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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001581-MR

JAMES CONLON — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 11-CI-008315

STEVEN HAISE and
ALL SAFE INDUSTRIES, INC. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: JONES, MAZE, AND STUMBO, JUDGES.

JONES, JUDGE: This appeal concerns the ownership and value of shares in a closely-held corporation as well as the duties, if any, majority shareholders owe minority shareholders. After careful review, we affirm.

I. BACKGROUND

This litigation stems from a dispute between James Conlon ("Conlon") and Steven Haise ("Haise") over the ownership of All Safe Industries, Inc. ("All Safe"). All Safe is a closely-held corporation, incorporated under the laws of the Commonwealth of Kentucky. At the time the litigation was initiated, in December of 2011, Conlon and Haise were the sole shareholders of All Safe. Conlon owned forty-seven percent (47%) of the outstanding shares of the company and Haise owned the remaining fifty-three percent (53%). Conlon and Haise were the corporation's only officers and the only members of its board of directors. Both men were also employed by the corporation, earning substantial salaries alongside other tangible benefits.

All Safe began in 1996 as a sole proprietorship owned exclusively by Haise. Conlon became interested in becoming involved in All Safe while serving an 18-month federal prison sentence.[1] During his time in prison, Conlon corresponded with Haise about All Safe. Two of the letters were written by Conlon to Haise and one was written by Haise to Conlon. In Conlon's first letter to Haise, he wrote about his interest in joining All Safe. In the second letter, Conlon specifically inquired about joining the company as an employee, earning "7.00 to 8.00 [dollars] an hour" and noted that the two men would need to "work

[1] In 1996, Conlon was arrested and charged with multiple federal offenses. On April 4, 1997, Conlon was sentenced to 18 months in prison and three years of probation, which began upon Conlon's release from prison.

out the details." The only letter sent by Haise provided: "The first order of business is to determining [sic] just what role you'll play."

Conlon joined All Safe as an employee in 1998. While stock certificates were prepared in 1998 for a 50/50 distribution between Conlon and Haise, no shares of stock were distributed to Conlon because he was subject to a restitution order related to his prior criminal conviction. In his deposition Conlon testified:

> While stock certificates were prepared [in 1998] for a 50/50 distribution (50 shares each), no shares of stock having been previously issued, we agreed that the immediate issuance of stock (50%), to me, should be deferred. At that time I was subject to a restitution order [from the aforementioned federal conviction] resulting in a concern that any interest I gained in All Safe would be subject to a claim under said order.

Conlon alleges at that time, he and Haise agreed that they would become equal shareholders in the future. In response to discovery requests, Conlon described the alleged oral agreement:

> Haise and Conlon agreed to defer the issue of Conlon's shares. Conlon understood that Haise would hold the stock certificate Haise prepared, and the shares they represented in trust for Conlon. Conlon further understood that these shares would be distributed to him at the end of his probation.

Conlon was released from prison in June of 1998 and was to remain on probation until June of 2001. Thus, according to Conlon, the oral contract allegedly entered into in 1998 obligated Haise to distribute to Conlon fifty percent

(50%) of the shares of All Safe in June of 2001, when Conlon's probation was terminated.

In 2001, Conlon began demanding equal ownership of All Safe. It is undisputed that equal ownership was not given to him at that time. Although Conlon alleges discussions about ownership continued thereafter, Conlon identified only dates in 1998 and 1999 as dates when an agreement for equal ownership was made.

The parties' ownership of All Safe was further impacted by the execution of a Buy-Sell Agreement, which established certain restrictions over the sale of the shares of All Safe stock held by Conlon and Haise. The Buy-Sell Agreement was dated effective January 1, 2003. In 2004, Conlon received stock, backdated to January 1, 2003, equal to twenty-five percent of the then-issued shares of All Safe. Conlon further received an additional five-percent interest each year in 2004, 2005, and 2006. In 2008, Conlon received additional shares of All Safe stock, bringing his total interest in All Safe to forty-seven percent (47%) of the issued stock. No stock was issued to Conlon after 2008.

In 2011, Haise sought to have the parties adopt a new buy-sell agreement, an agreement to which Conlon objected. Then, at a December 12, 2011, board meeting (Conlon and Haise were the only board members), Haise stated that the two shareholders would either adopt the new buy-sell agreement or that Haise would cause All Safe to issue him the remaining seven hundred (700) unissued shares of All Safe stock for the purpose of diluting Conlon's ownership

interest in All Safe from forty-seven percent (47%) to fourteen percent (14%). Conlon was terminated the following day.

By letter dated December 27, 2011, Conlon tendered his shares of All Safe pursuant to the terms of parties' January 2003 Buy-Sell Agreement. On March 1, 2012, All Safe accepted the tender of stock. However, a disagreement arose regarding the value Conlon should receive for his shares. The issue of proper valuation was ultimately submitted to the trial court for declaratory decision. The trial court agreed with All Safe's valuation.

In the meantime, Conlon filed suit against Haise and All Safe asserting various claims including breach of contract and breach of fiduciary duty. The trial court entered summary judgment in favor of Haise and All Safe. It also denied Conlon's request to file a third amended complaint.

This appeal followed.

II. Standard of Review

A trial court considering a summary judgment motion must view "[t]he record . . . in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc*., 807 S.W.2d 476, 480 (Ky. 1991) (citing *Dossett v. New York Mining & Mfg. Co.*, 451 S.W.2d 843 (Ky. 1970)).

"Appellate review of a summary judgment involves only legal questions and a determination of whether a disputed material issue of fact exists." *Shelton v. Kentucky Easter Seals Sct'y, Inc.*, 413 S.W.3d 901, 905 (Ky. 2013) (footnote omitted). "So we operate under a *de novo* standard of review with no need to defer to the trial court's decision." *Id.* Summary judgment should only be granted "when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Steelvest*, 807 S.W.2d at 483 (quoting *Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985)). "The moving party bears the initial burden of showing that no genuine issue of material fact exists, and then the burden shifts to the party opposing summary judgment to present 'at least some affirmative evidence showing that there is a genuine issue of material fact for trial.'" *Lewis v. B&R Corp*., 56 S.W.3d 432, 436 (Ky. App. 2001) (quoting *Steelves*t, 807 S.W.2d at 482). "'[I]mpossible' is used in a practical sense, not in an absolute sense." *Perkins v. Hausladen*, 828 S.W.2d 652, 654 (Ky. 1992).

III. ANALYSIS

A. Fiduciary Duty Claim

This case requires us to squarely confront an issue that to date no appellate court in this Commonwealth has explicitly ruled upon: whether shareholders in a privately owned corporation owe one another common-law fiduciary duties. Having reviewed the nature of fiduciary relationships in conjunction with the applicable business statutes and our prior case law, we have concluded that our common law does not support imposing heightened duties on shareholders. The law provides various remedies to a shareholder in a corporation who believes his rights have been violated. Those rights derive out of the Kentucky Business Corporation Act ("BCA"), not out of any common law special relationship of trust and confidence with other shareholders.[2] Therefore, we agree with the trial court's decision to grant summary judgment in favor of Haise with respect to Conlon's fiduciary duty claim.

To be clear, we are not holding that the BCA abrogated some previously recognized common law fiduciary duty between shareholders. *See Baptist Phys. Lexington, Inc. v. New Lexington Clinic, P.S.C.*, 436 S.W.3d 189, 191–92 (Ky. 2013). We are well aware that in addition to the statutory duties imposed by the BCA, "there may be certain nonstatutorily imposed fiduciary duties that exist . . . ." *Estep v. Werner*, 780 S.W.2d 604, 606 (Ky. 1989).

[2] We use the term "shareholder" as it is defined in the BCA: "the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation." KRS 271B.1-400(26).

However, we do not agree with Conlon that the nature of the relationship between shareholders gives rise to "the highest order of duty imposed by law." *Abbott v. Chesley*, 413 S.W.3d 589, 600 (Ky. 2013) (quoting *In re Sallee*, 286 F.3d 878, 891 (6th Cir.2002)).

The common law tort of breach of fiduciary duty requires the plaintiff to plead and prove four basic elements: "(1) the existence of a fiduciary duty; (2) the breach of that duty; (3) injury; and (4) causation." *Baptist Phys. Lexington, Inc.*, 436 S.W.3d at 193. Whether a fiduciary duty exists by virtue of the relationship between various actors is generally a question of law for the courts to decide as it essentially involves a policy determination. *Mullins v. Commonwealth Life Ins. Co*., 839 S.W.2d 245, 248 (Ky. 1992). If a fiduciary relationship does exist between the parties, the question of whether one party breached that duty is one of fact. *See Priestley v. Priestle*y, 949 S.W.2d 594 (Ky. 1997). Therefore, we must first determine whether the circuit correct correctly found that shareholders do not owe one another a fiduciary duty.

"A fiduciary duty requires more than the generalized business obligation of good faith and fair dealing." *Ballard v. 1400 Willow Council of Co-Owners, Inc*., 430 S.W.3d 229, 242 (Ky. 2013). "A fiduciary duty is 'the highest order of duty imposed by law.'" *Abbott*, 413 S.W.3d at 600 (quoting *In re Sallee*, 286 F.3d at 891). It goes "beyond the standard duty of reasonable care we ordinarily impose." *Associated Ins. Serv., Inc. v. Garcia,* 307 S.W.3d 58, 63 (Ky. 2010). "It exists where a special confidence is reposed in another who in equity

and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Lappas v. Barker*, 375 S.W.2d 248, 251 (Ky. 1963). If a fiduciary relationship exists, the fiduciary must place the other party's interests ahead of his own. *Ballard*, 430 S.W.3d at 242. "The fiduciary cannot profit from the relationship without the knowledge and permission of the principal." *Id.* at 241–42. When conflict is unavoidable the fiduciary must place the interests of the other above his own. *Id.*

Such onerous, self-sacrificing duties dictate that the fiduciary relationship "is not to be lightly required." *Snow Pallet, Inc. v. Monticello Banking Co.*, 367 S.W.3d 1, 5 (Ky. App. 2012). Fiduciary relationships arise only when it can be determined that nature of the relationship between the parties is such that the fiduciary "has expressly undertaken to act for the plaintiff's primary benefit." *Flegles, Inc. v. TruServ Corp.*, 289 S.W.3d 544, 552 (Ky. 2009). "The fact that one businessman trusts another, and relies upon his promise to perform a contract, does not rise to a confidential relationship. . . . Neither is the fact that the relationship has been a cordial one, of long duration, evidence of a confidential relationship." *Ballard*, 430 S.W.3d at 242 (quoting *In re Sallee*, 286 F.3d at 891–92). "Although fiduciary relationships can be informal, a fiduciary duty does not arise from the universal business duty to deal fairly nor is it created by a unilateral decision to repose trust and confidence; it derives from the conduct or undertaking of the purported fiduciary." *Flegles, Inc.*, 289 S.W.3d at 552.[3]

[3]Among others, Kentucky has recognized the following relationships as fiduciary ones: attorney/client, *Clark v. Burden*, 917 S.W.2d 574, 575 (Ky. 1996); trustee/beneficiary, *Hurst v.*

As a general rule, "[a] shareholder's rights are merely derivative unless he can show violation of a duty owed directly to him." *Sahni v. Hock*, 369 S.W.3d 39, 47 (Ky. App. 2010) (quoting *NBD Bank v. Fulner*, 109 F.3d 299, 301 (6th Cir.1997)). Even officers and directors do not owe duties to *individual* shareholders. "An officer or director does not sustain a fiduciary relation to an individual stockholder with respect to his stock, but may deal with such stockholder concerning the sale of his stock practically on the same terms as a stranger." *Hill v. Thomas*, 462 S.W.2d 922, 924 (Ky. 1970). "Thus, if corporate assets are misappropriated, or if a corporate officer or director otherwise breaches a fiduciary duty, it is an injury to the corporation, not [an individual] shareholder." *Gross v. Adcomm, Inc.*, 478 S.W.3d 396, 400 (Ky. App. 2015).

In the face of this unambiguous case law, Conlon nevertheless asserts that even if the corporation itself did not owe him a fiduciary duty, he was owed a fiduciary duty by Haise, All Safe's only other shareholder. Conlon asserts that such a duty has been implicitly recognized by our prior case. He asserts that our case law treats shareholders in a close corporation similarly to partners, and therefore, like partners, such shareholders owe one another fiduciary duties. A thorough review of Kentucky's case law does not support Conlon's arguments.

First Kentucky Trust Co., 560 S.W.2d 819 (Ky. 1978); director/corporation*; Baptist Physicians Lexington, Inc.*, 436 S.W.3d at 198; doctor/patient, *Emberton v. GMRI, Inc.*, 299 S.W.3d 565, 574 (Ky. 2009); one partner to another, *Lach v. Man O'War, LLC*, 256 S.W.3d 563, 571 (Ky. 2008); and insurer/ insured, *Farmland Mut. Ins. Co. v. Johnson*, 36 S.W.3d 368, 380 (Ky. 2000). In contrast, Kentucky has rejected the following relationships as giving rise to a heightened fiduciary duty: insurance broker or agent/client*, Associated Ins. Serv., Inc. v. Garcia*, 307 S.W.3d 58, 64 (Ky. 2010); franchisor/franchisee, *Flegles, Inc.*, 289 S.W.3d 5 at 552 (in dicta); and cooperative wholesaler/member customers. *Ballard*, 289 S.W.3d 544, 552.

Under the BCA, "[e]ach outstanding share, regardless of class, shall be entitled to one (1) vote on each matter voted on at a shareholders' meeting." KRS 271B.7-210. As far back as 1917, Kentucky recognized that shareholders are treated vastly different from directors. "A stockholder occupies a position and owes a duty radically different from a director. A stockholder may in a stockholders' meeting vote with the view of his own benefit; he represents himself only. But a director represents all the stockholders; he is a trustee for them; and he cannot use his office for his personal benefit at the expense of any stockholder." *Haldeman v. Haldeman*, 197 S.W. 376, 381 (Ky. 1917). While corporate law has changed throughout the last century, the concept that a shareholder is entitled to vote only in his own interest has persisted.

In 1941, the court reiterated that a shareholder has the "legal right to vote with a view of his own benefits and is representing himself only[.]" *Kirwan v. Parkway Distillery*, 148 S.W.2d 720, 723 (Ky. 1941). In fact, that same year the court explicitly rejected essentially the same argument Conlon makes today, when it stated that there was no law to support the notion that "a stockholder of a corporation bears the relation of partner to the other stockholders[.]" *Laine v. Commonwealth*, 151 S.W.2d 1055, 1058 (Ky. 1941).

Several years later, in 1985, we decided *Yeager v. Paul Semonin Co*., 691 S.W.2d 227 (Ky. App. 1985), a case remarkably similar to the present. In *Yeager*, the plaintiff brought a civil action seeking to stop a merger the majority shareholders had voted to approve. The plaintiff asserted that the merger would

depress the value of his stock and was being used by the majority for the sole purpose of eliminating his ownership in the corporation. *Id*. at 228. While the plaintiff did not allege a fiduciary duty claim *per se*, the court was called upon to determine whether the majority shareholders owed the minority members any duties. In so doing, it held that it was "the right of a majority to effect a corporate merger even when the interests of the minority may be adversely effected by being 'frozen out[.]'" *Id.* at 229.

In favor of his position, Conlon cites *Krebs v. McDonald's Ex'x*, 266 S.W.2d 87, 88 (Ky. 1953), where the court recognized that "the shareholders in closely held corporations bear a personal relationship to one another similar to that of a partnership and, as a consequence, the shares in such corporations signify more than a mere property interest." *Id.* at 89. The sole question before the court in *Krebs* concerned the assumed validity of an agreement among shareholders that they should severally have the option to buy the shares of deceased stockholders. The court's analogy appears to have had more to do with recognizing the intrinsic value of stock to shareholders of a closely-held corporation than any commentary on whether the shareholders themselves owe a fiduciary duty to one another. The *Krebs* court actually held that the agreement was binding on the deceased widow because when alive the deceased participated in the vote that approved the agreement. Implicit in this holding is the concept that the shareholders are free to exercise their will when voting.

We are likewise not swayed by Conlon's reliance on *Estep*, 780 S.W.2d 604. The *Estep* majority refused to explicitly decide whether shareholders owed one another a fiduciary duty because it determined that even if such a duty existed, the facts before it did not establish a breach. *Id.* In his dissent, Justice Leibson argued the *Estep* majority erred in not joining the "growing number" of states which have imposed fiduciary duties on shareholders in closely-held corporations. *Id*. at 609 (J. Leibson, dissenting). If anything, *Estep* establishes that prior to 1989, no Kentucky court had ever recognized that shareholders owe fiduciary duties to one another.

While certain similarities do exist between partnerships and closely-held corporations, there are also striking and fundamental differences. Shareholders generally have no individual liability. They purchase shares for consideration. In return, they have a right to vote those shares. If they do not own the majority of the shares, they should recognize that they may be outvoted. The tools of good corporate practice are designed to give a purchasing minority shareholder the opportunity to bargain for protection before parting with consideration. It would do violence to normal corporate practice and our corporation law to impose a duty on the majority to vote their shares in the minority's interests as opposed to their interests.

In sum, we hold that there is no common law fiduciary duty among shareholders.[4] Accordingly, trial court correctly granted summary judgment with respect to Conlon's breach of fiduciary duty claim.

[4]A federal district court applying Kentucky law also recently arrived at the same conclusion. *Griffin v. Jones*, No. 5:12-CV-00163-TBR, 2016 WL 1092879, at *4 (W.D. Ky. Mar. 21, 2016) ("In Kentucky, a stockholder does not owe a fiduciary duty.").

B. Breach of Contract

Next, Conlon argues that the trial court erred in granting summary judgment on his breach of contract claim. Resolution of this claim requires us first to determine whether the record supports an oral or written contract between Haise and Conlon.

"Not every agreement or understanding rises to the level of a legally enforceable contract." *Kovacs v. Freeman*, 957 S.W.2d 251, 254 (Ky. 1997). "The approved definition of a contract is, an agreement by the parties, upon a sufficient consideration, to do or not to do a particular thing." *Thomas v. Kerr*, 66 Ky. 619, 621 (1868). The fundamental elements of a valid contract are "offer and acceptance, full and complete terms, and consideration." *Energy Home, Div. of S. Energy Homes, Inc. v. Peay*, 406 S.W.3d 828, 834 (Ky. 2013). For the terms to be considered complete they must be "definite and certain" and must set forth the "promises of performance to be rendered by each party." *Kovacs*, 957 S.W.2d at 254. Indeed, "[m]utuality of obligations is an essential element of a contract, and if one party is not bound, neither is bound." *Id.*

Conlon alleges that he and Haise first agreed to a fifty-fifty stock split in 1998. Conlon has pointed to various documents to support the creation of a written contract during this time period. Several of the documents are letters written between Conlon and Haise while Conlon was incarcerated. The letters and other documents cited by Conlon are not definite and certain enough to rise to the

level of a contract. *See Mills v. McGaffee*, 254 S.W.2d 716, 717 (Ky. 1953) ("A written contract is one which is all in writing, so that all its terms and provisions can be ascertained from the instrument itself."). None of the documents include a price term, a time of transfer of shares, or even an expression of acceptance by Haise. The only writing signed by Haise does not include essential terms or reference any agreement to become equal owners.

Assuming an oral contract did exist between Conlon and Haise, the Statute of Frauds bars Conlon's claim. KRS 371.010(7) bars any action based upon an agreement "that is not to be performed within one year from the making thereof . . . [u]nless the . . . contract . . . be in writing and signed by the party to be charged therewith[.]"

According to Conlon, he reached his agreement with Haise for equal stock ownership in 1998 with the shares to be transferred to him in 2001 after his probation ended. Therefore, the agreement was one that was not to be performed within a year. Moreover, as explained above, none of the documents relied on singularly or collectively is sufficient enough to satisfy the statute of frauds. The trial court properly granted summary judgment to Haise. *See Strauch v. Reynolds*, 192 S.W.2d 816, 817 (Ky. 1946).

C. Buy-Sell Agreement

Next, Conlon argues that the trial court erred in its interpretation of the parties' January 2003 Buy-Sell Agreement. Conlon explains that he is appealing several related orders issued by the trial court that all center around the interpretation of the Buy-Sell Agreement and the calculation of the amount that Conlon was to receive for his All Safe shares.

On June 20, 2012, the trial court entered its opinion and order granting Appellees' motion for declaratory relief. The trial court determined that the unambiguous terms of the Buy-Sell Agreement required Conlon to sell his shares of stock at the price set by All Safe's CPA, Raymond Lindle. The court subsequently denied Conlon's motion to vacate, alter or amend, and issued related rulings regarding the sale.

The court found that withdrawal from All Safe was governed by Paragraph 22 of the Buy-Sell Agreement. Paragraph 22 provides that the price for the selling party's shares shall be determined by Paragraph 3. Paragraph 3 provides in relevant part:

> A. unless the parties agree to another price in writing, the price for each share of capital stock to be sold under this Agreement shall be equal to its fair market value as an ongoing business concern as determined in the sole discretion of the company's Certified Public Account, (CPA) and such determination by the CPA shall be binding and conclusive upon the parties hereto.

Conlon argues that the trial court erred in holding that Paragraph 16 was inapplicable. Conlon argues that Paragraph 16, rather than Paragraph 3 should apply. Paragraph 16 provides, in relevant part:

> 16. Deadlock. If at any time the Stockholders cannot agree on the Certified Public Accountant of the company and therefore are unable to establish an acceptable price for purchase, the matter shall be submitted to arbitration in the following manner: [a three person panel method is described].

Raymond Lindle had been All Safe's CPA for about four years when this dispute arose. He was exclusively responsible for All Safe's accounting work, including its business tax returns and Haise's and Conlon's personal tax returns. Haise and Conlon jointly interviewed Lindle and another candidate in 2008 and they jointly selected Lindle. Conlon has not rejected these facts. Instead, Conlon merely objected to Lindle performing the valuation when he tendered his shares.

There is no evidence to support a conclusion that the CPA was anyone other than Lindle. Conlon cannot manufacture a deadlock. Therefore, we agree with the trial court that Paragraph 16 was not applicable. Likewise, we agree with the trail court's conclusion that the valuation method set forth was unambiguous.

Conlon is bound by the Buy-Sell Agreement. Paragraph 3 provides: "[t]he price for each share of capital stock to be sold under this Agreement shall be equal to its fair market value as an on-going business concern as determined in the *sole discretion* of the company's Certified Public Account, (CPA) and such determination by the CPA shall be binding and conclusive upon the parties hereto."

(Emphasis added). Conlon is bound by the price determined by Lindle "in [his] sole discretion." *See Allen v. Lawyers Mutual Ins. Co. of Ky*., 216 S.W.3d 657 (Ky. App. 2007)(upholding determination of board of directors when they were authorized to act in their "sole discretion").

D. Escrow

Next, Conlon argues that the trial court erred in allowing the Appellees to apply Conlon's alleged indebtedness against the purchase price for Conlon's stock and by ordering that the purchase monies be paid into escrow. We disagree.

Paragraph 17 of the Buy-Sell Agreement provides:

> Indebtedness of a Stockholder. In the event that there is a purchase and sale of shares of stock or interest therein, pursuant to the provisions hereinabove, and there is any indebtedness owed by the selling Stockholder or his estate to any party to this Agreement, then, notwithstanding the said provisions relating to the payment of the purchase price, and any amount to be paid for the stock being purchased shall be applied first to reduce and satisfy any indebtedness owed by the Selling Stockholder or his estate to any party under this Agreement.

The Buy-Sell Agreement required the application of Conlon's debt to the purchase price. Conlon fails to make any real argument or provide any legal support for his argument that the trial court erred. Accordingly, we find that it was equitable to order payment into escrow until the appeal was resolved.

E. Amended Complaint

Finally, Conlon argues the trial court erred in denying him permission to file a third amended complaint. Pursuant to CR[5] 15.01, under circumstances such as those present herein, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." "The trial court has a wide discretion in permitting the amendment of pleadings." *Cheshire v. Barbour*, 481 S.W.2d 274, 276 (Ky. 1972). In determining whether to grant a party leave to amend a complaint, a circuit court should consider the nature of the amendment and whether the amendment would prejudice the opposing party or would work an injustice. *See Kenney v. Hanger Prosthetics & Orthotics, Inc.*, 269 S.W.3d 866, 869 (Ky. App. 2007).

We are somewhat perplexed by Conlon's assertion surrounding the "additional claims" he sought to add to his prior complaint. The majority of the proposed "amendment" relates to the inclusion of facts to support the already asserted claims. The other matters referred to by Conlon such as the mishandling of his tax liability are entirely distinct from the issues asserted by Conlon and would have only slowed down the litigation concerning Conlon's ownership of shares. In sum, we cannot conclude that the trial court abused its discretion.

IV. CONCLUSION

For the foregoing reasons, we affirm the orders of the Jefferson Circuit Court.

ALL CONCUR

[5] Kentucky Rules of Civil Rule.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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