

STATE OF NORTH CAROLINA
LENOIR COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21CVS000343-530

ARMISTEAD B. MAUCK and
LOUISE CHERRY MAUCK,

Plaintiffs,

v.

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

Defendants.

**ORDER ON PLAINTIFFS’ MOTION
FOR COURT INTERVENTION TO
COMPLETE CALL OF SHARES**

THIS MATTER is before the Court on Plaintiffs Armistead B. Mauck and Louise Cherry Mauck’s (together, the “Maucks”) Motion for Court Intervention to Complete Call of Shares (“Motion,” ECF No. 223).

FACTUAL AND PROCEDURAL BACKGROUND

1. A more thorough recitation of the factual and legal issues previously addressed by the Court in this case can be found in its prior orders and opinions.

2. In a nutshell, the Maucks are minority shareholders of Defendant Cherry Oil Co., Inc. (“Cherry Oil”). In this lengthy and protracted litigation, the Maucks asserted numerous claims for relief against Defendants Julius P. “Jay” Cherry, Jr. and Ann B. Cherry, who, collectively, are the majority shareholders in Cherry Oil.

3. On 2 May 2022, the Court entered an Order and Opinion on Defendants’ Motion to Dismiss Second Amended Complaint (“2 May Opinion,” ECF No. 62) dismissing each of the Maucks’ claims in this case, except for their individual claims

for breach of fiduciary duty and breach of contract. *See Mauck v. Cherry Oil Co.*, 2022 NCBC LEXIS 39 (N.C. Super. Ct. May 2, 2022).

4. After extensive discovery, on 15 September 2023, the Court entered an Order and Opinion (“15 September Opinion,” ECF No. 113) granting summary judgment in favor of Defendants with respect to the Maucks’ remaining claims. *See Mauck v. Cherry Oil Co.*, 2023 NCBC LEXIS 112 (N.C. Super. Ct. Sept. 15, 2023).

5. The Maucks subsequently appealed to the Supreme Court of North Carolina with respect to this Court’s rulings in the 2 May and 15 September Opinions. (ECF No. 171.)

6. While their appeal was pending, the Maucks filed the present Motion on 28 August 2025 requesting that this Court intervene in the ongoing process regarding the appraisal of their shares in Cherry Oil pursuant to a “call” provision in the company’s shareholder agreement.

7. On 17 October 2025, our Supreme Court issued an opinion (ECF No. 229) affirming, as modified, the rulings in this Court’s 2 May and 15 September Opinions. *See Mauck v. Cherry Oil Co.*, 2025 N.C. LEXIS 861 (N.C. Oct. 17, 2025). The mandate issued from the Supreme Court on 6 November 2025. (ECF No. 231.)

ANALYSIS

8. The Court concludes that it lacks the authority to rule on the present Motion.

9. In its opinion, the Supreme Court stated that it was addressing a “[f]inal judgment” from the rulings of this Court. *Mauck*, 2025 N.C. LEXIS 861, at *9. *See*

Beam v. Morrow, 77 N.C. App. 800, 802 (1985) (noting that “[a] final judgment disposes of the cause as to all the parties, leaving nothing to be determined between them in [the] trial court”) (cleaned up).

10. As noted above, the Supreme Court then proceeded to affirm, as modified, this Court’s rulings in its 2 May and 15 September Opinions. *See Mauck*, 2025 N.C. LEXIS 861, at *21.

11. The Supreme Court did not remand the case back to this Court or otherwise direct this Court to take any additional action in this litigation.

12. It is a fundamental principle in this State that an appellate court’s “mandate is binding . . . and must be strictly followed without variation or departure. No judgment other than that directed or permitted by the appellate court may be entered.” *D & W, Inc. v. City of Charlotte*, 268 N.C. 720, 722 (1966) (cleaned up); *see also Lea Co. v. N.C. Bd. of Transp.*, 323 N.C. 697, 700 (1989) (holding that because a “mandate did not include a remand” instruction, the “trial court had no authority” over the matter) (cleaned up).

13. Were this not the case, “litigation would never be ended, and the supreme tribunal of the state would be shorn of authority over inferior tribunals.” *D & W Inc.*, 268 N.C. at 722–23.

14. As such, this case has finally reached its end. *See S. Rambler Sales, Inc. v. Am. Motors Corp.*, 375 F.2d 932, 938 (5th Cir. 1967) (“All things must end—even litigation.”), *cert. denied*, 389 U.S. 832 (1967). As a result, the Court does not possess the authority to rule on Plaintiffs’ present Motion.

CONCLUSION

THEREFORE, Plaintiffs' Motion for Court Intervention to Complete Call of Shares is **DISMISSED** without prejudice.

SO ORDERED, this the 17th day of November 2025.

/s/ Mark A. Davis

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