

Directors fail to meet; shareholder can sue

Judge: Defendants effectively rejected demand

The failure of two directors to attend a properly noticed board of directors meeting was the equivalent of a “demand rejection” under the amended Massachusetts corporation statute, a Superior Court judge has ruled.

The plaintiffs argued that, by failing to meet and thus denying the board a quorum, the defendants had essentially rejected the plaintiffs’ requests to investigate allegations of corporate wrongdoing.

The defendants, who were two of four directors in a closely held Fall River corporation, argued the case should be dismissed under G.L.c. 156D, §7.42, which states that a shareholder may not bring a complaint until 90 days after the service of a written demand.

But Superior Court Judge Merita A. Hopkins disagreed and held in a case of first impression that the plaintiffs did not have to wait 90 days to move forward with their complaint.

“Drawing all reasonable inferences in favor of the plaintiffs, and recognizing the nature of this close corporation dispute, the complaint sufficiently alleges the equivalent of a demand rejection by the board of directors,” she wrote. “The defendants have not established beyond doubt that the plaintiffs’ derivative claims are legally insufficient for failure to comply with [the law].”

The 23-page decision is *Chambers, et al. v. Gold Medal Bakery, Inc., et al.*, Lawyers Weekly No. 12-231-09.

Changing history

Howard M. Cooper of Todd & Weld in Boston, who represented the plaintiffs, said the refusal by the two directors to attend the meeting deprived the board of a quorum, and thus unfairly prevented the company from ever having to consider the merits of his clients’ claims.

Until the statute was amended in 2004, Cooper said, the defendants’ refusal, which was seemingly motivated by their interest in delaying litigation, appeared to be supported by the law.

“Historically in Massachusetts, a plaintiff who wanted to bring derivative claims on behalf of a corporation could allege in a complaint that making a demand upon the corporation through its board of directors would be futile, and therefore the law allowed them to go forward and bring the complaints themselves,” he said.

But when the Legislature amended the statute, Cooper said, it made clear that pleading futility of demand was no longer sufficient.

“In order for the shareholders to act in this case, there needed to be a quorum, and because the targeted director had the ability to prevent that from happening, we found ourselves in a situation where the corporation was never going to meet to consider the request,” he said. “You could construct a scenario where by simply failing to attend, they would prevent the plaintiffs from going to court within 90 days.”



HOPKINS
Ruling in question
of first impression

Matthew F. Medeiros of Little, Bulman, Medeiros & Whitney in Providence, who represented the defendants, could not be reached for comment prior to deadline.

Let’s meet

Gold Medal Bakery, a closely held Fall River business, has been in operation for nearly a century. The plaintiffs, Michelle LeComte Chambers and

Georgette LeComte, each owned 25 percent of the bakery’s stock, as did the defendant, Gold Medal President Roland LeComte.

The company was run by Roland and co-defendant Brian LeComte, who was not a shareholder or director but held himself out at various times as Gold Medal’s treasurer and secretary. A 2009 suit accused the defendants and their accounting firm of violating a fiduciary duty, breach of contract, and fraud.

The plaintiffs alleged that the defendants failed to distribute excess cash and set up loan accounts in which they unnecessarily loaned money to their company at unfair interest rates.

At a 2007 special shareholders meeting, the board of directors was expanded to four directors: Chambers, Georgette, Roland and Florine LeComte, who was not a party to the dispute. At the plaintiffs’ request, the board then voted to allow an outside accounting firm to audit the company.

But the plaintiffs said the defendants interfered with that audit, denying their

accountant access to the property. They then filed suit in Bristol Superior Court seeking a court-ordered inspection of corporate records under G.L.c. 156D, §16.05.

After reaching a settlement in 2008, the parties agreed to dismiss that suit “unless either [side] petitions the Court in good faith for relief on any issue addressed in this Agreement.”

Although the plaintiffs claimed that their accountant was still denied access to the records, they said they obtained enough information to uncover evidence of wrongdoing.

On Feb. 10, Chambers sent a certified letter to the other directors demanding a special meeting to discuss the company’s compliance with the plaintiffs’ requests. She followed up with a March 2 letter that specifically referenced Chapter 156D and demanded that the board investigate her claims.

Several days later, the defendants notified her that the company was postponing the meeting. Roland and Florine LeComte then failed to appear for the meeting.

As a result, there was no quorum and no action could be taken on Chambers’ demands, which led the plaintiffs to file suit on April 3. The defendants responded by asking the court to dismiss on grounds that the plaintiffs had failed to make a demand upon the corporation and thus had not

CASE: *Chambers, et al. v. Gold Medal Bakery, Inc., et al.* Lawyers Weekly No. 12-231-09

COURT: Superior Court

ISSUE: Does the failure of two directors to attend a properly noticed board of directors meeting constitute a demand rejection under the amended Massachusetts corporation statute?

DECISION: Yes

complied with G.L.c. 156D, §7.42.

Suit may proceed

In denying the motion for dismissal, Hopkins wrote that the complaint alleged enough facts to support a finding that a demand rejection had occurred.

She noted that the plaintiffs’ complaint stated that Chambers had sent a certified letter to each director demanding a special meeting of the board. That letter, Hopkins wrote, was followed by up the March 2 correspondence, which again asked the board to investigate her claims.

Where those requests were not properly acted upon by the defendants, the judge

said, the plaintiffs were not obligated to wait 90 days to file their complaint.

In making her ruling, the judge also rejected the defendants’ arguments that the plaintiffs’ 2007 suit over the inspection of corporate records precluded them from bringing their 2009 complaint.

The defendants said that *res judicata* principles, which preclude further litigation of matters that should have been adjudicated in earlier proceedings, required the case to be dismissed.

Although the two suits involved similar facts, Hopkins concluded that they sought completely different judicial relief.

“Given the unique statutory cause of action for access to corporate books and records, the policies underlying *res judicata* are inapplicable here,” she wrote. “In the view of this Court, the policy considerations commonly advanced to justify the doctrine of claim preclusion are not implicated here because a statutory claim for access to corporate records logically precedes and is discrete from breach of fiduciary duty claims premised on the information discovered in those records.” MLW

For more information about the judge mentioned in this story, visit the Judge Center at www.judgecenter.com.

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