Plaintiff Bringing Direct Fiduciary Duty Claim Not Entitled to Burden-Shifting

The Massachusetts Superior Court, Business Litigation Session (Ricciuti, J.), recently denied a plaintiff's motion in limine seeking to shift the burden of proof in a fiduciary-duty case, where the plaintiff had failed to plead a derivative claim. In *Wettemann v. Nucleus Research Inc.*, plaintiff Rebecca Wettemann ("Wettemann"), a minority shareholder in Nucleus Research Inc. ("NRI"), alleged that the majority shareholder, Ian Campbell ("Campbell"), engaged in self-dealing. Wettemann, however, did not frame this claim as a derivative claim causing damage to the company, but, rather, as a direct claim in which she alleged she was personally harmed.

The Court explained that a claim that a corporate officer over-distributed to himself through personal expenses belongs to the company, not to a minority shareholder, and, therefore, must be brought as a derivative claim. If such a claim is brought derivatively, then once the

plaintiff makes out a prima facie case of self-dealing, the burden shifts to the defendant to show: (i) the utmost good faith of the transaction; and (ii) inherent fairness from the viewpoint of both the corporation and the other shareholders. Because Wettemann did not bring her claim derivatively, she could not take advantage of that burden-shifting framework.

This case is a reminder of the importance of properly asserting derivative claims for alleged harms that belong solely to the corporation.

About OCM

OCM is boutique litigation firm based in Burlington, Massachusetts, whose clients include Fortune 500 companies as well as closely held businesses and astute individuals. OCM's attorneys help their clients not only resolve disputes but also avoid them altogether. Whether you are facing a courtroom battle, arbitration, mediation, or negotiation, OCM can help.

View Our Website