

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT

P.D.K., Inc. v. Madeline and William McConnell

No. 4D18-3124 (Fla. 4th DCA Mar. 4, 2020) · No. No. 4D18-3124 · Decided March 4, 2020

SUMMARY

The Florida Fourth District Court of Appeal affirmed a final summary judgment allowing shareholders to inspect corporate records and set a shareholder meeting. The court held that the shareholder agreement contained no provision permitting forfeiture of shares for failure to provide additional funding, and that the alleged oral modification was not supported by mutual assent or other requirements. The court also concluded that the appellant failed to preserve the issue concerning its motion to amend and that amendment would have been futile.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	Levine, C.J.; Warner, J.; Phillips, Carol-Lisa, Associate Judge
JURISDICTION	Florida
DECIDED	March 4, 2020
DOCKET	No. 4D18-3124
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final summary judgment in an action seeking inspection of corporate records and an order setting a shareholder meeting.
STANDARD OF REVIEW	De novo review of final summary judgment; preservation principles govern issues on which the trial court did not rule.
PRECEDENTIAL VALUE	published
PARTIES	P.D.K., Inc., a Florida corporation v. Madeline McConnell, William McConnell

TOPICS

- corporate governance
- contract interpretation
- mutual assent
- summary judgment
- preservation of error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the McConnells remained shareholders entitled to inspect P.D.K.'s corporate records and seek a shareholder meeting when the shareholder agreement contained no forfeiture provision and no enforceable oral modification established forfeiture.
2. Whether the trial court erred by failing to expressly rule on P.D.K.'s motion to amend its answer.
3. Whether the proposed amendment should have been allowed when it would have been futile because it mirrored P.D.K.'s existing factual theory and did not establish mutual assent to an oral modification.

HOLDINGS

1. P.D.K. did not establish an enforceable oral modification requiring forfeiture of the McConnells' shares because it failed to show mutual assent to that modification. The McConnells therefore remained shareholders for purposes of their statutory inspection and shareholder-meeting claims.
2. P.D.K. failed to preserve the issue because it did not obtain a ruling on the motion to amend. In any event, the proposed amendment would have been futile because it merely repeated P.D.K.'s existing forfeiture and mutual-assent theory.

KEY QUOTATIONS

“That is not the same as mutual assent.” (2)

“This court should not have to guess whether or not a trial court made a ruling.” (3)

FACTUAL BACKGROUND

The McConnells were shareholders of P.D.K. under a shareholder agreement that contained no provision allowing forfeiture or cancellation of shares for failure to provide additional corporate funding. The agreement required any modification to be in writing and signed by all parties. P.D.K. claimed that the McConnells orally agreed to forfeit their shares if they refused to contribute additional funds, but the McConnells denied consenting and submitted affidavits, emails, and other documents showing no mutual assent.

PROCEDURAL HISTORY

The McConnells brought an action under sections 607.1602 and 607.0703, Florida Statutes, to inspect P.D.K.'s corporate records and set a shareholder meeting. The circuit court entered final summary judgment for the McConnells. P.D.K. appealed and also challenged the trial court's failure to rule expressly on its motion to amend. The Fourth District affirmed and denied rehearing while withdrawing and substituting its prior opinion.

DISPOSITION

affirmed

CASES CITED

- Okeechobee Resorts, L.L.C. v. E Z Cash Pawn, Inc., 145 So. 3d 989 (Fla. 4th DCA 2014)
- Hurricane Boats, Inc. v. Certified Indus. Fabricators, Inc., 246 So. 2d 174, 175 (Fla. 3d DCA 1971)
- Long Term Mgmt., Inc. v. Univ. Nursing Care Ctr., Inc., 704 So. 2d 669, 675 (Fla. 1st DCA 1997)
- West Coast Inc. v. Florida Blacktop Inc., 88 So. 3d 301, 305 (Fla. 4th DCA 2012)
- Carratelli v. State, 832 So. 2d 850, 856 (Fla. 4th DCA 2002)
- Quality Roof Servs., Inc. v. Intervest Nat'l Bank, 21 So. 3d 883 (Fla. 4th DCA 2009)

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