In The

Supreme Court of Virginia

RECORD NO. 171708

SARAH YANCEY MAY,

Appellant,

v.

R. A. YANCEY LUMBER CORPORATION,

Appellee.

REPLY BRIEF OF APPELLANT

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The Company Cites the Incorrect Standard of Review

The Company inaccurately argues that the trial court's ruling on its plea in bar is factual and that therefore, the trial court's ruling should be given deference on appeal. That is not correct and appears to be an attempt to deflect the focus away from the central issue of this case - the interpretation of Va. Code §13.1-724. Factual findings should be given deference on appeal, but the interpretation of a statute is to be review *de* novo. *Fitzgerald v. Loudoun County Sheriff's Office*, 289 Va. 499 (2015); *Smith v. McLaughlin,* 289 Va. 241, 251 (2015).

As Sarah Yancey May stated in her opening brief, there is a mixed question of law and fact with respect to the trial court's denial of Sarah's Emergency Motion for Temporary Injunctive Relief and the granting of the Company's Plea in Bar on the issue of laches - for which the Court must afford deference to the trial court's factual findings, although it reviews *de novo* its application of the law to the facts. *Ferguson v. Stokes*, 287 Va. 446 (2014). Sarah argued in her brief that the finding of laches is not supported by the clear evidence presented and the Court may decline to adopt the trial court's findings if the "are plainly wrong or without evidence to support them." *Westgate at Williamsburg Condo. Ass'n v. Phillip Richardson Co*., 270 Va. 566, 573 (2005).

With respect to the other two "factual findings" cited by the Company, the trial court's interpretation of the statute was dispositive on the questions of whether the amendment to the Company's Bylaws was valid and whether the Timber Business was a "significant continuing business activity."

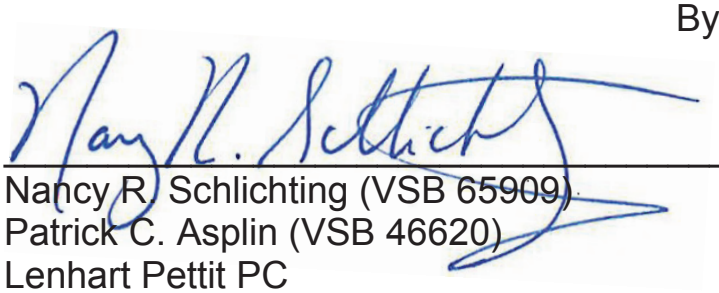
The Company appears to be arguing that this Court should ignore the core issue which is the trial court's interpretation of Va. Code §13.1-724(A). The trial court erred when it held that a simple majority of shareholders could amend corporate bylaws to alter the language and definitions provided in a statutory safe harbor and create an alternate safe harbor. The trial court's ruling nullifies the statutory protections afforded to minority shareholders of a Virginia corporation, and eviscerates the plain and clear intent of the statute – because it ruled that a mere majority of shareholders could effectively rewrite the statute and eliminate the two-thirds approval requirement, through the amendment of the Company's bylaws. The trial court's clear error in interpreting Va. Code §13.1-724 allowed a majority of shareholders to circumvent the need for the affirmative approval of more than two-thirds of the shareholders for the Proposed Sale required by Va. Code §13.1-724. It is the trial court's interpretation of Va. Code §13.1-724 which directed its rulings.

Whether the trial court's rulings in this case are affirmed or reversed hinge on this Court's decision on its statutory interpretation. Even the issue of whether Sarah's request for injunctive relief is barred by the doctrine of laches becomes moot if this Court finds that the trial court erred and the amendments to the Company's Bylaws were not proper or properly adopted, because that would mean that the Proposed Sale was not properly approved by the shareholders. This Court has been clear that on issues of statutory interpretation, its review is *de novo. Fitzgerald v. Loudoun County Sheriff's Office*, 289 Va. 499 (2015); *Smith v. McLaughlin,* 289 Va. 241, 251 (2015).

Conclusion

For the foregoing reasons, Appellant Sarah Y. May respectfully requests that this Court reverse the trial court's decision, hold that the Company has not properly approved the Proposed Sale in violation of Va. Code 13.1-724, and remand the case to the trial court for entry of injunctive relief to enjoin the sale of the assets of R. A. Yancey Lumber Corporation.

Respectfully submitted,
SARAH YANCEY MAY
By Counsel



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Certificate

I hereby certify, pursuant to Rule 5:26(h), that on this 24th day of August, 2018, three (3) paper copies of this Reply Brief have been hand-filed with the Clerk of the Supreme Court of Virginia and an electronic copy has been filed via, VACES. On this same day, a copy of this Reply Brief has been served, via email, to all opposing counsel.

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