first trial, the trial court ruled that the “Court of Appeals has already determined the actions of the Doerrs were in furtherance of the interests of Through the Green, Inc., and that this case is in essence a breach of contract case only, and therefore this Court cannot conclude that there was a separate breach of fiduciary duty owed to [Plaintiff] by . . . John Doerr.” Based upon that ruling, the trial court dismissed Plaintiff’s breach of fiduciary duty claim. This appeal by Plaintiff followed.

ANALYSIS

BREACH OF FIDUCIARY DUTY

Tennessee law protects minority shareholders from majority shareholders due to the competing nature of their interests. *Cambio Health Solutions, LLC v. Reardon*, 213 S.W.3d 785, 788 (Tenn. 2006). As part of this protection, a majority shareholder owes a fiduciary duty to minority shareholders. *Id.* (citing *Nelms v. Weaver*, 681 S.W.2d 547, 549 (Tenn. 1984)). Accordingly, “[a] majority shareholder is obligated to deal fairly with minority shareholders and not to act out of *avarice, malice, or self-interest.*” *Reardon*, 213 S.W.3d at 788 (emphasis added) (citing *Nelson v. Martin*, 958 S.W.2d 643, 649 (Tenn. 1997), overruled on other grounds by *Trau-Med of Am., Inc.*,

³ It is unclear from the record why one of Plaintiff’s claims was not ruled upon at the conclusion of the trial and why the parties proceeded with the first appeal without having assured that all issues had been ruled upon. The Doerrs and the Company appealed the original verdict, and while the first appeal was pending but before oral arguments, this Court remanded the case asking for resolution of the breach of fiduciary duty claim, stating in the remand order that the original verdict did not contain findings or conclusions specifically related to Plaintiff’s claim for fiduciary duty. The trial court made no new findings regarding the fiduciary duty claim but rather certified the claim under Tenn. R. Civ. P. 54.02 and returned the matter to this Court for determination. *See Rennell*, 2008 WL 695874, at *9.

71 S.W.3d 691, 701 (Tenn. 2002)). Stated another way, “the shareholders of a close corporation share a fiduciary relationship which imposes upon all shareholders the duty to act in good faith and fairness with regard to their respective interests as shareholders.” *Hall v. Tennessee Dressed Beef Co.*, 957 S.W.2d 536, 541 (Tenn. 1997).

In order for Plaintiff to prevail on his breach of fiduciary duty claim against John Doerr, he must establish that Doerr acted out of “malice, avarice, or self-interest.” *Reardon*, 213 S.W.3d at 788. In the first appeal of this case, however, this court held that there was “insufficient proof in the record that John Doerr was not acting in furtherance of the corporation’s interest.” *Rennell*, 2008 WL 695874, at *9.

As to the fact that John Doerr attempted to minimize [the Company’s] income tax, this if anything goes to show that John Doerr was *acting in [the Company’s] best interest*. The fact that he would personally benefit is incidental to [the Company’s] benefit. It could be said that in any decision of a president and majority shareholder of a closely held corporation, it is expected that the individual will personally benefit because the individual and the corporation’s interests are one in the same. We do not believe that this alone is enough to prove that John Doerr’s actions were not substantially motivated by an intent to further [the Company’s] interest or that he acted outside the scope of his authority. Even if John Doerr was angry that Mr. Rennell did not want to invest in Highland Rim, which could possibly indicate a spiteful motive, that is not enough to hold John Doerr liable for the procurement of breach of contract if he was substantially motivated to further [the Company’s] interest. *There is insufficient proof in the record that John Doerr was not acting in furtherance of the corporation’s interest*. We hold that under the facts of this case, Mr. Rennell did not meet his burden of proof for procurement of breach of contract, and accordingly, we reverse.

Id. (emphasis added).

Once this court’s ruling in the first appeal became final, the determinations therein became the law of the case, which “prohibits reconsideration of issues that have already been decided in a prior appeal of the same case.” *Memphis Publ’g Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998). The law of the case doctrine “applies to issues that were actually before the appellate court in the first appeal and to issues that were necessarily decided by implication.” *Id.*

[W]hen an initial appeal results in a remand to the trial court, the decision of the appellate court establishes the law of the case which generally must be followed upon remand by the trial court, and by an appellate court if a second appeal is taken from the judgment of the trial court after remand.

Id.

In this court’s prior opinion in this matter, we stated that “[t]here is insufficient proof in the record that John Doerr was not acting in furtherance of the corporation’s interest.” *Id.* at *9. No new evidence was introduced; therefore, there is no basis upon which to contend that there is sufficient evidence in the record to establish that he was not acting in furtherance of the Company’s interest or “to prove that John Doerr’s actions were not substantially motivated by an intent to further [the Company]’s interest or that he acted outside the scope of his authority.” *Id.* Furthermore, Plaintiff introduced no evidence that John Doerr acted out of “malice, avarice, or self-interest.” As was stated in the first appeal, “[i]t could be said that in any decision of a president and majority shareholder of a closely held corporation, it is expected that the individual will personally benefit because the individual and the corporation’s interests are one in the same.” *Id.* That fact, however, is wholly insufficient to establish that John Doerr was acting out of malice, avarice, or self-interest.⁴ Accordingly, we affirm the trial court’s dismissal of Plaintiff’s breach of fiduciary duty claim against John Doerr.

ADDITIONAL COMPENSATORY DAMAGES

Because we have determined that the trial court correctly dismissed Plaintiff’s breach of fiduciary duty claim, Plaintiff is not entitled to any further compensatory damages.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Plaintiff, Rob Rennell.

FRANK G. CLEMENT, JR., JUDGE

⁴We acknowledge the argument asserted by Plaintiff that this Court’s ruling in the first appeal regarding Plaintiff’s claim against John Doerr for procuring a breach of contract should not be used to preclude his claim for breach of fiduciary duty. In his brief and at oral argument, Plaintiff correctly stated that a claim of procuring a breach of contract requires a “three-party” relationship while a claim of breach of fiduciary duty only requires a “two-party” relationship. That fact, however, does not obviate the Court’s affirmative finding that “[t]here is insufficient proof in the record that John Doerr was not acting in furtherance of the corporation’s interest.” *Rennell*, 2008 WL 695874, at *9. It is because of this affirmative finding, and the absence of sufficient evidence that John Doerr was acting out of malice, avarice, or self-interest, that we find it of no consequence that the two claims referenced by Plaintiff have different elements.