

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
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DEC 31 2002
BRENNAN V. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (23)

IN RE:

Greenwood Supply Company,

Debtor.

C/A No. 01-13697-W

Adv. Pro. No. 02-80303-W

Brantley M. Adams, Martha Adams,
Brantley M. Adams, Jr., Christine Scott
Adams, and Matthew Wilson Adams,

Plaintiffs,

JUDGMENT

Chapter 11

v.

Greenwood Supply Company, Joseph E.
Adams, Jr., Marian H. Adams, The Joseph E.
Adams, Jr. and Marian H. Adams Family
Partnership, Joe E. Adams, III, Michael A.
Adams, and Judith Adams Robinson,

Defendants.

ENTERED
DEC 31 2002
S. R. P.

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DISTRICT OF SOUTH CAROLINA

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court denies Greenwood Supply Company ("Debtor" or "GSC"), Joseph E. Adams, Jr., Marian H. Adams, The Joseph E. Adams, Jr. and Marian H. Adams Family Partnership, Joe E. Adams, III, Michael A. Adams, and Judith Adams Robinson's ("Defendants") motion for a directed verdict. It is further ordered that Debtor shall be dissolved. The Court will withhold a ruling regarding the Minority Shareholders' alternative remedies at this time. It is further ordered that Defendants breached their fiduciary duties by receiving maid service, certain loans, and a life insurance policy from Debtor. Joseph E. Adams, Jr., Marian H. Adams, The Joseph E. Adams, Jr. and Marian H. Adams Family Partnership, Joe E. Adams, III, Michael A. Adams, and Judith Adams Robinson (collectively, the "Majority Shareholders") are ordered to pay Debtor \$6,869.25 for maid

23

service, Joe E. Adams, III, is ordered to pay Debtor \$23,048.09 for the loan he owes it within thirty days, Michael A. Adams is ordered to pay Debtor \$1,699.01 for the loan he owes it within thirty days, and Joseph E. Adams, Jr. is ordered to change the beneficiary of the life insurance policy from himself to Debtor or to pay the cash value of the policy to Debtor within twenty days. It is further ordered that Debtor shall report all amounts paid and billed to it for attorneys' fees, expert witnesses' fees, costs, and other expenses for this case within ten days of this Order's entry.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
December 31, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to

DEC 31 2002

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R. PHIPPS

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Greenwood Supply Company,

Debtor.

Brantley M. Adams, Sr., Martha Adams,
Brantley M. Adams, Jr., Christine Scott
Adams, and Matthew Wilson Adams,

Plaintiffs,

v.

Greenwood Supply Company, Joseph E.
Adams, Jr., Marian H. Adams, The Joseph
E. Adams, Jr. and Marian H. Adams Family
Partnership, Joe E. Adams, III, Michael A.
Adams, and Judith Adams Robinson,

Defendants.

C/A No. 01-13697-W

Adv. Pro. No. 02-80303-W

ORDER

Chapter 11

ENTERED
DEC 31 2002
S.R.P.

THIS MATTER comes before the Court upon the First Amended Complaint filed by Brantley M. Adams, Sr., Martha Adams, Brantley M. Adams, Jr., Christine Scott Adams, and Matthew Wilson Adams (collectively, the "Minority Shareholders" or "Plaintiffs") seeking the judicial dissolution of Greenwood Supply Company ("GSC" or "Debtor") and/or the purchase of their GSC shares by Debtor and/or the individual defendants Joseph E. Adams, Jr., Marian H. Adams, The Joseph E. Adams, Jr. and Marian H. Adams Family Partnership, Joe E. Adams, III, Michael A. Adams, and Judith Adams Robinson (collectively, the "Majority Shareholders") pursuant to S.C.

Code Ann. §33-14-300 (Law. Co-op. 1990).¹ In addition, the Minority Shareholders sue derivatively and seek on behalf of GSC an accounting as well as an order requiring the Majority Shareholders to repay GSC for the excessive compensation and the wasteful amounts they have taken from GSC. In response to these claims, the Majority Shareholders deny acting oppressively or that they have breached their fiduciary duties. In addition, the Majority Shareholders raise the affirmative defenses that the statute of limitations or laches bars Plaintiffs' ability to bring the derivative action. Further, at trial, the Majority Shareholders moved for a directed verdict arguing that the Minority Shareholders failed to prove their claims as a matter of law. After considering the pleadings, pre-trial memoranda of law, the evidence, and counsel's arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Federal Rule of Civil Procedure 52, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7052.²

FINDINGS OF FACT

1. All of the parties in this adversary proceeding except Debtor are shareholders in GSC, a family-held business located in Greenwood, South Carolina. GSC sells industrial supplies and retail sporting goods.
2. The primary litigants in this adversary proceeding are two brothers, Plaintiff Brantley M. Adams, Sr. ("Brant") and Defendant Joseph E. Adams, Jr. ("Joebie"). Brant does not work for GSC. He is a practicing psychologist who lives in Florence, South Carolina and is 62 years of age. Joebie, 69 years of age, works for GSC. The other shareholder Plaintiffs and Defendants are family

¹ For clarity, the Court will use first names when referring to the individual parties.

² The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any of the following Conclusions of Law constitute Findings of Fact, they are so adopted.

members of Brant and Joebie respectively.

3. Joebie, Joe E. Adams, III (“Joey”), Michael A. Adams (“Mike”), Marian H. Adams (“Marian”) and The Joseph E. Adams, Jr. and Marian H. Adams Family Partnership (the “Family Partnership”) own 76.26% of GSC’s stock.

4. Brant, his wife, and their children own the remaining shares of GSC.

5. GSC has been operating for over 68 years. One of its founders was Joe E. Adams, Sr., Joebie and Brant’s father. Joe E. Adams, Sr. managed GSC’s daily operations and owned one-half of the stock while his brother, L.B. Adams, Sr., owned the other half and served on the board of directors.

6. Joe E. Adams, Sr. hired Joebie to work for GSC full-time in 1957 while Brant was still in high school.

7. Joe E. Adams, Sr. died in December 1965. Shortly thereafter, GSC began paying Brant \$300 per month as consulting fees to assist Brant while he was attending graduate school. Brant did not perform any services for GSC in consideration of the fees he received.

8. Also after Joe E. Adams, Sr. died, Joebie assumed the management of GSC’s daily operations. Brant and Joebie each inherited one-fourth of their father’s stock, and their mother, Christine B. Adams, inherited one-half. L.B. Adams, Sr. died in 1986 leaving his half of the total stock to a trust controlled by his son, L.B. Adams, Jr. Thereafter, until 1990, Christine B. Adams, L.B. Adams, Jr., and Joebie served on the board of directors. In late 1990, Christine B. Adams suffered a brain injury that made her incapable of serving on the board.

9. From at least 1974 through 1989, the board paid dividends to all shareholders. In late 1990, Joebie informed Brant that GSC could no longer afford to pay dividends. No dividends have been paid to any shareholder since that time.

10. By 1990, Joebie's two sons, Joey and Mike, were working for GSC. Specifically, in 1990, Joey became Vice President of Retail Operations supervising the company's branches in Greenwood, Belton, and Anderson. Since 1999, Joey has served as Co-President of GSC. In 1990, Mike became Vice President of Sales, and, since 1999, he has served as Co-President of GSC. Joebie, Joey, and Mike continue to work for GSC, and the following tables represent their compensation since 1990:

JOEBIE ADAMS

<u>Date</u>	<u>Salary</u>	<u>Year End Bonus</u>	<u>Salary + Bonus</u>	<u>GSC Sales</u>
1990			75,420	\$6,738,086
1991			80,400	6,473,686
1992	86,729	20,000	106,729	6,818,162
1993	81,493	22,000	103,493	7,308,215
1994	82,100	12,000	94,100	7,060,608
1995	82,100	42,000	124,040	7,115,821
1996	82,100	10,000	92,100	6,140,137
1997	82,100	50,000	132,100	6,456,254
1998	82,100	25,000	107,100	5,558,436
1999	14,469	1,000	15,469	5,068,959
2000	14,469	50,000	64,580	5,467,415
2001	14,469	50,000	64,580	4,909,807

JOEY ADAMS

<u>Date</u>	<u>Salary</u>	<u>Year End Bonus</u>	<u>Salary + Bonus</u>	<u>GSC Sales</u>
1990			21,250	\$6,738,086
1991			30,800	6,473,686
1992	36,877	10,000	46,877	6,818,162
1993	30,637	15,000	45,637	7,308,215
1994	36,576	14,000	50,576	7,060,608
1995	34,830	39,000	73,830	7,115,821
1996	34,830	10,000	44,830	6,140,137

1997	34,830	50,000	84,830	6,456,254
1998	34,830	0	34,830	5,558,436
1999	50,265	13,500	63,765	5,068,959
2000	53,940	1,000	54,940	5,467,415
2001	53,940	1,000	54,940	4,909,807

**MICHAEL
A. ADAMS**

<u>Date</u>	<u>Salary</u>	<u>Year End Bonus</u>	<u>Salary + Bonus</u>	<u>GSC Sales</u>
1990			34,340	6,738,086
1991			42,000	6,473,686
1992	48,076	10,000	58,076	6,818,162
1993	41,827	15,000	56,827	7,308,215
1994	47,337	14,000	61,337	7,060,608
1995	46,260	39,000	85,260	7,115,821
1996	46,260	10,000	56,260	6,140,137
1997	46,260	50,000	96,260	6,456,254
1998	46,260	12,500	58,760	5,558,436
1999	71,760	1,000	72,760	5,068,959
2000	71,760	1,000	72,760	5,467,415
2001	71,760	1,000	72,760	4,909,807

11. GSC's practice of paying deferred compensation or year-end bonuses has been in effect for many years dating to when Joe E. Adams, Sr. managed the company. GSC typically sets executives' salaries very low in order to allow the company to use the money until paying deferred compensation or a bonus in the following year. Until 1994, the practice of paying deferred compensation was approved by a board of directors that included non-employees Christine B. Adams (until 1990), L.B. Adams, and/or L.B. Adams, Jr. Also until 1994, L.B. Adams, Jr. had the largest interest in the company.

12. Each year, Brant received a copy of GSC's tax returns. The total compensation paid to Joebie, Joey, and Mike is clearly shown each year on the tax returns. Even though Brant received these tax returns, he never objected to the compensation until he filed this lawsuit.

13. Following his mother's illness in 1990, Joebie held a power of attorney to transfer her assets as gifts. In accordance with her wishes, Joebie transferred one-half of her interest in GSC to his family and one-half of her interest to Brant's family. Thus, until late 1994, the ownership of GSC was the following: the Majority Shareholders owned approximately one-fourth, the Minority Shareholders owned approximately one-fourth, and the L.B. Adams Trust owned approximately one-half.

14. In 1994, the parties discussed Brant's selling his and his family's GSC shares to Joebie. After obtaining a valuation of GSC from Elliott Davis that concluded GSC was worth \$2,692,194 or \$1,459 per share of the 1845 shares outstanding, Joebie offered to purchase Brant's family's shares for \$700 per share.

15. On September 15, 1994, Brant requested a copy of the Elliott Davis appraisal, but Joebie did not provide it. Consequently, Brant hired his own accountant to value GSC. Based upon the information available, Brant's accountant estimated GSC to be worth \$2,763,512 with the common shares worth \$1,100 per share.

16. On November 23, 1994, Brant offered to sell his shares to Joebie for \$1,100 per share.

17. On November 29, 1994, the Family Partnership purchased the GSC stock held by the L.B. Adams Trust for \$802 per share. With this purchase, the Majority Shareholders increased their ownership interest in GSC to 76.26%, the same amount of interest they currently hold.

18. Joebie did not disclose to Brant his negotiations to purchase GSC stock from the L.B. Adams

Trust.

19. On December 1, 1994, Joebie rejected Brant's offer to sell his GSC shares. Joebie cited rising interest rates as preventing him from purchasing Brant's shares at any price. In addition, Joebie noted that, for any potential sales in the future, he hoped Brant would consider the limited market for the shares and discount his sales price accordingly.

20. Also on December 1, 1994, Joebie informed Brant that he would no longer receive \$300 per month as consulting fees from GSC. Joebie testified that an accountant had informed him such payments, without Brant performing any services for GSC, were improper dividends and subject to question.

21. On December 8, 1994, Brant informed Joebie that he could not attend an upcoming shareholders' meeting scheduled for December 12, 1994 because of inadequate notice. In addition, Brant requested copies of GSC's articles of incorporation, bylaws, minutes of shareholders' and directors' meetings, information regarding compensation paid to directors and officers, and copies of monthly profit and loss statements.

22. On December 12, 1994, a stockholders' meeting was held. At this meeting, Joey, Mike, and Marian were elected as new directors.

23. For her service on the board of directors, Marian received \$2,900 in directors' fees (\$100.00 per directors meeting she attended) from 1994 to 1998. When Marian became employed by GSC, she stopped receiving directors' fees.

24. On December 14, 1994, Joebie, by letter, invited Brant's participation on the board of directors, but he provided little, if any, of the information Brant requested. Joebie wrote that GSC did not have articles of incorporation and that the bylaws were missing. He told Brant that copies

of the minutes were kept at GSC and that Brant could review them at any time. He also told Brant that GSC did not maintain monthly profit and loss statements.

25. On January 30, 1995, Brant informed Joebie that he could not serve on GSC's board of directors unless the meetings were held on the weekend days of Saturday or Sunday because he was otherwise fully occupied with his medical practice. Brant repeated his request for GSC's corporate and financial information.

26. On February 18, 1995, Joebie responded to Brant's request for information. Again, he wrote that no articles of incorporation existed and that the bylaws were missing.

27. On March 2, 1995 and after receiving a letter from Brant's attorney, Joebie repeated that he hoped Brant would serve on the board of directors but that the meetings needed to be held on a weekday, not Saturdays or Sundays as Brant requested. Joebie also promised to provide an annual financial statement to Brant.

28. From 1995 forward, discussions about purchasing the Minority Shareholders' stock continued. Periodically, the Minority Shareholders would request information about GSC like financial information and account details, but the Majority Shareholders claimed such documents did not exist, sent only partial or incomplete information, or refused to send the requested information.

29. In late 1996, Dillon Supply Company ("Dillon") approached GSC and offered to purchase its accounts receivable, inventory, real property at the corporate location, furniture, and fixtures for \$2,400,000. After receiving this offer, GSC hired Elliott Davis to value it, which resulted in a valuation of GSC at over \$4,000,000, and The Ridgeway Company to value GSC's real property at the corporate location. Dillon then increased its offer to \$3,013,746. GSC made a counteroffer,

Dillon rejected it, and the negotiations ended.

30. Neither the Majority Shareholders nor Debtor disclosed the potential Dillon sale to the Minority Shareholders, nor did they disclose the appraisals used during the negotiations with Dillon.

31. In March 1997, the Majority Shareholders obtained another appraisal from Elliott Davis, which valued GSC at over \$4,000,000. The Majority Shareholders did not disclose this appraisal to the Minority Shareholders.

32. In 1997, Joebie hired Elease Davis ("Davis") to work for GSC as a janitor. Davis formerly worked as a caretaker for Joebie and Brant's mother, and, after Christine B. Adams passed away, Davis could not find similar employment. With GSC, Davis worked approximately one-half day per week cleaning at the corporate location. For three other one-half days per week, Davis cleaned the homes of Joebie, Joey, and Mike. This practice continued until 1999 when Davis found other employment. GSC paid Davis a total of \$9,159 for these services.

33. In 1997, Joebie, Joey, and Mike received double bonuses. According to Joebie, the law changed in 1996 and prevented a company from accruing compensation in one year and paying it in the following year. Thus, in 1997 the three were paid most of the 1996 accrued bonus as well as the 1997 bonus.

34. Since 1998, Marian has been employed by GSC as Joebie's assistant and secretary. Prior to that time, she worked for GSC as a substitute for an employee on maternity leave. Since 1998 and through September 7, 2002, she has received \$35,765 in total salary. The testimony introduced at trial established that Marian worked several hours for GSC performing a variety of tasks.

35. In October 1998, Debtor engaged Elliott Davis to calculate a hypothetical fair market value of 100% of the common stock and a single share within the Minority Shareholders' bloc. Elliott

Davis hypothetically valued GSC as worth \$2,877,387 and a single minority share as worth \$772.

36. On January 21, 1999, Joebie resigned as President of GSC. The minutes of the directors' meeting reflect that Joebie would be semi-retired. Joey and Mike were elected as Co-Presidents of GSC.

37. On February 9, 1999, Joebie suggested that he convey his one-half interest of property that he jointly owns with Brant (the Power House Road Property) to Brant in exchange for Brant's shares of GSC.

38. On February 24, 1999, Brant's attorney responded that Brant would consider selling his stock for fair value. Because additional information was needed to determine the fair value of the shares, Brant's attorney requested Joebie to authorize Elliott Davis to release the financial information it had relating to GSC to him.

39. On August 2, 1999, Joebie's attorney mailed Brant's attorney a copy of a July 23, 1999 Elliott Davis hypothetical valuation. This valuation again calculated a hypothetical fair market value of 100% of the common stock and a single share within the Minority Shareholders' bloc. Elliott Davis hypothetically valued GSC as worth \$2,690,737 and a single minority share as worth \$722.

40. On November 4, 1999, the Minority Shareholders filed this lawsuit in the Court of Common Pleas in Greenwood County, South Carolina.

41. In recent years, many textile mills in this area of South Carolina closed including Clinton Mills, Spartan Mills, Inman Mills and, recently, most of Greenwood Mills. The decline of the textile industry is one of the reasons why GSC's business has suffered in recent years.

42. In addition, GSC's retail sporting goods business has recently suffered by the location of strong, large-scale competitors in Greenwood. Also, in 1994, the company reported to law

enforcement officials that certain high school coaches were seeking illegal kickbacks; consequently, some of these coaches were discharged and others faced criminal prosecution. GSC's reporting the wrongdoing caused some coaches to resent GSC, which affected its retail sporting goods business.

43. In the last five years, GSC's sales have declined, and, in 2001, GSC lost \$118,885.

44. On December 10, 2001, GSC paid Joebie \$33,000 for part of a loan it owed Joebie.

45. On December 19, 2001, the Minority Shareholders' lawsuit was scheduled to go to trial in the Court of Common Pleas in Greenwood County, South Carolina.

46. On December 19, 2001, GSC filed its Chapter 11 petition and since that time has been operating as a debtor-in-possession.

47. As part of its regular course of business, GSC has provided a variety of benefits to the Majority Shareholders. Since 1957, GSC has paid the premiums on a life insurance policy covering Marian of which Joebie is the sole beneficiary. In addition, as employees of GSC, the Majority Shareholders receive cellular phones and medical insurance, and GSC pays for these expenses.

48. Historically, GSC has made loans to shareholders and employees alike at a charge of 7% interest. As president, Joebie would authorize the loans. As of September 11, 2002, Joey and Mike had outstanding, unsecured loans from GSC at 7% interest. Joey owed \$23,048.09, and Mike owed \$1,699.01. There is no evidence that any employee or shareholder loans were formally approved by shareholders or the board of directors.

49. Conversely, the Majority Shareholders have loaned money to GSC at various times at the same 7% interest rate. For example, in July 1989, Joebie loaned GSC \$35,000, and, as of September 1, 2002, GSC owed \$74,479.45 on this obligation. In October 2000, Joebie loaned GSC an additional \$40,000 in a separate obligation, and, as of October 10, 2001, GSC owed \$27,842.77 for

this obligation.

50. Debtor and the Majority Shareholders have agreed to an order requiring the judicial dissolution of Debtor and that all of the assets of GSC will be collected and sold in this bankruptcy proceeding. Upon consummation of this sale, GSC will be formally dissolved.

CONCLUSIONS OF LAW

I. Defendants' Motion for Directed Verdict

At the close of the Minority Shareholders' case, the Majority Shareholders moved for a judgment as a matter of law. The Majority Shareholders assert that the Minority Shareholders failed to present evidence of oppression that would entitle them to relief under the judicial dissolution statute and that the Minority Shareholders failed to make a required demand upon GSC to remedy the alleged breaches of fiduciary duty and misappropriations of corporate funds before bringing the derivative action. At trial, the Court denied the motion as it relates to judicial dissolution and took under advisement the motion as it relates to the derivative causes of action.

After reviewing this issue, the Court denies the remainder of Defendants' motion. The Minority Shareholders plead particularized facts in their First Amended Complaint to support the assertion that a demand upon GSC's board of directors would have been futile.

The Majority Shareholders cite Carolina First Corp. v. Whittle, 539 S.E.2d 402 (S.C. Ct. App. 2000) in support of their argument that the Minority Shareholders were required to make a demand upon them. That case, however, is distinguishable because the plaintiffs there "d[id] not allege that any member of the Board other than Whittle and Sebastian had any improper motive or participated in any self-dealing or fraud. Taking [plaintiff's] allegations as true, the vast majority of the directors received nothing of value from the . . . [alleged] self-dealing or fraud." Id., 539

S.E.2d at 412. Here, by contrast, the derivative claim challenges the salaries, bonuses, and benefits of all four of the directors so that the entire board would have had conflicts of interest in addressing any demand. The Carolina First Court expressly recognized applicable case law holding that demand is futile when the entire board has a conflict of interest. See id.

Unlike the plaintiff in Carolina First, the Minority Shareholders have alleged self-interest (in that the Majority Shareholders are the wrongdoers and cannot be expected to sue themselves) and control (in that the Majority Shareholders clearly have actual control over the Board's decisions), and those facts are undisputed. Additionally, the Supreme Court of South Carolina has approvingly observed, "In evaluating the 'excuse' allegations in a derivative suit, 'Courts have generally been lenient in excusing demand.'" Grant v. Gosnell, 223 S.E.2d 413, 415 (S.C. 1976) (quoting DeHaas v. Empire Petroleum Co., 435 F.2d 1223 (10th Cir. 1970)). Therefore, the Minority Shareholders did not have to demand of GSC or the Majority Shareholders that they pursue the derivative claim against themselves because of the futility of demanding such action.

II. Judicial Dissolution

As previously noted, the Minority Shareholders in their First Amended Complaint primarily seek to compel the Majority Shareholders and/or GSC to purchase their shares of GSC at a fair value in lieu of judicial dissolution. See S.C. Code Ann. §33-14-310(d) (Law. Co-op. 1990). When the Minority Shareholders filed their complaint, GSC was apparently profitable in operating its business. Yet, on December 19, 2001, GSC filed its bankruptcy Petition. As part of the bankruptcy case, Debtor and the Majority Shareholders have stipulated to an order requiring judicial dissolution. Further, the Court finds that, based upon its review of the evidence, there are sufficient grounds under S.C. Code Ann. §33-14-300(2) (Law. Co-op. 1990) to order the judicial dissolution of GSC.

Pursuant to S.C. Code Ann. §33-14-105 (Law. Co-op. 1990), a corporation in the process of dissolution continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs. These activities include the sale and collection of assets and the payment of liabilities. At this point in the proceedings, the Majority and Minority Shareholders agree that a sale of Debtor as a going concern may provide the best value for the purpose of dissolution. The Bankruptcy Court is a specialized court in these activities and can properly and promptly preside over a corporation in the process of dissolution. In fact, no court is better suited to administer a dissolution because debtors in bankruptcy have unique powers like the ability to reject executory contracts and avoid certain liens that can benefit them while dissolving.

At the trial of this action, the Minority Shareholders seek as an alternative to dissolution the buyout of their shares, and they prefer a valuation date that coincides with the highest value of GSC, no matter how distant in time from this proceeding. While the Court recognizes this bankruptcy case was filed on or about the trial date of the state court proceeding commenced by the Minority Shareholders, the Court is convinced that Debtor's business has suffered significant losses as a result of the decline of the textile industry and competition from large-scale retailers and therefore legitimately filed for bankruptcy relief. In as much as it is not apparent that Debtor filed to manipulate the value to be paid to the Minority Shareholders, the Court believes that a court-supervised dissolution process is the appropriate remedy at this time for the claims asserted by the Minority Shareholders under the judicial dissolution statute.

At this point in the case, the parties have agreed upon an independent and experienced business broker, minimum marketing prices, and other terms for the sale of Debtor's significant assets, and sales efforts have commenced. The Court notes that the plan filed by the Minority

Shareholders on September 20, 2002 calls for exactly this type of sales process over a six month period. As long as there is such a viable and agreed upon process to realize the best value through a liquidation and collection of Debtor's assets, it is unnecessary to consider the alternative dissolution remedies sought by the Minority Shareholders.

The Court is aware of the Minority Shareholders' concern that only the Majority Shareholders have the interest, inside position, and unique knowledge of this business' niche to be the successful purchaser at any bankruptcy sale of assets. However, this concern is best tested by the competent and independent marketing of the assets and a thorough and open review of any sale proposals by creditors and this Court. A status hearing on these marketing and sales efforts is scheduled for January 3, 2003. Therefore, the Court will withhold further order regarding any alternative relief under the judicial dissolution statute until such time as it reviews the marketing and sales efforts.

III. Derivative Causes of Action

In the Minority Shareholders' First Amended Complaint, they assert a derivative cause of action on behalf of GSC based upon the Majority Shareholders' alleged breach of fiduciary duties. The Minority Shareholders seek an accounting as well as the restoration of the corporate assets the Majority Shareholders wasted through self-dealing. Specifically, the Minority Shareholders allege that the Majority Shareholders wasted GSC's corporate assets by paying for the following: (1) year-end bonuses to Joebie, Joey, and Mike since 1990, (2) personal maid service for Joebie, Joey, and Mike, (3) unauthorized loans to Joey and Mike, (4) director's fees and wages to Marion even though she performed no work for GSC, (5) a preferential payment to Joebie for his unsecured loan to GSC, (6) attorneys' fees, expert witnesses' fees, costs, and other expenses GSC paid in defense of the

Minority Shareholders' lawsuit, and (7) sundry benefits for the Majority Shareholders. According to Plaintiffs, these acts of self-dealing and corporate waste constitute a breach of their fiduciary duties as directors, officers, and majority shareholders of GSC pursuant to S.C. Code Ann. §§33-8-300(a) and -420(a) (Law. Co-op. 1990).

The standard by which corporate directors and officers are obligated to discharge their duties is established in the South Carolina Business Corporations Act of 1988. See S.C. Code Ann. §§33-8-300 and -420 (Law. Co-op. 1990). These statutes apply to parties in the capacities of directors and officers and not to parties in the capacity of controlling shareholders. Pursuant to these provisions, directors and officers are to perform their duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation and its shareholders. See id. If a director or officer complies with the standard outlined in these statutes, then a director or officer is not liable for any action taken while in either position. See S.C. Code Ann. §§33-8-300(d) and -420(d) (Law. Co-op. 1990); see also Lesesne v. Lesesne, 413 S.E.2d 847, 848 (S.C. Ct. App. 1992) (noting that anyone acting in a fiduciary relationship shall not be permitted to make use of that relationship to benefit his or her personal interests).

The Court has reviewed the evidence in the record, and its specific findings are outlined infra according to each allegation raised by the Minority Shareholders.

Year-End Bonuses

The Minority Shareholders argue that the year-end bonuses GSC paid Joebie, Joey, and Mike

since 1990 are excessive.³ The Minority Shareholders assert that these bonuses escalated after the board of directors stopped declaring dividends and after the board stopped paying Brant the monthly consulting fees he had received since the 1960s. Moreover, the Minority Shareholders claim that these bonuses are unwarranted because they effectively increased compensation when there was no accompanying increase in job duties. Finally, the Minority Shareholders argue that these bonuses continued even when sales began to decline sharply.

The Court believes that the payment of bonuses as part of the Majority Shareholders' overall compensation is not a breach of fiduciary duty. The Court reaches this conclusion for three reasons. First, the Court finds credible the explanation offered by Defendants that these bonuses were like a deferral of salary. By deferring portions of salary until the end of the year, GSC benefitted because it was able to use the money throughout the year. Cf. Mortimer v. D.T. McKeithan Lumber Corp. et al., 120 S.E. 723, 745 (S.C. 1923) (finding salary increases after a change in stockholder control were excessive because there was no justification for the salary increases); McDuffie v. O'Neal, 476 S.E.2d 702, 707 (S.C. Ct. App. 1996) (finding pay raises and large bonus were misappropriations

³ The Minority Shareholders object to the Majority Shareholders introducing pages 66-67 and Exhibit 5 of Gary Mathes's deposition on the grounds of hearsay. Exhibit 5 is a report detailing chief executive officer compensation for miscellaneous general merchandise stores located in the Charlotte, North Carolina area and pages 66-67 include Mathes's discussion of this report. The Majority Shareholders argue that this portion of the deposition should be admitted into evidence because it is not being offered for the truth of the matter asserted but to prove that the Minority Shareholders' expert reviewed information indicating that the Majority Shareholders were not paid excessively.

The Court sustains the Minority Shareholders' objection and finds that the report and deposition testimony concerning it are hearsay. See In re Hidden Lake Ltd. P'ship, 247 B.R. 722, 724 (Bankr. S.D. Oh. 2000) (holding that deposition testimony of an expert retained but not called by a party was inadmissible hearsay with the party's objection); see also Fowler v. Jenkins (In re Jenkins), 258 B.R. 251, 258 (Bankr. N.D. Ala. 2001) (noting that depositions are hearsay).

of corporate assets when they were unsubstantiated). Further, upon examining the overall compensation, the Court finds that the Majority Shareholders' compensation was not unreasonable. The only evidence presented on the issue indicates that the compensation was generally within the range of two Industrial Distribution Association reports concerning executive compensation for similar companies.⁴ Moreover, the Minority Shareholders presented no expert testimony or other evidence to shed light on this issue or otherwise lead the Court to conclude that the compensation was excessive. See, e.g. Kreisler v. Kerrison Dry Goods Co., Nos. 97-1230, 97-1800, 1999 WL 30836, at **5-6 (4th Cir. Jan. 26, 1999) (examining an allegation of improper disbursements from a corporation to majority shareholders and concluding that justified or substantiated compensation to majority shareholders of a corporation for business advice was not a breach of fiduciary duty under S.C. Code Ann. §§33-8-310 and -320 (Law. Co-op. 1990)). Finally, when comparing the

⁴ For data compiled for 1997, the Majority Shareholders received above-average compensation. For companies with sales revenue similar to GSC, the average compensation for a president/CEO was \$113,777, a vice president/second officer was \$92,000, the chief financial officer was \$56,759, and the sales manager/chief marketing officer was \$72,240. Comparing these figures to the Majority Shareholders' compensation, the Court notes that Joebie received \$132,100 as President/CEO, Joey received \$84,830 as Vice President of Retail Operations, and Mike received \$96,260 as Vice President of Sales. The Court also notes that 1997 is the year when, according to Joebie's testimony, GSC had to pay "double bonuses" because the law changed and prevented GSC from accruing compensation in one year and paying it in the following year.

For data compiled for 1999, the Majority Shareholders received below-average compensation. For companies with sales revenues similar to GSC, the average compensation for a president/CEO was \$94,752, vice president/second officer was \$80,000, chief financial officer was \$53,963, and chief marketing officer was \$64,000. As Chairman, Joebie earned \$15,469, Joey earned \$63,765 as Co-President, and Mike earned \$72,760 as Co-President.

The Court was also presented with data for 1993 and 1995; however, it was not as complete as that for 1997 and 1999. Based on the information presented regarding comparable compensation for 1997 and 1999, the Court believes that the Majority Shareholders received reasonable compensation.

amount of compensation with the amount of GSC's sales, the Court concludes that compensation generally reflected revenue. For example, in 1997, when GSC had sales totaling approximately \$6.4 million, Joebie earned \$132,100, Joey earned \$84,830, and Mike earned \$96,260. In 2000, when sales declined to approximately \$5.4 million, the Majority Shareholders' compensation decreased accordingly as Joebie earned \$64,580, Joey earned \$54,940, and Mike earned \$72,760. For these reasons, the Court finds no breach of fiduciary duty based upon the Majority Shareholders' receipt of compensation from GSC.

Alternatively, the Court believes that the statute of limitations bars the Minority Shareholders from asserting a cause of action based upon S.C. Code Ann. §§33-8-300(a) and -420(a) (Law. Co-op. 1990) for the years 1990 through 1996. These statutes provide that an action against a director or officer for failing to perform the duties imposed by these sections must be commenced within three years after the cause of action has accrued or within two years after the time when the cause of action is discovered or should reasonably have been discovered, whichever occurs sooner. The statute concludes by providing that the limitations period does not apply to breaches of duty that have been concealed fraudulently.

In this instance, the Minority Shareholders allege waste and self-dealing based upon Joebie's, Joey's, and Mike's compensation. The Minority Shareholders, however, knew or should have known about this compensation by virtue of GSC's yearly tax returns, which the Minority Shareholders agree they received. Accordingly, if the Minority Shareholders believed the Majority Shareholders breached their duties as directors or officers because of Joebie's, Joey's, or Mike's compensation, the law required them to assert these claims within two years after the breach was discovered. Although the Court concludes that the Majority Shareholders did not breach their

fiduciary duty, the Court further finds that, because of the statute of limitations, the Minority Shareholders could only assert a claim for breaches of fiduciary duty pursuant to S.C. Code Ann. §33-8-300 and based upon Joebie's, Joey's, and Mike's compensation for 1997 forward. The attempt to recover compensation pursuant to this statute is barred for the years 1990 through 1996.⁵ See, e.g. Roof v. Swanson, 543 S.E.2d 278, 281 (S.C. Ct. App. 2001) (interpreting §33-8-300(e) literally, holding that a plaintiff must commence a suit within three years after the cause of action accrues or two years after the date the plaintiff discovers or reasonably should discover the breach with whichever period occurring or expiring first controlling, and finding an action for breach of fiduciary duty was barred when the plaintiff brought it over two years after the plaintiff discovered the breach).

Maid Service

The Minority Shareholders allege that GSC paid for maid service for Joebie, Joey, and Mike. The Court finds that this allegation is substantiated as, from 1997 through part of 1999, GSC paid Elise Davis ("Davis") to perform janitorial or cleaning services for GSC and the Majority Shareholders. Davis worked one-half day per week at GSC as a janitor, and, for three other one-half days per week, she cleaned the residences of Joebie, Joey, and Mike. As total compensation for this

⁵ As to the Minority Shareholders' other claims of fiduciary breaches by directors or officers because of self-dealing or corporate waste, the Court concludes that the statute of limitations imposed by S.C. Code Ann. §33-8-300(e) does not apply. Indeed, the statute provides that, for breaches that have been concealed fraudulently, the limitations period is tolled. The Court finds that the Minority Shareholders did not learn of the activities that compose their other allegations of breaches of fiduciary duty (maid service, improper loans, Marian's compensation, and sundry benefits) until discovery was conducted for this trial.

cleaning work from 1997 through June 1999, GSC paid Davis \$9,159.⁶

Although the Majority Shareholders admit that Davis performed work for them personally but that GSC paid for this benefit, they explain that their family has a significant connection with Davis. Specifically, Davis worked as a caretaker for Joebie and Brant's mother, Christine B. Adams, until Ms. Adams passed away. When Ms. Adams died, Davis could not find other employment. Because Joebie appreciated Davis's care for his mother, Joebie hired Davis to work as a janitor for GSC as well as for some of the Majority Shareholders until Davis could find other employment. This arrangement ended in 1999 when Davis began working at Fuji.

While Defendants provide a sympathetic explanation for their actions, the Court concludes that GSC's paying for maid service for the residences of Joebie, Joey, and Mike could not be in the best interests of the corporation and its shareholders. Indeed, the maid service is an unfair benefit received by the Majority Shareholders alone, and the Majority Shareholders should return the amount of this benefit to GSC. The Court concludes that the Majority Shareholders received 75% of Davis's cleaning services and that they should return \$6,869.25 to GSC, which is 75% of the amount GSC paid Davis.⁷

Loans to Majority Shareholders from GSC

⁶ The Court admitted into evidence Davis's 1998 and 1999 W-2 forms that reflect that she earned \$4,920.83 from GSC in 1998 and \$2,369.81 in 1999. Davis's 1997 W-2 was not introduced into evidence; however, the Court accepts Joebie's testimony that Davis worked for GSC in 1997 and that she was paid \$9,159 for her work from March 1997 through June 1999.

⁷ Davis received total compensation for March 1997 through June 1999 of \$9,159. She cleaned in equal amounts for GSC, Joebie, Mike, and Joey. The Court does not believe that Defendants should repay the corporation for the benefit the corporation received. Instead, Majority Shareholders should repay the benefit they received, which was 75% of Davis's services, and 75% of \$9,159 is \$6,869.25.

The Minority Shareholders complain that the Majority Shareholders have used GSC as their personal bank where, at any time, the Majority Shareholders can loan the corporation money and receive 7% interest or obtain a loan from the corporation with a 7% interest charge. Specifically, the Minority Shareholders argue that loans from GSC to Joey and Mike create a conflict of interest and that Joey and Mike should repay these amounts to GSC.

The evidence supports the conclusion that GSC at times served a bank-like function. Joebie testified that he believed he could act on behalf of the corporation and offer loans to employees and shareholders alike at 7% interest. Susan Davis, GSC's bookkeeper, confirmed that the company's practice is to make loans available to all employees and shareholders, and both Joey and Mike admitted they received loans from GSC in the past and that they owe GSC for current loans. The evidence also indicates that these transactions are informal. No notes are executed, no security is pledged as collateral, and the person who decides whether GSC will lend money is solely Joebie. GSC, however, maintains detailed repayment schedules and records for the loans it extends and requires repayment through payroll deductions.

Currently, Joey owes GSC for a \$20,000 loan he received in January 1999. As of September 11, 2002, the balance owed on this loan is \$23,048.09. Likewise, in 1998, Mike received two loans from GSC that total \$9,000. As of September 11, 2002, the balance owed on these loans is \$1,699.01.

The Minority Shareholders are correct that these loans could evidence a breach of fiduciary duty. The South Carolina Business Corporation Act of 1988 provides that a corporation may not directly or indirectly lend money to a director or officer of the corporation unless (1) a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group,

except the votes of shares owned by or voted under the control of the benefitted director, approves the loan, or (2) the corporation's board of directors determines that the loan benefits the corporation and approves either the specific loan or a general plan authorizing loans. See S.C. Code Ann. §33-8-320(a) (Law. Co-op. 1990); see also S.C. Code Ann. §33-8-310 (Law. Co-op. 1990) (including officers under the same standard as directors for conflicts of interest). In this case, there is neither evidence of a majority vote (excluding Joey and Mike when appropriate) by the shareholders nor a determination by the board of directors approving these loans. The only form of authorization for these loans is Joebie's approval; however, authorization by one person does not satisfy the conflict of interest requirements as outlined in S.C. Code Ann. §33-8-320(a) (Law. Co-op. 1990).⁸ Because the statute's requirements are not satisfied, the Court believes Joey and Mike breached their fiduciary duties and that they should repay the respective amounts they owe to GSC (Joey: \$23,048.09 and Mike: \$1,699.01). The Court recognizes that Joey and Mike do not dispute their obligation to repay these loans, which regularly occurs through payroll deductions, but requires the repayment of these loans within thirty days.

Marian's Director's Fees and Wages

The Minority Shareholders seek the return of Marian's director's fees and wages because the Minority Shareholders assert that she does no work for GSC. Specifically, the Minority Shareholders want Marian to return the \$2,900 she earned as director's fees for attending meetings from 1994 through 1997 as well as the wages she earned from 1998 to the present, which totals approximately \$35,765.

⁸ The evidence indicates that Joebie authorized the three loans. Joey testified that Joebie approves all loans GSC extends. Documents indicate that Joebie approved the two loans from GSC to Mike in 1998.

The Court concludes that director's fees of \$100 per meeting is not excessive.⁹ Further, the Court finds that Marian works for GSC. The only evidence before the Court persuades it that Marian performs secretarial tasks for Joebie, makes travel arrangements, delivers goods for GSC, participates in customer relations promotions, and chips in generally to fulfill GSC's needs. Because Marian works for GSC and her salary is relatively modest, the Court concludes that GSC's compensating her is not a waste of corporate assets and thereby finds no breach of fiduciary duty.

GSC's Payment to Joebie on the Eve of Bankruptcy

As stated earlier, GSC has a history of lending money to employees and shareholders as well as receiving loans from shareholders. Currently, GSC owes Joebie for two loans. In July 1989, Joebie loaned GSC \$35,000, and, as of September 1, 2002, GSC owed \$74,479.45 for this obligation (the "First Obligation"). In October 2000, Joebie loaned GSC an additional \$40,000 in a separate obligation, and, as of October 10, 2001, GSC still owes \$27,842.77 on this obligation (the "Second Obligation").¹⁰

On December 10, 2001, Joebie received a check for \$33,000 from GSC toward the payment of the First Obligation. The Minority Shareholders attack this transaction and argue that Joebie should repay this amount to GSC because it is a preferential payment. The Court, however, believes that the issue of whether this payment to a creditor, who apparently held a legal obligation against Debtor, constitutes a preference is better suited for an adversary proceeding brought pursuant to 11

⁹ Boards of directors may establish compensation for their services as directors. See S.C. Code Ann. §33-8-111 (Law. Co-op. 1990).

¹⁰ The evidence reflecting the \$40,000 obligation indicates that the last entry was October 10, 2001, and no further evidence was presented to indicate that GSC made additional payments.

U.S.C. §547.¹¹ Moreover, the Court questions whether the Minority Shareholders have standing to pursue a preference action. See David B. Wheeler, ed., ABI Preference Handbook 7 American Bankruptcy Institute (2002) (noting that only certain parties to a bankruptcy case have standing to bring a preference action, including trustees, debtors-in-possession, creditors' committees, or reorganized debtors). Accordingly, the Court does not consider this preference action as it is currently presented at this time.

Legal Bills

At this time, the Court will not render a decision regarding attorneys' fees or the allegations that GSC inappropriately paid the Majority Shareholders' defense costs. At the beginning of the trial, the parties stipulated that they wished to bifurcate attorneys' fees issues. Within ten days after the entry of this Order, Debtor shall account for all amounts paid and billed to it for attorneys' fees, expert witnesses' fees, costs, and other expenses for this case, and the Court shall conduct a hearing on this issue shortly thereafter and upon further notice.

Other Activities

At trial, the Minority Shareholders also alleged that the Majority Shareholders received sundry benefits at GSC's expense like medical insurance, cellular phones, and, in Joebie's case, a life insurance policy on the life of Marian. The Court finds that medical insurance is a typical benefit provided to employees and therefore rules that GSC's provision of it to the Majority Shareholders as key employees even though GSC pays the full premium is not a breach of the Majority Shareholders' fiduciary duties. The Court also finds that the cellular phones provided to Joey and

¹¹ The Court notes that the issue of a preferential payment was not pled in Plaintiffs' First Amended Complaint. In addition, this issue was not included in its Pre-Trial Memorandum.

Mike are predominantly for business purposes. Moreover, the Court also finds that Mike repays GSC for the cost of his spouse's cellular phone that is included in GSC's plan. Finally, the Court concludes that the life insurance policy provided for the benefit of Joebie on Marian's life that GSC pays for is not an expense that benefits the corporation or the shareholders. Apparently, Joebie is the beneficiary of this policy; as such, the Court does not understand how this policy benefits anyone other than Joebie. In light of the duration in which GSC has paid this policy (since 1957) and the minimal amount of the premium (approximately \$29.00), the Court believes the best remedy is to make GSC the beneficiary of the policy, not Joebie, or to have Joebie pay the policy's cash value to GSC within twenty days.¹²

CONCLUSION

From the arguments discussed above, it is, therefore,

¹² The Court notes that Plaintiffs seek an accounting as one form of relief. An accounting is designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as a result of a breach of a confidential or fiduciary duty. See Rogers v. Salisbury Brick Corp., 382 S.E.2d 915, 917 (S.C. 1989). In this case, discovery has revealed the extent of the "profits" received as a result of Defendants' breaches of fiduciary duty; therefore, the Court does not order a further accounting in this matter. Cf. id. (ordering an accounting where a discrepancy between an amount of material used and the amount owed for this material existed).

In addition, the Court notes that, in their Pre-Trial Brief, Defendants raise the affirmative defense of unclean hands in the context of Brant receiving \$300 per month for several years, which totaled approximately \$108,000. Defendants argue that, if they must repay money to GSC, Brant should repay the amount of his consulting fees as well. In light of this Order, the Court does not address this argument at this time.

Finally, the Court notes that it is withholding its opinion as to Plaintiffs' argument that Defendants should be subordinated to Plaintiffs' claims pursuant to 11 U.S.C. §510(c)(1) pending the Court's continued monitoring of the efforts to sell Debtor as a going concern. The Court further notes that subordination was not pled in Plaintiffs' First Amended Complaint, and there has been no subsequent amendment to this Complaint.

ORDERED that the Majority Shareholders' motion for a directed verdict is denied,

ORDERED that GSC shall be dissolved through the sales and collection efforts pursuant to the procedure GSC, the Majority Shareholders, and the Minority Shareholders agreed to or as further ordered and that the Court will withhold a ruling regarding the Minority Shareholders' alternative remedies at this time,

ORDERED that the Majority Shareholders breached their fiduciary duties by receiving maid service, loans, and a life insurance policy from Debtor. The Majority Shareholders are ordered to pay Debtor \$6,869.25 for the maid service, Joe E. Adams, III, is ordered to pay Debtor \$23,048.09 for the loan he owes it within thirty days, Michael A. Adams is ordered to pay Debtor \$1,699.01 for the loan he owes it within thirty days, and Joseph E. Adams, Jr. is ordered to change the beneficiary of the life insurance policy from himself to Debtor or pay the cash value of the policy to GSC within twenty days, and

ORDERED that Debtor shall report all amounts paid and billed to it for attorneys' fees, expert witnesses' fees, costs, and other expenses for this case within ten days of this Order's entry.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
December 31, 2002.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
~~was mailed on the date listed below to~~

DEC 31 2002

~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

SHEREE R. PHIPPS

Deputy Clerk

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✓ *Callaway*
✓ *Mason*
✓ *English*

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