**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A22-0777**

Stacy Demskie, et al.,
Appellants,

vs.

U. S. Bank National Association,
Respondent.

**Filed December 19, 2022**
**Affirmed**
**Jesson, Judge**

Scott County District Court
File No. 70-CV-21-12704

Daniel R. Hall, Joseph W. Anthony, Anthony Ostlund Louwagie Dressen & Boylan P.A., Minneapolis, Minnesota (for appellants)

Denise S. Rahne, Brendan V. Johnson, Timothy W. Billion, Robins Kaplan LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Jesson, Judge; and Klaphake, Judge.*

**NONPRECEDENTIAL OPINION**

**JESSON**, Judge

Appellants Stacy Demskie, Lue Demskie, and Michael Demskie (the Demskies) filed three separate lawsuits against respondent U.S. Bank: one for its actions as trustee of

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

John Demskie's trust, one for its actions as special administrator of the estate of John Demskie, and one for its actions as an alleged shareholder of the Minnesota corporation, Remote Technologies, Inc. (RTI). This appeal is taken from a judgment dismissing only the third of those three lawsuits, in which the Demskies allege that U.S. Bank is a shareholder of RTI and, in its role as a shareholder, breached shareholder fiduciary duties and committed unfairly prejudicial conduct in violation of the Minnesota Business Corporations Act, Minnesota Statutes sections 302A.001-.92 (2022). The district court dismissed the claims on the pleadings because the Demskies failed to properly allege that both U.S. Bank and the Demskies were shareholders of RTI. As a result, the court held that the Demskies were not entitled to relief. Since the pleadings do not allege facts sufficient to prove that U.S. Bank was a shareholder of RTI and the Demskies cannot initiate a buy-out as non-shareholders, we affirm.

**FACTS**

In 1992, John Demskie (the decedent) founded RTI as a technology company that manufactures remote controls and other audio-visual equipment for use in high-end, integrated audio-visual installations for residential and commercial users.[1] The company grew from a small Plymouth apartment to a business with dozens of employees and millions of dollars in annual revenue. The decedent owned 90% of RTI, and his co-owner Kevin Marty owned the remaining 10%.

[1] The facts are as set out in the Demskies' complaint.

In May 2012, before his death, the decedent created both a trust and a pour-over will.[2] He designated four beneficiaries of the trust: Lue Demskie (mother), Stacy Demskie (sister), Michael Demskie (brother), and Marty (co-owner). The decedent selected U.S. Bank as the successor trustee of the trust as well as the special administrator to his probate estate. Each beneficiary was to receive 25% of the "remaining trust property" of the decedent.

After the decedent passed away in September 2016, U.S. Bank stepped into their roles as trustee and special administrator. Within these roles, U.S. Bank was to maintain RTI and initiate a sale for the beneficiaries. Accordingly, U.S. Bank hired a new CEO to replace the decedent and, with the assistance of Marty, elected a five-member board of directors that included all the Demskies. But in April 2017, U.S. bank removed the Demskies from the board without giving a cause. Further, U.S. Bank approved RTI's termination of Stacy Demskie, who was a controller and human-resources manager at RTI for 22 years. Once the Demskies were removed from the board and Stacy Demskie was fired, the Demskies claim that they were no longer given updates on the status of RTI.

In early 2020, U.S. Bank sold RTI for $100,000, significantly less than the over $30 million the Demskies were told RTI was worth in 2017, following the decedent's death. The Demskies claim that U.S. Bank was given information from an investment

[2] Another will of the decedent was discovered in 2016 that left the residuary of his estate to a charitable organization, the Minneapolis Foundation. The Demskies assert that U.S. Bank did not tell them of their conflict of interest with the Minneapolis Foundation, given U.S. Bank's long-standing representation by the same lawyers as the charitable organization. The complaint does not assert which will controls.

banker that warned it to sell RTI in 2017 or risk a quick and substantial drop in the company's worth. But, the Demskies assert, U.S. Bank did not act on this advice. And U.S. Bank continuously falsely represented that RTI was in a strong financial position.

As a result of the sale of RTI, the Demskies filed this lawsuit in September 2021 against U.S. Bank asserting two claims: breach of shareholder fiduciary duties owed to the Demskies as owners of a beneficial interest in RTI and unfairly prejudicial conduct in violation of Minnesota Statutes sections 302A.751, .467. In separate district court files, the Demskies also filed a probate petition and a trust petition alleging similar claims.[3]

In this lawsuit, the Demskies contend that U.S. Bank was a controlling shareholder of RTI and owed them fiduciary duties because U.S. Bank had sole control of all the decedent's assets, had the power to vote 90% of the shares of RTI stock, had the capacity to select RTI's board of directors, was actively involved in company decisions, and exercised direct control over RTI's operations. The Demskies sought the following forms of relief: damages, an order for a buy-out of their beneficial ownership interests in RTI for the fair value of the company (the over $30 million valuations), attorney fees, and any other equitable relief determined by the district court.

U.S. Bank filed a motion for judgment on the pleadings for failure to state claims for which relief could be granted. The district court granted the motion, dismissing the Demskies' claims with prejudice. The district court reasoned that the facts pleaded in the complaint establish that neither the Demskies nor U.S. Bank are shareholders of RTI, given

[3] The trust and probate petitions are still pending in district court as of the date of this opinion.

that none of the parties are registered as shareholders on RTI's corporate book and record. And that, the district court concluded, is the definition of "shareholder" for purposes of their claims under the Minnesota Business Corporation Act.

The Demskies appeal.

**DECISION**

The Demskies brought two claims against U.S. Bank under the Minnesota Business Corporation Act. The Minnesota Business Corporation Act governs corporations in Minnesota, such as RTI, and includes the duties shareholders owe each other as well as the definition of a "shareholder." Minn. Stat. §§ 302A.001-.92. The Demskies' first claim against U.S. Bank proceeds under the theory that U.S. Bank, as a shareholder of RTI, breached duties owed to them, as beneficial owners of RTI. The Demskies' second claim is premised on the theory that they could obtain a buy-out of RTI as beneficial owners because U.S. Bank's conduct, as a shareholder of RTI, was unfairly prejudicial to them.

We review a district court's decision on a rule 12.03 motion for judgment on the pleadings de novo to determine whether the complaint sets forth legally sufficient claims. *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (quotation omitted); *see also Sec. Bank & Tr. Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 495-96 (Minn. 2018); *see generally* Minn. R. Civ. P. 12.03 ("After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."). "A claim is sufficient against a motion to dismiss . . . if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014).

## I. Since U.S. Bank is not a shareholder of RTI, it did not owe or breach any shareholder fiduciary duties to the Demskies.

To prevail on a breach-of-fiduciary-duty claim, a plaintiff must prove four elements: duty, breach, causation, and damages, but if one element is not proven, no relief is available. *See TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 434 (Minn. App. 2017). According to the Demskies, U.S. Bank owes them a duty because U.S. Bank is a controlling shareholder. And the Minnesota Business Corporation Act recognizes "the duty which *all shareholders* in a closely held corporation *owe one another* to act in an honest, fair, and reasonable manner in the operation of the corporation." Minn. Stat. § 302A.751, subd. 3a (emphasis added); *see Gunderson v. Al. of Comput. Pros, Inc.*, 628 N.W.2d 173, 185 (Minn. App. 2001), *rev. granted* (Minn. July 24, 2001) *and appeal dismissed* (Minn. Aug. 17, 2001). A "shareholder" is defined as "a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation." Minn. Stat. § 302A.011, subd. 29. Therefore, the issue of whether U.S. Bank is a shareholder is dispositive for the Demskies' first claim because U.S. Bank needs to be a shareholder to owe shareholder fiduciary duties.

Here, taking as true the factual allegations in the complaint, the Demskies did not plead sufficient facts to show that U.S. Bank is a shareholder. Although the Demskies labeled U.S. Bank a shareholder in their complaint to try to support the legal conclusion that U.S. Bank owed them fiduciary duties in that role, they failed to allege that U.S. Bank was registered on the books or records as the owner of shares of RTI. *See id.* "But a legal conclusion in the complaint does not bind [this court], and a plaintiff must provide more

than mere labels and conclusions." *Graphic Commc'ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 692 (Minn. 2014).[4]

Nor do the following allegations—taken as true—support their contention that U.S. Bank was a controlling shareholder: U.S. Bank had sole control of 90% of the interest in the stock of RTI, had the power to vote, called a shareholder meeting, was actively involved in company decisions, and continued to exercise control over RTI's operations. These allegations do not satisfy the definition of shareholder under the Minnesota Business Corporation Act, under which the Demskies seek relief, because none of the allegations claim that U.S. Bank owns any shares of stock in RTI. Minn. Stat. § 302A.011, subd. 29.

Since this court is not bound by legal conclusions in the complaint, such as labeling U.S. Bank as a controlling shareholder, the pleadings have not alleged facts sufficient to establish that U.S. Bank is a shareholder. *Graphic Commc'ns Loc. 1B Health & Welfare Fund A*, 850 N.W.2d at 692. For that reason, the Demskies' first claim against U.S. Bank fails on the pleadings.

[4] The Demskies further argue that their pleadings do not merely assert legal conclusions or labels because they are analogous to those in *Walsh*, where the plaintiff pleaded that they were not "served" with documents in an ineffective-service-of-process case. 851 N.W.2d at 606. The supreme court held that the *Walsh* pleadings were sufficient under the traditional pleading standard. *Id.* at 607. And a footnote from *Walsh* explained that the plaintiff's use of the word "serve" in the pleadings was not a legal conclusion because "serve" has a non-legal, factual meaning that the pleader likely meant to explain she was not "furnish[ed]" or "suppli[ed]" with the documents. *Id.* at n.3. But even if this court was bound by dicta in a footnote, the Demskies' case is distinguishable from *Walsh*. "Shareholder" does not have a similar non-legal, factual meaning like "serve."

## II. The Demskies, as beneficial owners, cannot commence a shareholder action to seek relief through a buy-out of RTI under the Minnesota Business Corporation Act.

The Demskies argue that as beneficial owners of RTI, they have the right to seek a buy-out of RTI upon a motion to the court under Minnesota Statutes section 302A.751, subdivision 2. The district court reasoned that the Demskies cannot seek relief under this section because the plain language of the statute requires an initiation of an action by a shareholder before a beneficial owner can move the court for a buy-out. Again, we review a claim that was dismissed on the pleadings de novo. *Burt*, 902 N.W.2d at 451.

We begin our de novo review by turning to Minnesota Statutes section 302A.751, subdivision 2, which states:

> *In an action under subdivision 1, clause (b)*, involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that clause is established, *the court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation* held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

(Emphasis added.) But this statute has a qualifying sentence in subdivision 2, "in an action under" subdivision 1(b). *Id.* Accordingly, we next consider subdivision 1(b)(3),[5] because

[5] Shareholder actions under subdivision 1(b) can be brought for any of six reasons as laid out in the statute. Minn. Stat. § 302A.751, subd. 1(b)(1)-(6). Claims for unfairly prejudicial conduct are under subdivision 1(b)(3). *Id.*

the Demskies' second claim references unfairly prejudicial conduct by U.S. Bank. That statute states:

> A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business: (b) *[i]n an action by a shareholder* when it is established that: (3) the directors or those in control of the corporation have acted in a manner *unfairly prejudicial toward one or more shareholders in their capacities as shareholders* or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation.

Minn. Stat. § 302A.751, subd. 1(b)(3) (emphasis added).

In sum, subdivision 1(b)(3) permits an action brought by a shareholder for unfairly prejudicial conduct of another shareholder. *Id.* Thus, the Demskies, even assuming that they are beneficial owners, cannot move for a buy-out of RTI under subdivision 2 without an initiation of a shareholder action under subdivision 1(b). Minn. Stat. § 302A.751, subd. 1(b)(3), subd. 2. Similar to the analysis for the Demskies' first claim, since the Demskies conceded that they are not shareholders, but instead maintain they are beneficial owners, they cannot seek relief for alleged unfairly prejudicial conduct by U.S. Bank under the Minnesota Business Corporation Act through a buy-out of RTI.

To persuade us otherwise, the Demskies cite *Lund v. Lund* to support their contention that beneficial owners can seek buy-out relief without a shareholder initiating an action. 924 N.W.2d 274 (Minn. App. 2019), *rev. denied* (Minn. Mar. 27, 2019). We disagree with this broad reading of *Lund*. Although *Lund* held that a "district court may grant any equitable relief it finds just and reasonable in the circumstances if individuals in control of the corporation . . . have acted in a manner unfairly prejudicial toward another

shareholder or member," this court conditioned this language on the presence of unfairly prejudicial conduct under Minnesota Statutes section 302A.751, which "includes conduct that violates or frustrates the reasonable expectations of a *minority shareholder*." *Id.* at 279-80 (citing *U.S. Bank N.A. v. Cold Spring Granite Co.*, 802 N.W.2d 363, 366, 378 (Minn. 2011)) (emphasis added). The Demskies, unlike Lund, do not claim to be minority shareholders or shareholders of any type of RTI. Rather, they claim to be beneficial owners of interests in RTI. Since Minnesota Statutes section 302A.011, subdivision 29 (defining "shareholder") and subdivision 41 (defining "beneficial owner" and "beneficial ownership") have cemented the dichotomy between shareholders and beneficial owners within a company, the Demskies cannot move for a buy-out for unfairly prejudicial conduct by U.S. Bank under this mechanism.[6]

Finally, at oral argument the Demskies contended that to affirm the district court would leave beneficiaries such as themselves with no avenue for relief. We disagree. Our conclusion does not leave the Demskies or similarly situated beneficiaries without a chance for redress. The Demskies have two avenues for potential relief through their trust and probate petitions against U.S. Bank that are still pending in district court.

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[6] Nor are we persuaded by the Demskies citing the nonprecedential opinion from this court, *Zenanko v. Vukelich*, to support the reading of Minnesota Statutes section 302A.751, subdivisions 1(b) and 2 as allowing beneficial owners to move for a buy-out of a company without an initial shareholder action. 1991 WL 6379, at *1-2 (Minn. App. Jan. 29, 1991) (concluding the legislature could not have intended the "anomaly" between subdivisions 1(b) and 2 of Minnesota Statutes section 302A.751, which only allows shareholders to seek a buy-out). First, we observe that *Zenanko* is a nonprecedential opinion and this court is not bound by this decision. And *Zenanko* interpreted the statute to allow a non-shareholder to initiate a buy-out because the party at issue was the incorporator of the company. *Id.* at *2. *Zenanko*'s facts are at odds with those presented here.

In sum, we conclude that the district court did not err in dismissing the Demskies' two claims because neither U.S. Bank nor the Demskies are shareholders that owe fiduciary duties or can initiate an action to obtain a buy-out for unfairly prejudicial conduct under the Minnesota Business Corporation Act.

**Affirmed.**