

SUPREME COURT OF MISSISSIPPI

Keene v. Brookhaven Academy, Inc.

28 So. 3d 1285 (Miss. 2010) · No. No. 2008-CA-01381-SCT · Decided March 4, 2010

SUMMARY

The Mississippi Supreme Court affirmed summary judgment dismissing Dudley Keene's challenges to Brookhaven Academy, Inc.'s formation of a nonprofit foundation, lease of property to the foundation, and transfer of educational activities. The court held that the Academy was a general-purpose corporation, its actions were not ultra vires, shareholders had properly ratified the actions, and the notice for the ratification meeting was adequate.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, Justice; Graves, P.J.; Dickinson, J.; Chandler, J.
JURISDICTION	Mississippi
DECIDED	March 4, 2010
DOCKET	No. 2008-CA-01381-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Keene appealed from the Lincoln County Chancery Court's grant of summary judgment to all defendants and dismissal of his claims challenging the formation of a nonprofit foundation, the lease of Academy property, and the transfer of educational activities.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published opinion; binding Mississippi Supreme Court precedent.
PARTIES	Dudley Keene, individually and on behalf of Brookhaven Academy and shareholders of Brookhaven Academy v. Brookhaven Academy, Inc., Brookhaven Academy Educational Foundation, Inc., Jeff Gatlin, Ken Powell, Phil McGee, Dean Snider

TOPICS

corporate governance

corporate law

summary judgment

declaratory judgment

injunctions

PRACTICE AREAS

corporate law civil procedure commercial litigation remedies

QUESTIONS PRESENTED

1. Whether shareholders properly ratified the Academy Board's formation of the Foundation, lease of Academy property to the Foundation, and transfer of educational activities.
2. Whether the Foundation's acquisition of Academy shares was unlawful because it was allegedly a subsidiary of the Academy and could not vote shares in the parent corporation.
3. Whether the stock-transfer and membership requirements coerced shareholders into transferring Academy shares.
4. Whether the Academy was a special-purpose corporation whose charter limited it from forming the Foundation, leasing its assets, or transferring educational activities.
5. Whether the Academy Board's challenged acts were void or merely voidable ultra vires acts.
6. Whether shareholders received adequate notice of the purposes of the special meeting at which the challenged acts were ratified.

HOLDINGS

1. The shareholders properly ratified the formation of the solely owned nonprofit Foundation, the lease of Academy property to the Foundation, and the transfer of educational activities.
2. The challenge to the Foundation's voting of Academy shares failed because the record did not establish that the Foundation was a subsidiary of the Academy, and the statute governing a corporation's acquisition of its own shares was inapplicable.
3. The stock-transfer arrangement was not coercive because shareholders had the option either to transfer two Academy shares or to pay \$750 for Foundation membership and school enrollment.
4. The Academy was a general-purpose corporation, not a special-purpose corporation limited to operating schools, and its articles authorized the challenged formation, leasing, and asset-related activities.
5. The Academy Board's challenged acts were not void ultra vires acts because they were within the powers conferred by the Academy's articles; in any event, the shareholders ratified the acts.
6. The shareholders received adequate notice because the notice, proxy materials, and referenced meeting materials described the purposes and specific matters to be ratified, satisfying Mississippi Code section 79-4-7.05.

KEY QUOTATIONS

"The standard of review for a grant of summary judgment is de novo." (28 So. 3d at 1288)

"An act of a corporation relating to the subjects within its powers though it should exceed those powers is not void." (28 So. 3d at 1293)

“It is true that the act of a corporation entirely foreign to the purposes for which it was created is void from want of power.” (28 So. 3d at 1293)

FACTUAL BACKGROUND

Brookhaven Academy, Inc., a for-profit corporation, formed Brookhaven Academy Educational Foundation, Inc., a nonprofit corporation, leased its real property to the Foundation, and transferred educational activities to it. Academy shareholders could exchange two Academy shares for Foundation membership or pay a \$750 membership fee, and shareholders later voted to ratify the formation, lease, and transfer. Keene retained his shares, did not attend or vote at the ratification meeting, and challenged the corporate actions as unauthorized, coerced, and inadequately noticed.

PROCEDURAL HISTORY

Keene first filed an action in the Lincoln County Chancery Court seeking declaratory and injunctive relief, asserting that Brookhaven Academy had failed to comply with its bylaws and articles of incorporation. The chancery court dismissed derivative claims but allowed claims seeking to enjoin allegedly unauthorized corporate acts to proceed. Keene later filed a substantially similar derivative action in circuit court; that action was transferred to chancery court, which granted defendants' motions for summary judgment and dismissed the action after finding that the Academy was a general-purpose corporation, its acts were voidable rather than void, shareholders received adequate notice, and shareholders properly ratified the challenged actions. The Supreme Court of Mississippi affirmed.

DISPOSITION

affirmed

CASES CITED

- Guidant Mutual Insurance Co. v. Indemnity Insurance Co. of North America, 13 So. 3d 1270, 1275 (Miss. 2009)
- Mabus v. St. James Episcopal Church, 13 So. 3d 260, 263 (Miss. 2009)
- Smith v. Gilmore Memorial Hospital, Inc., 952 So. 2d 177, 180 (Miss. 2007)
- Jowett v. Scruggs, 901 So. 2d 638, 644 (Miss. Ct. App. 2004)
- Italo Petroleum Corp. of America v. Producers Oil Corp. of America, 174 A. 276, 281 (Del. Ch. 1934)
- Ivanhoe Partners v. Newmont Mining Corp., 533 A.2d 585, 605 (Del. Ch. 1987)
- Tallahatchie Valley Electric Power Ass'n v. Mississippi Propane Gas Ass'n, Inc., 812 So. 2d 912, 914-15, 918-19 (Miss. 2002)
- Blue Cross & Blue Shield v. Protective Life Insurance Co., 527 So. 2d 125, 126-28 (Ala. Civ. App. 1987)
- Paz v. Brush Engineered Materials, Inc., 949 So. 2d 1, 7 (Miss. 2006)
- Cucos, Inc. v. McDaniel, 938 So. 2d 238, 241 (Miss. 2006)
- Griffith v. Gulf Refining Co., 215 Miss. 15, 61 So. 2d 306, 307 (1952)
- Bryant Construction Co. v. Cook Construction Co., Inc., 518 So. 2d 625, 629 (Miss. 1987)

- **Burnett's Lumber & Supply Co. v. Commercial Credit Corp.**, 211 Miss. 53, 51 So. 2d 54, 57 (1951)

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