SUPREME COURT OF SOUTH CAROLINA

Pertuis v. Front Roe Restaurants, Inc., 423 S.C. 640

817 S.E.2d 273 (2018) · No. Appellate Case No. 2016-000749 · Decided July 5, 2018

SUMMARY

The South Carolina Supreme Court reviewed a dispute involving minority ownership interests in three restaurant corporations and the alleged amalgamation of those corporations into a single business enterprise. The court formally recognized South Carolina's single-business-enterprise theory, requiring evidence beyond intertwined operations, including bad faith, abuse, fraud, wrongdoing, or resulting injustice. It reversed in part, vacated in part, and affirmed as modified in part the lower courts' rulings concerning amalgamation, ownership interests, distributions, valuation, and shareholder oppression.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Acting Chief Justice Kittredge; Justice Few; Justice James; Acting Justice Arthur Eugene Morehead III; Justice Hearn
JURISDICTION	South Carolina
DECIDED	July 5, 2018
DOCKET	Appellate Case No. 2016-000749
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioners sought certiorari review of the South Carolina Court of Appeals' affirmance of a bench-trial judgment involving shareholder oppression, alleged amalgamation of three corporations into a single business enterprise, ownership percentages, distributions, corporate valuation, and a forced buyout.
STANDARD OF REVIEW	Because stockholder-oppression actions are equitable, the Supreme Court may find facts according to its own view of the evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Front Roe Restaurants, Inc., Beachfront Foods, Inc., Lake Point Restaurants, Inc., Mark Hammond, Larkin Hammond v. Kyle Pertuis

TOPICS

corporate veil piercing · corporate law · controlling shareholder · commercial litigation · remedies

PRACTICE AREAS

corporate law · commercial litigation · business organizations · equitable remedies

QUESTIONS PRESENTED

1. Whether South Carolina law governed the alleged amalgamation or single-business-enterprise theory despite two corporations being incorporated in North Carolina.
2. Whether the evidence supported treating the three corporations as a single business enterprise or amalgamated entity.
3. Whether Pertuis proved entitlement to a 7.2% ownership interest in Front Roe.
4. Whether Pertuis was entitled to shareholder distributions attributable to the North Carolina corporations and Front Roe.
5. Whether the court could consider the remaining issues concerning the North Carolina corporations under the internal-affairs doctrine.

HOLDINGS

1. South Carolina law governs the evaluation of whether the three corporations operated as a single business enterprise; the internal-affairs doctrine does not bar review of that threshold issue.
2. South Carolina formally recognizes a single-business-enterprise theory, but treating multiple corporations as one enterprise requires more than intertwined operations; the party seeking the remedy must prove bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions.
3. The trial court erred by treating Lake Point, Beachfront, and Front Roe as a single business enterprise.
4. Pertuis proved only a 1% ownership interest in Front Roe and was not entitled to the trial court's equitable award of a 7.2% interest.
5. Pertuis was entitled to unpaid distributions from Front Roe, but the award had to be reduced from $99,117 to $14,142 to exclude amounts attributable to the North Carolina corporations.
6. The internal-affairs doctrine precluded consideration of the remaining issues concerning Lake Point and Beachfront, and the court vacated the judgment to the extent it made findings concerning those corporations.

KEY QUOTATIONS

> *"Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions."* (II.A.2)

> *"The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied."* (II.A.2)

> *"Pertuis failed to meet his burden of proving the existence of an oral agreement as to all the material terms of the contract—specifically including the required profit margin bench mark, which is perhaps the most*

> *material term."* (II.B)

FACTUAL BACKGROUND

The Hammonds formed three restaurant corporations—two North Carolina corporations and one South Carolina corporation—and hired Pertuis as a manager, granting him minority ownership interests under vesting arrangements. Pertuis ultimately held 10% interests in the two North Carolina corporations and a disputed interest in Front Roe, the South Carolina corporation; Front Roe's tax returns reflected a 1% interest. After the parties separated and failed to agree on a buyout, Pertuis sued, claiming he was an oppressed minority shareholder entitled to a forced buyout, a greater ownership interest, and unpaid distributions. The trial court treated the three corporations as a single enterprise and awarded Pertuis a 7.2% interest in Front Roe, $99,117 in distributions, and a buyout of his shares.

PROCEDURAL HISTORY

The circuit court found that Lake Point, Beachfront, and Front Roe operated as a de facto partnership or single business enterprise, awarded Pertuis ownership interests in the corporations, awarded $99,117 in unpaid distributions, found him to be an oppressed minority shareholder, valued the corporations, and ordered a buyout of his shares. The court of appeals affirmed. The Supreme Court of South Carolina granted certiorari, reversed the amalgamation and 7.2% Front Roe ownership findings, vacated the judgment as to the two North Carolina corporations, and affirmed the distribution award as modified and the remaining judgment under Rule 220, SCACR.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The judgment was reversed as to amalgamation, the purported de facto partnership, and the 7.2% Front Roe ownership interest; vacated to the extent it made findings concerning Beachfront and Lake Point; and affirmed as modified to award $14,142 in Front Roe distributions and to affirm the balance of the court of appeals' judgment under Rule 220, SCACR.

CASES CITED

- Ballard v. Roberson, 399 S.C. 588, 593, 733 S.E.2d 107, 109 (2012)
- S.C. Dept. of Transp. v. Horry Cty., 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011)
- Kincaid v. Landing Dev. Corp., 289 S.C. 89, 96, 344 S.E.2d 869, 874 (Ct. App. 1986)
- Kennedy v. Columbia Lumber & Mfg. Co., 299 S.C. 335, 340-41, 384 S.E.2d 730, 734 (1989)
- Mid-South Mgmt. Co. v. Sherwood Dev. Corp., 374 S.C. 588, 605, 649 S.E.2d 135, 144-45 (Ct. App. 2007) (per curiam)
- Magnolia N. Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012)
- Pope v. Heritage Cmtys., Inc., 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011)

- Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008)
- Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)
- SSP Partners v. Gladstrong Invs. (USA) Corp., 275 S.W.3d 444, 450-51, 455 (Tex. 2008)
- Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999)
- Springob v. Univ. of S.C., 407 S.C. 490, 495, 757 S.E.2d 384, 387 (2014)
