

May 4, 2007

See: <http://ussailing.net/waccamaw/>

Question: Do early WSC shares carry an enforceable transfer restriction?

My Position: There is no enforceable restriction.

I want: If right -- A clear written opinion stating 1) the shares do not carry an enforceable restriction & 2) representing the shares as restricted is risky.

If wrong – To understand where I missed the boat.

Motivation:

1. I own 5 shares (issued 12/21/99) that I would like to retain in my family.
2. I serve on the WSC board. I want to avoid personal and board liability.
3. WSC board is stalled on this issue. We need to move forward.
4. I am tired of fighting with my board.
5. My position has been disrespected.

History: In 2001, after several years of discussion, the WSC board offered a rewrite of the bylaws. While reviewing in late 2001 I asked what the section on “Stock” was all about and was told that it was the restriction. An Internet search found GS 55-6-27. When I suggested that our stock, as issued, did not meet the requirements for a proper transfer restriction I caused a stir *.

I was elected and subsequently resigned * from the 2002 board over this issue. During this time I had the application * changed to mention stock restrictions and the certificates changed to note the restriction. Shares purchased from WSC and issued since 2002 are properly restricted.

I was elected in 2005 for a 3 year term and selected to be Yeoman (secretary) and stock transfer agent. I continue to struggle with other board members who believe the early shares carry a proper transfer restriction. We no longer issue certificates but a letter of receipt *. Transferred shares have been issued restricted with the consent of the new owner.

WSC operates on a \$20,000 budget. The property has a tax value of \$500,000 and a true market value of \$2,000,000 to \$4,000,000. We sell the shares to new members for \$250. 335 now issued. This puts the book value per share between \$6K and \$11K!!!! We are working to recover shares from ex members. We pay them \$250 !!

Articles of Incorporation:

1. * First Charter -- 250 shares authorized, Feb 6, 1973
2. * Amendment, December 12, 1978, 400 shares authorized. No mention of restrictions.

Bylaws:

1. * Earliest extant dated 1976.
2. * New bylaws in 2001.

3. WRT stock the wording has been essentially unchanged and unintelligible since 1976. Interpretation of what it might mean is enclosed *.

Support for No Restriction:

1. No shares issued before 2002 were marked “restricted”.
2. * GS 55-6-27 requires the shares to be marked restricted.
3. * Whitacre Partnership V Biosignia. Inc indicates to me that the Supreme Court places strong emphasis on the legend requirement.
4. * I read in Crowder Construction Company v. Eugene P Kiser “... restrictions on the sale or transfer of shares of stock are not favored and are strictly construed.”
5. I don’t want to represent a share as restricted and deal with the owner later ☹
6. * Gilbert Law Summaries, Corporations C1971 supports notice on the certificate.
7. Past practice. No previous board has enforced the restriction requirements of the bylaws. Of 177 folk who own shares only 57 are current members – 32%. The others were let off the hook.
8. Bylaws authorize restrictions. They do not mandate or implement. The implementation is a board decision and must follow law. Bylaws don’t trump state law.

Support for Restriction:

1. * Bylaws AII S1, AII S8, AIX
2. It has always been the intention of WSC to restrict the stock. TRUE
3. Some say shares issued before 1976 had actual notice, as these are the folks who adopted the bylaws?
4. “Restricted” label omission simply a correctable clerical error.
5. Would the statement on the application “I agree to acquaint myself and abide by the club by-laws ...” constitute actual notice?
6. Some ask about the effective date of GS55-6-27?
7. 55-6-27 -- “impose” v “authorized” v “enforceable”
8. Gap between the offer price and book should indicate a restriction.
9. Does AII, S8 Resignation complicate things? Never enforced.
10. A tight restriction would make share recovery from non-participating shareholders and lost shareholders much easier.
11. * Concerns expressed that club could not survive a takeover bid W/O restricted stock.