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STATE OF MINNESOTA
IN COURT OF APPEALS
A15-1706

Linda "Randee" Wines,
Appellant,

vs.

Jeff Wines, et al.,
Respondents.

Filed July 11, 2016
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-15-4615

Kay Nord Hunt, Phillip A. Cole, Deborah C. Swenson, Lommen Abdo, P.A., Minneapolis, Minnesota; and

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Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the rule-12 dismissal of her claims, arguing that they are properly pleaded and timely. Respondents appeal the district court's denial of their

motion for rule-11 sanctions. We affirm the denial of respondents' sanction motion, but otherwise reverse and remand to the district court for further proceedings.

FACTS

Appellant Linda Randee Wines (Randee) is the widow of Fred Wines, who founded United Shipping Company, Inc. Respondents Jeff Wines and Brett Wines are Fred Wines's sons and Randee's stepsons. Respondent Robert Schmidt is a business associate of Jeff and Brett Wines.

In 1988, United sought chapter 11 bankruptcy protection. During the bankruptcy proceeding, respondents assumed United's management duties. In December 1989, Fred Wines submitted a final amended reorganization plan that involved canceling all existing equity interests, securing new capital, and issuing new stock with 26% going to Randee. The company was renamed Wiseway Distribution Services, Inc. (WDS). When a potential shareholder failed to exercise his stock purchase option, the shares were redistributed, leaving Randee with 29.66% (2,966 shares) of WDS's stock.

In May 1991, Randee received a letter from respondents' counsel stating that she must deliver a $14,811 promissory note by June 14, 1991, in order to receive all of her shares of WDS stock. The letter indicated that Jeff would pay $10,400 of her capital contribution, which would give her 12.24% (1,224 shares) of the outstanding stock. On June 4, Fred Wines sent a letter to Jeff and Brett, reminding them of their 1989 agreement to pay the capital contribution for Randee's original 26% of WDS's stock. In the letter, Fred Wines warned respondents not to "screw [Randee] out of this interest in the new company."

In June 1993, Randee received another letter from respondents stating that she owned 12.24% of the WDS stock and informing her about the company's financial status. Respondents advised that WDS would reinvest any profits, that it would likely take many years for the shareholders to see any return on their investments, and that any such returns would most likely result from a sale of the company. Respondents offered to buy Randee's shares for $10,400 and to provide her with information regarding WDS's finances. Two months later, Randee responded by mail, questioning respondents' calculation of her ownership shares and requesting detailed financial information about the company. Respondents did not honor this request.

In 2013, Randee investigated WDS's legal status, discovering that the company had ceased doing business in 1996 and had been administratively dissolved. She subsequently learned that respondents had transferred WDS's operation, assets, and tradenames to a Wisconsin corporation, Wiseway Motor Freight, Inc. (WMF), which was registered in Minnesota as a foreign corporation and operated the same business lines. In response to Randee's inquiries, respondents' counsel advised that, as of January 7, 2015, WDS had been out of business for nearly 20 years, Randee has no interest in WMF, and that any claims against respondents would be met with counterclaims for sanctions.

In February 2015, Randee commenced this action seeking relief as a shareholder under Minn. Stat. §§ 302A.463, .751, subd. 1(b)(2), (3), (5) (2014). She alleged that respondents, as directors of WDS, violated their fiduciary duties by acting unfairly, fraudulently, and illegally toward her, and by misapplying or wasting WDS's corporate

assets. Her amended complaint seeks equitable relief in the form of an accounting and a buy-out.

In lieu of answering, respondents moved to dismiss the action under Minn. R. Civ. P. 12.02, arguing that Randee's claims are improper because they are derivative and she did not join WDS, and are time-barred. Respondents also sought sanctions under Minn. R. Civ. P. 11.03. The district court granted the dismissal motion, but denied respondents' rule-11 motion, determining that Randee's claims were not so lacking in merit as to warrant sanctions.

Randee appeals the dismissal of her claims. Respondents appeal the denial of their sanction motion.

D E C I S I O N

I. Randee alleged direct claims against respondents.

Minn. R. Civ. P. 12.02(f) permits dismissal on the pleadings when a plaintiff fails to join an indispensable party. An entity on whose behalf a derivative claim is asserted is an indispensable party. *See Koster v. (American) Lumbermens Mut. Cas. Co.*, 330 U.S. 518, 522, 67 S. Ct. 828, 831 n.2 (1947); *Buckley v. Control Data Corp.*, 923 F.2d 96, 98 (8th Cir. 1991) (applying Minnesota law). "We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted).

Under Minnesota law, a shareholder may file direct or derivative claims against a corporation. *Wessin v. Archives Corp.*, 581 N.W.2d 380, 383 (Minn. App. 1998), *rev'd*

on other grounds, 592 N.W.2d 460 (Minn. 1999). But a shareholder may not bring a direct action when the claim belongs to the corporation. *Stocke v. Berryman*, 632 N.W.2d 242, 247 (Minn. App. 2001) (citing *Nw. Racquet Swim & Health Clubs, Inc. v. Deloitte & Touche*, 535 N.W.2d 612, 617 (Minn. 1995)), *review denied* (Minn. Sept. 25, 2001). In order to pursue a direct claim, a shareholder must be able to "allege some injury or harm that is separate and distinct from the injury or harm to the corporation and that is not dependent on the harm to the corporation." *Id*. We focus on the nature of the alleged injury when deciding whether a shareholder's claim is direct or derivative. *Wessin v. Archives Corp.*, 592 N.W.2d 460, 464 (Minn. 1999).

Randee asserts that the district court erred in concluding that her claims are derivative and therefore require joining WDS as an indispensable party. Taking the allegations of Randee's amended complaint as true, as we must, respondents failed to supply financial information that Randee requested and was entitled to as a shareholder, allowed WDS to be administratively dissolved, transferred WDS's assets to a new corporation, and utilized the new corporation to compete in the same market as WDS. Randee asserts that these actions caused injuries to her as a shareholder that are distinct from those sustained by WDS. We agree.

Minn. Stat. § 302A.463 requires corporations to prepare annual financial statements and give them to individual shareholders upon request. Minn. Stat. § 302A.751 (2014) provides that a shareholder whom a corporation has treated unfairly or illegally may seek equitable relief, including a buy-out. The amended complaint alleges violations of both statutes. In determining whether these allegations implicate

direct or derivative claims, we are guided by *Blohm v. Kelly*, 765 N.W.2d 147, 157 (Minn. App. 2009), where a shareholder contended that a corporation violated Minn. Stat. § 302A.461 (2008) by denying him access to corporate records. We looked to the statute which, by its terms, gives shareholders "an absolute right, upon written demand, to examine and copy" requested records "in person or by a legal representative, at any reasonable time." Minn. Stat. § 302A.461, subd. 4(a); *Blohm*, 765 N.W.2d at 157. In doing so, we concluded that "[b]ecause the right of access to corporate records is personal to each shareholder, [appellant] has alleged an injury to himself and, thus, a direct claim." *Blohm*, 765 N.W.2d at 157.

Like the statute at issue in *Blohm*, the two statutes Randee seeks relief under create rights that are personal to individual shareholders. Minn. Stat. §§ 302A.463, .751, subd. 2. And the harm Randee sustained as a result of respondents' actions—the complete loss in value of her shares in WDS—impacted her alone. On these facts, we are satisfied that Randee pleaded direct claims against respondents. *See Wenzel v. Mathies*, 542 N.W.2d 634, 641 (Minn. App. 1996) (stating that a shareholder who was not given notice of issuance of new shares and not allowed an opportunity to buy the new shares may bring a direct claim), *review denied* (Minn. Mar. 28, 1996).

II. The six-year statute of limitations contained in Minn. Stat. § 541.05 (2014) applies to Randee's claims.

Neither Minn. Stat. § 302A.463 nor Minn. Stat. § 302A.751 contain a statute of limitations. For that reason, the district court applied Minn. Stat. § 541.05, which states:

> Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be commenced within six years:
>
> (1) upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed;
>
> (2) upon a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07;
>
> . . . .
>
> (6) for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud[.]

We review the construction and applicability of a statute of limitations de novo. *State Farm Fire & Cas. v. Aquila Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

Randee argues that because her claims are equitable they are not subject to a statute of limitations. In support of this argument, she cites cases from other jurisdictions in which courts have held that statutes of limitation do not apply to claims seeking purely equitable relief. *See, e.g.*, *Lake v. Hankin Grp.*, 79 A.3d 748, 755 (Pa. Cmwlth. 2013) (stating "statutes of limitation are not controlling in equity, but only provide guidance in determining the reasonableness of any delay"). We are not persuaded.

First, in *Anderson v. Anderson*, our supreme court applied Minn. Stat. § 541.05 to a derivative shareholders' action that alleged a corporate officer and director breached their fiduciary duties. 293 Minn. 209, 218-219, 197 N.W.2d 720, 726 (1972). The *Anderson* court did not expressly rule that section 541.05 applied to the plaintiffs' equitable rescission claims, but the court applied the statute, concluding that plaintiffs

timely commenced the action within six years of reasonably becoming aware of the misconduct. *Id.*

Second, the six-year statute of limitations expressly applies to "liability created by statute." Minn. Stat. § 541.05, subd. 1(2). Randee's amended complaint seeks equitable relief under two statutes—Minn. Stat. § 302A.463 and Minn. Stat. § 302A.751. Accordingly, the equitable nature of Randee's claims does not exempt them from the statute of limitations contained in Minn. Stat. § 541.05. *See Abbott v. McNeff*, 171 F. Supp. 2d 935, 940 (D. Minn. 2001) (holding that Minn. Stat. § 541.05, subd. 1(1), (2) applies to claims brought under Minn. Stat. § 302A.751).

Randee next asserts that, even if Minn. Stat. § 541.05 applies, the six-year limitation period did not begin to run until she discovered respondents' misconduct in 2014. She relies on subdivision 1(6), which provides that in cases involving fraud "the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party." *See Anderson*, 293 Minn. at 219, 197 N.W.2d at 726 ("Plaintiffs' cause of action . . . did not accrue until they became aware, or should have become aware by reasonable diligence, of the facts supporting the claim."). This argument has merit.

Respondents contend that Randee knew or had reason to know of the reduction in her stock ownership in 1993. We agree. The amended complaint alleges that Randee received a letter from respondents in June 1993 stating that she owned 12.24% of WDS's stock. This conflicted with her understanding that she held 29.66% of the stock. Respondents did not respond to Randee's follow-up letter. On this record, we conclude that Randee was reasonably aware in June 1993 that respondents had reduced her

ownership by 17.42% (1,742 shares). Because Randee did not commence this action until 2015, her remedies at trial are limited to recovery based on her 12.24% ownership of WDS's stock.

But we are not persuaded by respondents' argument that Randee had reason to know of their other fraudulent behavior because WMF's formation and WDS's administrative dissolution are matters of public record. Whether Randee could have discovered facts related to these claims by reasonable diligence is a question of fact that is not appropriate to consider in the context of a rule-12 motion to dismiss. *See Murphy v. Country House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976) ("[T]he determination of when discovery should reasonably have been made is one of fact.").

Finally, we agree with Randee's assertion that the district court erred in its alternative holding that Randee's claims are time-barred by the doctrine of laches. Laches is an affirmative defense and as such is not a basis for dismissal under rule 12. *See Searles v. Searles*, 420 N.W.2d 581, 584 (Minn. 1988) ("The affirmative defenses of laches and estoppel alleged in defendant's answer are not put in issue by defendant's Rule 12 motion questioning only the sufficiency of plaintiff's complaint."). And because we conclude that Randee's claims have sufficient merit to preclude rule-12 dismissal, we affirm the district court's determination that rule-11 sanctions are not warranted.

Affirmed in part, reversed in part, and remanded.