

STATE OF NORTH CAROLINA  
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23CV005586-500

SHERRY WORLEY and GINGER MASSENGILL, individually, and as members of the committees of the respective Board of Directors for ORMOND OIL & GAS COMPANY, INC., and ORMOND'S SALES AND SERVICE, INCORPORATED,

Plaintiffs,

v.

WILLIAM E. ORMOND, JR., individually, and in his capacity as an Officer, and Director of ORMOND OIL & GAS COMPANY, INC., and ORMOND'S SALES AND SERVICE, INCORPORATED; ORMOND OIL & GAS COMPANY, INC.; ORMOND'S SALES AND SERVICE, INCORPORATED; ORMOCO, LLC; R.E.S. INVESTORS, LLC; ORMOND ENERGY INVESTORS, LLC; and OFB VENTURES LLC,

Defendants.

**ORDER AND OPINION ON  
PLAINTIFFS' MOTION FOR  
ISSUANCE OF A WRIT OF  
MANDAMUS,  
OR IN THE ALTERNATIVE,  
FOR PARTIAL SUMMARY  
JUDGMENT ON CLAIM FOR  
RECOVERY OF DECLARED  
DIVIDENDS**

1. **THIS MATTER** is before the Court on the 20 December 2023 filing of *Plaintiffs' Motion for Issuance of a Writ of Mandamus, or in the Alternative, for Partial Summary Judgment on Claim for Recovery of Declared Dividends* (the "Motion"). (ECF No. 30 ["Mot."]) Pursuant to N.C.G.S. §§ 55-6-40, 55-3-04(b), and in the alternative, Rule 56 of the North Carolina Rules of Civil Procedure (the "Rule(s)"), Plaintiffs request issuance of a writ of mandamus, or alternatively, affirmative

summary judgment on their claim for the recovery of declared dividends against Defendant Ormond Oil & Gas Company, Inc.<sup>1</sup> (*See Mot.*)

2. For the reasons set forth herein, the Court **GRANTS** in part and **DENIES** in part the Motion.

*James, McElroy & Diehl, P.A., by Fred B. Monroe and Haley Lohr, for Plaintiffs Sherry Worley and Ginger Massengill.*

*Goldberg Segalla, by David L. Brown, for Defendants Ormond Oil & Gas Company, Inc. and Ormond's Sales and Service, Inc.*

*The Armstrong Law Firm, P.A., by L. Lamar Armstrong, Jr., for Defendant William E. Ormond, Jr.*

Robinson, Judge.

## I. INTRODUCTION

3. This action arises out of a dispute among three siblings, each of whom are shareholders of Ormond Oil & Gas Company, Inc. and Ormond's Sales and Service, Incorporated. Plaintiffs, through the filing of this lawsuit, contend that their brother, Defendant William E. Ormond, Jr., exercised, and continues to exercise, complete control over the two companies for his own benefit and without regard to Plaintiffs' interests.

4. At issue in the Motion is a very limited dispute: whether Plaintiffs are entitled, as shareholders of Ormond Oil & Gas Company, Inc., to recover certain previously declared dividends.

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<sup>1</sup> On 10 May 2024, after obtaining leave from the Court, Plaintiffs filed their First Amended Verified Complaint. (ECF No. 115 ["Am. Compl."].) Plaintiffs' first cause of action for failure to pay declared dividends against Ormond Oil & Gas Company, Inc. remains a claim at issue in this case. (Am. Compl. ¶¶ 128–34.)

## II. FACTUAL AND PROCEDURAL BACKGROUND

5. The Court does not make findings of fact when ruling on a motion for summary judgment. “[T]o provide context for its ruling, the Court may state either those facts that it believes are not in material dispute or those facts on which a material dispute forecloses summary adjudication.” *Ehmann v. Medflow, Inc.*, 2017 NCBC LEXIS 88, at \*6 (N.C. Super. Ct. Sept. 26, 2017); *see also Hyde Ins. Agency, Inc. v. Dixie Leasing Corp.*, 26 N.C. App. 138, 142 (1975) (encouraging the trial court to articulate a summary of the relevant evidence of record to provide context for the claims and motion(s)). Furthermore, the Court sets forth herein only those portions of the procedural history relevant to its determination of the Motion.

6. Plaintiffs Sherry Worley (“Worley”) and Ginger Massengill (“Massengill”; with Worley, “Plaintiffs”) are residents of Princeton, North Carolina. (Verified Compl. ¶¶ 1–2, ECF No. 3 [“Compl.”].)<sup>2</sup>

7. Defendant William E. Ormond, Jr. (“Ormond”) is a resident of Princeton, North Carolina. (Compl. ¶ 5; William E. Ormond, Jr. Answer ¶ 5, ECF No. 24 [“Ormond Answer”].)

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<sup>2</sup> For purposes of resolving the Motion, the Court treats the Verified Complaint as an affidavit. *See Page v. Sloan*, 281 N.C. 697, 705 (1972); *Bauer v. Douglas Aquatics, Inc.*, 207 N.C. App. 65, 69 (2010). Notwithstanding this determination, the Verified Complaint, as any affidavit, may only be properly considered if it demonstrates by its allegations and representations that the affiant has firsthand knowledge of the facts or circumstances alleged and that the representations therein are properly considered by the Court as admissible evidence. *See Page*, 281 N.C. at 705.

Furthermore, the Court cites herein to the allegations in the Verified Complaint, rather than the First Amended Verified Complaint, as the briefing on the Motion occurred prior to the filing of the latter pleading.

8. Defendants Ormond Oil & Gas Company, Inc. (“OOG”) and Ormond’s Sales and Service, Incorporated (“OSS”; with OOG, the “Ormond Companies”) are North Carolina corporations with their principal place of business in Princeton, North Carolina. (Compl. ¶¶ 3–4; Answer Defs. OOG & OSS ¶¶ 3–4, ECF No. 22 [“Ormond Cos. Answer”].)

9. It is undisputed that: (1) Plaintiffs and Ormond are siblings who inherited their respective ownership interests in the Ormond Companies from their parents; (2) Ormond owns sixty-two percent (62%) of the shares of OOG and fifty-six percent (56%) of the shares of OSS; and (3) Plaintiffs each own approximately nineteen percent (19%) of the shares of OOG and twenty-two percent (22%) of the shares of OSS. (Compl. ¶¶ 19–20; Ormond Answer ¶¶ 19–20; Ormond Cos. Answer ¶¶ 19–20.) Together, the three siblings own all outstanding shares in the Ormond Companies. (Ormond Cos. Answer ¶ 7 (“[A]dmitted that Plaintiff Worley, Plaintiff Massengill and Defendant Ormond own all shares of stock in both companies, and that Defendant Ormond owes [sic] the majority of shares in each company.”).)

10. It is also undisputed that Ormond is the President and Chief Executive Officer of both Ormond Companies, (Aff. William E. Ormond Jr. ¶ 2, ECF No. 19 [“Ormond Aff.”]; Ormond Cos. Answer ¶ 7), and that Plaintiffs and Ormond were members of OOG’s Board of Directors in 2023, (Compl. ¶ 42; Ormond Cos. Answer ¶ 42; *see also* 8 Nov. 2023 Hr’g Tr. 31:3–20, ECF No. 29.5 [“8 Nov. Hr’g Tr.”]).

11. On 20 September 2023, Plaintiffs noticed a special meeting of the OOG Board of Directors to be held on 25 September 2023. (Compl. Ex. A, ECF No. 3.2.)<sup>3</sup> After communicating with Ormond about his claimed inability to attend the meeting as scheduled, (Ormond Aff. ¶¶ 59–61), Plaintiffs rescheduled the meeting to 27 September 2023, issuing a notice of special meeting that contained an offer for Ormond to participate in the meeting by phone if he could not attend in person, (*see* Compl. Ex. C).<sup>4</sup> The notice of special meeting was signed by Plaintiffs as directors and officers of OOG. (*See* Compl. Exs. A, C.) It appears that the special meeting was properly noticed in accordance with Article II, Section 3 of OOG’s Bylaws. (Aff. Ginger Massengill Ex. 5, ECF No. 10.3 [“OOG Bylaws”].)

12. On 27 September 2023, Plaintiffs attended the special meeting of OOG’s Board of Directors (the “27 September Board Meeting”). (Compl. Ex. F.) Ormond did not attend, by phone or otherwise. (Compl. Ex. F.) The meeting began at 3:00 p.m. and the meeting minutes demonstrate that Plaintiffs, as directors of OOG, resolved, in relevant part, that: (1) OOG “shall, until further resolution of the Directors, pay a dividend to the Shareholders of the Corporation, in the amount of \$850,000.00”; (2) “the record date of the dividends to be paid as described above is September 27, 2023”; and (3) “the payable date of the dividends to be paid as described above is to be September 29, 2023.” (Compl. Ex. F.)

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<sup>3</sup> The Exhibits to the Verified Complaint were filed in one document rather than separately filed. (*See* ECF No. 3.2.) Therefore, for ease of reference, the Court does not restate the ECF No. at each citation, but rather cites to these exhibits as follows: (Compl. Ex(s). [ ] at [ ]).

<sup>4</sup> Ormond did not object in writing to either meeting or to the notices of meeting.

13. The evidence demonstrates that the \$850,000.00 dividend declared was not paid on or before 29 September 2023. (*See* Ormond Answer ¶ 76; Third Aff. Ginger Massengill ¶ 8, Ex. 10 at 6, ECF Nos. 29.2, 102.2 [“3d Massengill Aff.”] (attempting to revoke the dividend at issue).) The record also demonstrates that OOG was solvent both at the time the dividend was declared and at the initiation of this action. (Aff. Sherry Worley ¶¶ 3–5, ECF No. 58.2; Compl. Ex. I at 2; CRI Report 23, ECF No. 90.1 (suggesting that at the end of 2022, OOG had \$4,607,345.00 in total assets, \$422,125.00 in total liabilities, including long term liabilities, and a net income of \$1,472,446.00).)

14. Plaintiffs initiated this action on 12 October 2023 with the filing of the Verified Complaint. (*See* Compl.)

15. On 24 October 2023, Ormond provided Plaintiffs with notice of special shareholders’ meetings for the Ormond Companies to be held on 6 November 2023. (3d Massengill Aff. ¶ 2, Exs. 1–2.) Ormond similarly provided notices of directors’ meetings for the Ormond Companies to follow the shareholders’ meetings. (3d Massengill Aff. Exs. 3–4.)

16. On 6 November 2023, Plaintiffs attended the special shareholders’ meetings of the Ormond Companies, presenting written objections, but Plaintiffs did not vote on the issues at hand. (3d Massengill Aff. ¶¶ 3–4, Exs. 5–6 (providing Plaintiffs’ written objections presented at the meetings).) During the OOG special shareholders’ meeting, Ormond voted alone to replace Massengill with Ronald Waters as a director. (3d Massengill Aff. ¶ 4, Ex. 7 at 7–8.) The Court determined in

a prior Order that Ormond’s notice of meeting was “defective because it did not specify which director was proposed to be removed[.]” meaning that “the removal of Massengill as a director of OOG was ineffective, as was the election of Ron[ald] Waters[.]” (Order on Pls.’ Mot. Inj. Relief 9–10, ECF No. 106 [“30 Apr. Order”].)

17. On 17 November 2023, Ormond, through counsel, noticed a special meeting of the OOG Board of Directors to be held on 22 November 2023. (3d Massengill Aff. ¶ 7, Ex. 9 (providing Ormond’s counsel’s email to Plaintiffs’ counsel, attaching the notice of special meeting of OOG’s Board of Directors).) The notice provided that the purpose of the special meeting was “to determine whether prior resolutions and actions by OOG Directors should be invalidated, reversed and rescinded, including . . . the \$850,000 dividend[.]” (3d Massengill Aff. Ex. 9 at 3.)

18. At the 22 November 2023 meeting, Plaintiffs objected in writing, (*see* ECF No. 94.2 (Plaintiffs’ written objections)), and Worley objected orally, to the allegedly improper motion on numerous grounds, including that the OOG Board of Directors was not properly constituted, and to any attempt to rescind the dividend, (3d Massengill Aff. ¶ 8, Ex. 10 at 3, 6; *see* ECF No. 94.2). Despite Plaintiffs’ objections, Ormond moved to “reject and reverse and invalidate and rescind all resolutions and other actions taken by Ormond Oil Board from September 23rd through the present, including . . . the \$850,000 dividends[.]” (3d Massengill Aff. Ex. 10 at 3.) Ronald Waters seconded the motion. (3d Massengill Aff. Ex. 10 at 3.)

19. While Massengill was not permitted to participate due to her purported removal as a director, Worley engaged in some discussion with Ormond regarding his

motion. (*See* 3d Massengill Aff. Ex. 10 at 3–6.) Ultimately, the record demonstrates that Worley voted against Ormond’s motion to rescind the dividend previously approved by OOG’s Board of Directors on 27 September 2023. (3d Massengill Aff. Ex. 10 at 6.) Ormond and Ronald Waters voted in favor of rescinding or otherwise reversing the actions approved at the 27 September Board Meeting. (3d Massengill Aff. Ex. 10 at 6.)

20. Now, through the filing of the Motion, Plaintiffs seek (1) an order from the Court compelling OOG’s Board of Directors to make the \$850,000.00 dividend payment, or alternatively (2) summary judgment in their favor on their first claim for relief for OOG’s failure to pay declared dividends (“Count One”). (*See* Mot.; Compl. ¶¶ 74–80; Am. Compl. ¶¶ 128–34.)<sup>5</sup>

21. Following full briefing, the Court held a hearing on the Motion on 4 April 2024 (the “Hearing”), (*see* ECF Nos. 73, 86), at which all parties were present and represented through counsel. The Motion is now ripe for resolution.

### III. LEGAL STANDARD

22. Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C.G.S. § 1A-1, Rule 56(c). “A ‘genuine issue’ is

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<sup>5</sup> As discussed above, following the filing of the Motion, Plaintiffs were permitted to file the First Amended Verified Complaint. (*See* Order, ECF No. 107; Am. Compl.) The allegations in the First Amended Verified Complaint at Count One mirror those in the Verified Complaint at Count One. (*Compare* Compl. ¶¶ 74–80, *with* Am. Compl. ¶¶ 128–34.) The filing of the First Amended Verified Complaint therefore did not render the Motion moot.



one that can be maintained by substantial evidence.” *Dobson v. Harris*, 352 N.C. 77, 83 (2000) (citation omitted). “‘Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion’ and means ‘more than a scintilla or a permissible inference.’” *Head v. Gould Killian CPA Grp., P.A.*, 371 N.C. 2, 8 (2018) (quoting *Ussery v. Branch Banking & Tr. Co.*, 368 N.C. 325, 335 (2015)).

23. The moving party bears the burden of showing that there is no genuine issue of material fact, and that the movant is entitled to judgment as a matter of law. *Hensley v. Nat’l Freight Transp., Inc.*, 193 N.C. App. 561, 563 (2008). The movant may make the required showing by proving that “an essential element of the opposing party’s claim does not exist, cannot be proven at trial, or would be barred by an affirmative defense, or by showing through discovery that the opposing party cannot produce evidence to support an essential element of her claim.” *Dobson*, 352 N.C. at 83 (citations omitted).

24. “Once the party seeking summary judgment makes the required showing, the burden shifts to the nonmoving party to produce a forecast of evidence demonstrating specific facts, as opposed to allegations, showing that he can at least establish a *prima facie* case at trial.” *Gaunt v. Pittaway*, 139 N.C. App. 778, 784–85 (2000) (citation omitted). The Court must view the evidence in the light most favorable to the nonmovant. *Dobson*, 352 N.C. at 83 (citation omitted). However, the nonmovant

may not rest upon the mere allegations or denials of [its] pleading, but [its] response, by affidavits or as otherwise provided in this rule, must

set forth specific facts showing that there is a genuine issue for trial. If [the nonmovant] does not so respond, summary judgment, if appropriate, shall be entered against [the nonmovant].

N.C.G.S. § 1A-1, Rule 56(e).

25. “For affirmative summary judgment on a party’s own claim, the burden is heightened.” *Futures Grp. v. Brosnan*, 2023 NCBC LEXIS 7, at \*\*4 (N.C. Super. Ct. Jan. 19, 2023); see *Brooks v. Mount Airy Rainbow Farms Ctr., Inc.*, 48 N.C. App. 726, 728 (1980). The movant “must show that there are no genuine issues of fact, that there are no gaps in his proof, that no inferences inconsistent with his recovery arise from the evidence, and that there is no standard that must be applied to the facts by the jury.” *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985); accord *Kidd v. Early*, 289 N.C. 343, 370 (1976). Consequently, “rarely is it proper to enter summary judgment in favor of the party having the burden of proof.” *Blackwell v. Massey*, 69 N.C. App. 240, 243 (1984).

#### IV. ANALYSIS

##### A. Motion for Writ of Mandamus

26. Plaintiffs contend that the Court may issue an order compelling OOG to perform a specific duty imposed by law and that the Court *should* do so in this situation to require OOG to pay Plaintiffs their share of the \$850,000.00 dividend declared at the 27 September Board Meeting. (Pls.’ Br. Supp. Mot. 3–4, ECF No. 31 [“Br. Supp.”].)

27. A writ of mandamus is a court order “ ‘to a board, corporation, inferior court, officer or person commanding the performance of a specified official duty imposed by

law.’” *Morningstar Marinas/Eaton Ferry, LLC v. Warren Cty.*, 368 N.C. 360, 364 (2015) (quoting *Sutton v. Figgatt*, 280 N.C. 89, 93 (1971)). The writ is appropriately issued when:

(1) the [petitioner] has a clear legal right to the act requested; (2) the respondent has a legal duty to perform the act requested; (3) performance of the act at issue is ministerial in nature and does not involve the exercise of discretion; (4) the respondent did not perform the act requested and the time for performance of the act has expired; and (5) no alternative, legally adequate remedy is available.

*Id.* (cleaned up); see *Richardson v. Utili-Serve, LLC*, 2020 NCBC LEXIS 135, at \*\*14 (N.C. Super. Ct. Nov. 17, 2020).

28. Here, as to the fifth required element for issuance of a writ, Plaintiffs have another legally adequate remedy available to them, as the Motion itself indicates: summary judgment in their favor on Count One. Plaintiffs do not address why summary judgment would not serve as a satisfactory alternative remedy. Therefore, the Motion is **DENIED** in part to the extent it requests the Court issue a writ of mandamus. This determination is without prejudice to a renewal of the application for the writ if circumstances later appear to warrant the relief. See *Mears v. Bd. of Educ. of Buncombe Cty.*, 214 N.C. 89, 92 (1938).

**B. Motion for Summary Judgment on Count One**

29. Next, Plaintiffs contend that the Court should grant affirmative summary judgment on Count One against OOG for its failure to pay declared dividends. (Br. Supp. 4 n.2, 7; Pls.’ Reply Br. 6, ECF No. 58.)

30. In Count One, Plaintiffs allege that OOG violated N.C.G.S. § 55-6-40 by failing to pay its shareholders the \$850,000.00 dividend declared on

27 September 2023, seeking recovery in the form of payment of their share of that amount. (Compl. ¶¶ 74–80.)

31. North Carolina General Statutes § 55-6-40(a) provides that “[a] board of directors may authorize and the corporation may make distributions to its shareholders[.]” Subsection (c) therein “prohibits an insolvent corporation from making distributions to its shareholders.” *Cent. Carolina Surgical Eye Assocs., P.A. v. Matthews*, 2022 NCBC LEXIS 22, at \*\*36 (N.C. Super. Ct. Mar. 16, 2022). Our Courts have held that to sustain a claim for failure to pay declared dividends, a claimant must allege that, at the time the action was initiated, funds were available for the payment of dividends and that the corporation is solvent. *Id.* at \*\*38 (citing *Steele v. Locke Cotton Mills Co.*, 231 N.C. 636, 640–42 (1950), and *Gaines v. Long Mfg. Co.*, 234 N.C. 331, 339 (1951)). Thus, if it is demonstrated that (1) the board of directors properly authorized the corporation to make a distribution to its shareholders, and (2) the corporation is solvent with sufficient funds to pay the dividend, “a court of equity has jurisdiction to compel the declaration and payment of corporate dividends wrongfully withheld from minority stockholders.” *Gaines*, 234 N.C. at 338.

32. “A corporation’s indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation’s indebtedness to its general, unsecured creditors except to the extent otherwise provided by agreement.” N.C.G.S. § 55-6-40(f). Thus, once properly declared, a

dividend payable to shareholders becomes a debt of the company akin to other unsecured debts.

33. Defendants argue that genuine issues of material fact remain as to (1) whether the declaration of the dividend at the 27 September Board Meeting satisfied the requirements of N.C.G.S. § 55-6-40, and (2) whether it continues to be a valid declaration. (Defs.' Resp. Opp'n Mot. 14, ECF No. 51 ["Resp. Br."].) These arguments are unavailing.

34. Here, it is undisputed that Plaintiffs were directors of OOG at the time they voted to approve the \$850,000.00 dividend. Further, pursuant to N.C.G.S. § 55-6-40(a), the OOG Articles of Incorporation do not contain restrictions that would disallow the dividend.<sup>6</sup> In fact, the OOG Articles of Incorporation filed with the North Carolina Secretary of State do not mention dividends.

35. It is also undisputed that Plaintiffs provided proper notice of a special meeting in accordance with Article II, Section 3 of the Bylaws of OOG, and that Ormond did not object in writing. (*See* OOG Bylaws 2.) Further, the meeting minutes from the 27 September Board Meeting demonstrate that Plaintiffs, acting as a majority of the directors, resolved that: (1) OOG would pay to its shareholders a

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<sup>6</sup> While the OOG Articles of Incorporation are not a filing of record, the parties have quoted from portions of it throughout this litigation. (Defs.' Resp. Opp'n Pls.' Mot. Amend Compl. 3, ECF No. 85; Ormond Cos. Answer ¶¶ 9, 11, 42.) "The Court may take judicial notice of public filings available on the North Carolina Secretary of State's official website." *Banc of Am. Merch. Servs., LLC v. Arby's Rest. Grp., Inc.*, 2021 NCBC LEXIS 60, at \*5 n.3 (N.C. Super. Ct. June 30, 2021) (citing N.C. R. Evid. 201(b), (c)). The Court hereby takes judicial notice of the OOG Articles of Incorporation appearing on the North Carolina Secretary of State's official website. *See Arts. of Incorpor. of OOG* (SOSID: 0108359) (Doc. ID 000234013) (filed Jan. 6, 1978), available at <https://www.sosnc.gov>.

dividend in the total amount of \$850,000.00; and (2) the dividend would be due and payable on 29 September 2023. (*See* Compl. Ex. F.) The 29 September 2023 payment date came and went without a transfer of funds to Plaintiffs for their proportionate share of the \$850,000.00.

36. Furthermore, the record demonstrates that OOG is a solvent company with funds sufficient to pay the dividend. (Compl. Ex. I at 2 (OOG “is sitting on, according to you, approximately \$3,000,000.00 in cash”); CRI Report 23, ECF No. 90.1; Third Aff. Sherry Worley ¶ 3 (detailing that Ormond told Worley OOG “would pay \$3 Million (with \$2.2 Million upfront) for an acquisition and would not have to borrow money. We also knew the company had been doing very well, and it ought to have a lot of excess cash and no debt.”), ¶ 5 (“I have since learned that our perceptions about OOG’s cash position being more than sufficient to support a dividend was correct, and that we were actually conservative, as I had thought.”), ECF No. 58.2; Fourth Massengill Aff., ECF No. 58.3 (stating the same).)

37. In opposition to the Motion, Defendants have not come forth with competent evidence demonstrating that OOG would be unable to pay the dividend or that paying the dividend would otherwise cause OOG to become insolvent such that dissolution and winding up processes would result in unfairness to creditors and shareholders. *See Cent. Carolina Surgical*, 2022 NCBC LEXIS 22, at \*\*39.<sup>7</sup>

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<sup>7</sup> Interestingly, the evidence before the Court indicates that, while Ormond attempted to cause the directors to rescind the declaration of dividend at issue, on 22 December 2023 he proposed to declare a dividend in the amount of \$375,000.00. (*See* Resp. Br. 7; Shawn Wiggins Aff. ¶¶ 5–9, ECF No. 51.1 [“Wiggins Aff.”].) OOG’s Chief Financial Officer Shawn Wiggins (“Wiggins”) testified that, during the 22 December 2023 Board of Directors meeting, he “provided a summary of OOG’s financial condition and its current and future needs and,

38. Even viewing the evidence in the light most favorable to OOG, Plaintiffs have demonstrated that the OOG Board of Directors properly authorized the corporation to make a distribution to its shareholders in the amount of \$850,000.00.

39. While Defendants also appear to argue that a vote during the subsequent 22 November 2023 special meeting served to properly rescind the dividend, (Resp. Br. 7, 14), that vote came after the payment date of the dividend passed, making it legally ineffective. Further, the Court has already ordered that the composition of the OOG Board of Directors at that meeting was improper. (30 Apr. Order at 10 (“[T]he removal of Massengill as a director of OOG was ineffective, as was the election of Ron Waters, since there was no vacancy to fill, and the election of a replacement was not noticed for the meeting. Plaintiffs therefore remain members of the OOG Board of Directors.”).) As a result, the vote taken at that meeting was ineffective.

40. The \$850,000.00 dividend became recoverable on 29 September 2023, and it remains an outstanding debt of OOG. Therefore, while it is rarely appropriate to grant affirmative summary judgment, the Court determines that this is the rare circumstance warranting such a ruling as Plaintiffs have demonstrated that there are no genuine issues of fact, no gaps in their proof, and no inferences inconsistent

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based thereon, recommended that the OOG Directors declare a \$375,000 dividend for 2023.” (Wiggins Aff. ¶¶ 3, 5.) Wiggins did not testify or otherwise opine that payment of an \$850,000.00 dividend would place the company in financial peril. (See Wiggins Aff.; see also Ex. A to Wiggins Aff.)

Ultimately, when Ronald Waters moved to declare a \$375,000.00 dividend, and Ormond seconded the motion, the pair voted together to approve the dividend. (Wiggins Aff. Ex. A at 12:13–13:3.) Worley voted against that motion. (Wiggins Aff. Ex. A at 12:19–24.)

with their recovery arising from the evidence that would warrant a denial of the Motion.

## V. CONCLUSION

41. **THEREFORE**, for the foregoing reasons, the Court **GRANTS** in part and **DENIES** in part the Motion. The Motion is **GRANTED** to the extent it requests summary judgment on Plaintiffs' Count One against OOG for failure to pay a declared dividend. Plaintiffs are entitled to their respective shares of the \$850,000.00 dividend declared on 27 September 2023 as it was not timely or properly rescinded.

42. Except as expressly granted, the Motion is **DENIED** without prejudice to a renewal of the application for the writ of mandamus if circumstances later appear to warrant the relief.

43. In accordance with N.C.G.S. § 55-6-40(h), Plaintiffs, as shareholders of OOG, are entitled to recover from the corporation all reasonable expenses, including attorney's fees, in seeking the relief requested in the Motion.

**IT IS SO ORDERED**, this the 11th day of June, 2024.

/s/ Michael L. Robinson  
Michael L. Robinson  
Special Superior Court Judge  
for Complex Business Cases