

STATE OF NORTH CAROLINA
LENOIR COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 343

ARMISTEAD B. MAUCK and
LOUISE CHERRY MAUCK,

Plaintiffs,

v.

CHERRY OIL CO., INC.; JULIUS P.
“JAY” CHERRY, JR.; and ANN B.
CHERRY,

Defendants,

and

CHERRY OIL CO., INC. and JULIUS
P. “JAY” CHERRY, JR.,

Counterclaim-
Plaintiffs,

v.

ARMISTEAD B. MAUCK,

Counterclaim-
Defendant.

**ORDER ON DEFENDANTS’ MOTION
IN THE CAUSE FOR COURT
SUPERVISION OF CALL OF SHARES,
DEFENDANTS’ MOTION IN THE
CAUSE FOR SUPERVISION OF
ADDITIONAL DOCUMENT
REQUESTS, AND PLAINTIFFS’
MOTION FOR LEAVE TO
SUPPLEMENT THE SECOND
AMENDED COMPLAINT**

1. **THIS MATTER** is before the Court on Defendants’ Motion in the Cause for Court Supervision of Call of Shares (ECF No. 79), Defendants’ Motion in the Cause for Supervision of Additional Document Requests (ECF No. 103), and Plaintiffs’ Motion for Leave to Supplement the Second Amended Complaint (ECF No. 108) (collectively, the “Pending Motions”). A hearing on the Pending Motions was held on 9 November 2023 at which all parties were represented by counsel.

2. In its 15 September 2023 Order and Opinion granting summary judgment for Defendants on Plaintiffs’ two remaining claims in this action, the Court

thoroughly summarized the facts giving rise to this action and the lengthy background of this litigation.¹ *Mauck v. Cherry Oil Co.*, 2023 NCBC LEXIS 112, at **2–16 (N.C. Super. Ct. Sept. 15, 2023).

3. The Pending Motions relate to two issues: (1) the remaining steps to be taken by the parties to effectuate the purchase of Plaintiffs’ shares in Cherry Oil Co., Inc. (“Cherry Oil”) as a result of the process that began with Defendants’ vote to exercise the “call” provision in the Shareholders’ Agreement; and (2) Cherry Oil’s alleged refusal to grant Plaintiffs’ request to inspect certain records of the company.² The Court will address each issue in turn.

I. Remaining Steps Regarding Cherry Oil’s Purchase of Plaintiffs’ Shares

4. As detailed in the Court’s 15 September Order and Opinion, the parties have struggled to reach agreement on how the process for valuing Plaintiffs’ shares as set out in Section 6(B) of the Shareholders’ Agreement should be carried out. In a nutshell, Section 6(B) directs each party to designate an appraiser and for the two designated appraisers to select a third appraiser. In the event the two appraisers fail to do so by the deadline contained in Section 6(B), the third appraiser is to be selected by the Lenoir County Clerk of Court. Section 6(B) further provides that “[t]he written decision of such appraisers shall be binding upon all parties as to the fair market value of such shares.” (*See* S’holders’ Agrmt. § 6(B), ECF No. 15.2)

¹ No motion for summary judgment was filed by either side regarding Defendants’ pending counterclaims.

² Plaintiffs allege that Defendants have produced some, but not all, of the corporate records Plaintiffs have requested.

5. In Defendants' Motion in the Cause for Court Supervision of Call of Shares, Defendants proposed several alternative methods for proceeding with the valuation of Plaintiffs' shares, one of which would have the Court—rather than the designated appraisers—ultimately decide the value of the shares. Plaintiffs, in turn, responded to Defendants' motion by providing their own proposal for carrying out the valuation process set forth in Section 6(B).

6. As an initial matter, the Court observes that Section 6(B) clearly sets out the intent of the shareholders for this valuation to be made by the appointed appraisers rather than by the Court. Therefore, the Court views its current role in this process as a highly limited one—that is, seeking to ascertain the parties' agreement on a process going forward pursuant to Section 6(B) and issuing rulings, to the extent required, on disagreements between the parties over the proper interpretation of the Settlement Agreement.

7. Following a discussion between the Court and the parties' attorneys at the 9 November hearing, an agreement was reached between all parties on the remaining steps to be taken for the valuation process to move forward, which is set out below:

- a. Each side shall have 14 days from the date of this Order in which to designate an appraiser of their choice;
- b. Once both sides have designated an appraiser, the two appraisers shall have 30 days in which to select a third appraiser;

- c. Each side shall be responsible for ensuring that the appraiser they have designated is promptly made aware of the deadline for the selection of the third appraiser; and
 - d. Once all three appraisers have been designated and informed of their duties under the Shareholders' Agreement, the parties shall follow the process to be established by the appraisers for the valuation process to take place. The parties shall also promptly serve a copy of this Order upon the three designated appraisers once they have been selected.
8. The parties need not file any documents with the Court regarding the appraisal process unless a dispute arises that genuinely requires the Court's intervention.³

II. Inspection of Cherry Oil Records by Plaintiffs

9. Both Plaintiffs' Motion for Leave to Supplement the Second Amended Complaint and Defendants' Motion in the Cause for Supervision of Additional Document Requests relate to the issue of whether Plaintiffs are entitled to obtain additional documents from Cherry Oil.

10. Plaintiffs assert—and Defendants concede—that Plaintiffs continue to be shareholders of Cherry Oil until their shares have actually been purchased by the company. As such, Plaintiffs retain all of the rights possessed by shareholders other than their voting rights, which were circumscribed by virtue of the company's vote to

³ The need for future Court intervention is unlikely given that—once again—the Shareholders' Agreement clearly contemplates a valuation process to be controlled by the designated appraisers (rather than by the Court).

call their shares. *See* S'holders' Agrmt. § 11 (providing that any shareholder "subject to a . . . call shall vote . . . in accordance with the vote of the Shareholders owning a majority of the remaining Shares").

11. N.C.G.S. § 55-16-02 *et seq.* sets out a statutory right of shareholders to inspect and copy various enumerated records of the corporation (subject to certain restrictions). Pursuant to N.C.G.S. § 55-16-04, a shareholder denied this right is permitted to apply to the superior court in the county where the corporation's principal office is located for an order permitting inspection and copying of the requested records. In their Motion for Leave to Supplement the Second Amended Complaint, Plaintiffs seek leave to file a Third Amended Complaint adding a claim under N.C.G.S. § 55-16-04. In conjunction with their motion, Plaintiffs have submitted a proposed Third Amended Complaint that is forty pages long, includes all (or virtually all) of the same lengthy factual allegations that they have asserted throughout this litigation, and contains not only a new claim under N.C.G.S. § 55-16-04 but also the same breach of fiduciary duty and breach of contract claims that the Court dismissed in its 15 September Order and Opinion.

12. In the exercise of its inherent discretion to control its docket and in furtherance of considerations of judicial economy, the Court **CONCLUDES** that Plaintiffs shall instead be permitted to file a Supplemental Complaint (bearing the above-referenced case number) against Cherry Oil pursuant to N.C.G.S. § 55-16-04 seeking an order allowing them to inspect and copy certain specified records of Cherry

Oil. Any such Supplemental Complaint shall be filed **within twenty (20) days of the date of this Order** and shall contain no additional claims for relief.⁴

CONCLUSION

THEREFORE, IT IS ORDERED as follows:

1. Defendants' Motion in the Cause for Court Supervision of Call of Shares is **DENIED** as moot;
2. Plaintiffs' Motion for Leave to Supplement the Second Amended Complaint is **GRANTED**, in part, and **DENIED**, in part, as set out above; and
3. Defendants' Motion in the Cause for Supervision of Additional Document Requests is **DENIED** as moot.

SO ORDERED, this the 14th of November, 2023.

/s/ Mark A. Davis

Mark A. Davis
Special Superior Court Judge
for Complex Business Cases

⁴ Nor shall the Supplemental Complaint contain any allegations other than those directly related to the new claim under N.C.G.S. § 55-16-04.