

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1235**

Richard S. Little,  
Appellant,

vs.

Kenneth R. Streeter, et al.,  
Respondents.

**Filed April 3, 2017  
Affirmed  
Johnson, Judge**

Hennepin County District Court  
File No. 27-CV-15-14387

Steven R. Little, SRL Law, PLLC, Minneapolis, Minnesota (for appellant)

Michael F. Cockson, Adam M. Nodler, Faegre Baker Daniels LLP, Minneapolis,  
Minnesota (for respondents)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and  
Klaphake, Judge.\*

**UNPUBLISHED OPINION**

**JOHNSON**, Judge

This appeal concerns a dispute among three shareholders of a closely held corporation. One shareholder alleged that the other two shareholders breached their

---

\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

fiduciary duties and engaged in conduct that justifies a court-ordered buy-out of his shares. The district court entered summary judgment in favor of the two defendant shareholders. We conclude that the doctrine of *in pari delicto* precludes the relief sought. Therefore, we affirm.

## FACTS

In January 1986, Richard S. Little, Kenneth R. Streeter, and Gus A. Chafoulias formed LSC Liquors, Inc. (LSC). At the time of incorporation, each of the men owned one-third of the 3,000 outstanding shares. Since its formation, LSC has operated a liquor store in the city of Maple Grove. Streeter has served as president and treasurer, Chafoulias has served as vice-president, and Little has served as secretary.

In 1989, the three shareholders of LSC sought to open a second liquor store in Maple Grove. According to Streeter's and Little's testimony, the parties believed that a city ordinance prohibited any individual from owning a liquor store in the city if he or she had an ownership interest of more than ten percent in another liquor store in the city. In October 1989, Little assigned 350 of his LSC shares to Streeter and 350 of his LSC shares to Chafoulias, which resulted in his owning only ten percent of the shares of LSC. The documentation of the assignments state that the assignments were made "For Value Received." Also in October 1989, Little, Streeter, and Chafoulias formed another corporation, Chaff Liquors, Inc. (Chaff). At the time of Chaff's incorporation, Little owned 80 percent of the company, Streeter owned 10 percent, and Chafoulias owned 10 percent. Chaff operated a liquor store in Maple Grove briefly, from December 1989 until July 1990, when it closed.

Little has introduced evidence that he, Streeter, and Chafoulias shared equally in the profits and losses of both LSC and Chaff, notwithstanding his 1989 assignments of LSC shares and notwithstanding the 80-10-10 ownership of Chaff. The documentary evidence, to the extent that it exists, is consistent with Little's testimony. LSC has not retained financial records for the years 1989 to 2003. But its financial records show that, between 2004 and 2014, LSC distributed dividends to Little, Streeter, and Chafoulias in equal amounts and reported its distributions to the IRS accordingly. In 2014, LSC distributed \$65,000 in dividends to each of the three shareholders Little, Streeter, and Chafoulias, for a total of \$195,000.

On December 30, 2014, LSC was served with a notice of levy by the IRS. Because Little had unpaid taxes, the IRS sought any property possessed by LSC in which Little had an interest. Streeter consulted with an attorney after receiving the notice of levy. Streeter found records of the 1989 assignments of 700 shares from Little to Streeter and Chafoulias. Streeter consulted with an accountant, who advised that Little "should be treated as a 10% shareholder in LSC for accounting and tax purposes." The accountant also advised that Little's receipt of \$65,000 in dividends in 2014 should be reconciled with his 10-percent ownership. Accordingly, LSC revised its 2014 financial statements to recognize total dividends of \$650,000, of which \$455,000 was shown as payable to Streeter and Chafoulias. With that liability, the 2014 revised balance sheet showed shareholder equity of approximately \$181,000. By comparison, the 2013 balance sheet showed shareholder equity of approximately \$663,000.

In March 2015, Streeter informed Little that he owns one-tenth (not one-third) of LSC's shares. Streeter later testified in deposition that he had "[j]ust absolutely forgot[ten]" about Little's 1989 assignments of LSC shares and that Chafoulias and LSC's accountant also had forgotten. Chafoulias's deposition testimony corroborates Streeter's testimony.

Little commenced this action in July 2015 against Streeter, Chafoulias, and LSC. He alleges that Streeter and Chafoulias induced him to participate in "sham transactions" in 1989, including the assignments of 700 LSC shares to Streeter and Chafoulias for "[n]o consideration." He alleges that the sole purpose of the assignments was "to meet certain requirements of the City of Maple Grove to open a second liquor store" but that the three men simultaneously had an oral agreement to treat Little as a one-third shareholder in LSC, notwithstanding the assignments. He asserted three claims for relief: (1) a claim for a buy-out of his shares on the ground that the defendants acted fraudulently or unfairly prejudicial toward him, *see* Minn. Stat. § 302A.751, subd. 1(b) (2016); (2) a claim seeking access to certain corporate records, *see* Minn. Stat. § 302A.461, subd. 4 (2016); and (3) a common-law claim alleging that Streeter and Chafoulias breached their fiduciary duties to him.

In October 2015, Streeter and Chafoulias requested indemnification from LSC. In November 2015, LSC appointed an attorney to serve as special counsel for the purpose of determining whether Streeter and Chafoulias are entitled to indemnification and an advance of funds. *See* Minn. Stat. § 302A.521, subd. 2(a) (2016). Special counsel determined that Streeter and Chafoulias were entitled to indemnification and an advance.

In December 2015, Little moved to amend his complaint to add a request for punitive damages. The district court denied the motion on the ground that Little had failed to present clear and convincing evidence that Streeter, Chafoulias, and LSC acted “in conscious or intentional disregard of” or “with indifference to the high probability of injury to” his rights. *See* Minn. Stat. § 549.20, subd. 1(b) (2016).

In February 2016, Little moved for partial summary judgment on his first and third claims and on the issue whether Streeter and Chafoulias were entitled to indemnification and an advance. At the same time, the defendants moved for summary judgment on all of Little’s claims. In May 2016, the district court denied Little’s motion, granted the defendants’ motion, and ordered entry of judgment for the defendants. Little appeals.

## D E C I S I O N

Little argues that the district court erred by denying his motion for partial summary judgment and by granting the defendants’ motion for summary judgment with respect to his first and third claims. In response, Streeter, Chafoulias, and LSC argue that the district court did not err because the doctrine of *in pari delicto* bars Little’s claims and arguments.

A district court must grant a motion for summary judgment if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993); *see also* Minn. R. Civ. P. 56.03. A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp.*, 751 N.W.2d 558, 564 (Minn. 2008). “[T]here is no genuine issue or

material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). "When the parties file cross-motions for summary judgment, . . . they tacitly agree that there exist no genuine issues of material fact." *Remodeling Dimensions, Inc. v. Integrity Mut. Ins. Co.*, 819 N.W.2d 602, 610 (Minn. 2012) (quotation omitted). We apply a *de novo* standard of review to the district court's decision to grant summary judgment, viewing the evidence in the light most favorable to the non-moving party. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

To resolve the parties' arguments, we begin by considering the doctrine of *in pari delicto*. The district court applied the doctrine as follows:

[U]nder Minnesota law Plaintiff is not entitled to the equitable relief of a compelled buy-out he requests based on the facts he alleges. . . . Plaintiff's allegations are admissions that the parties' alleged actions would have been an attempt to defraud the City into permitting the parties to open a second liquor store by misrepresenting that Plaintiff was a 10% shareholder when in fact Plaintiff was not. When a party engages in fraud or similar intentional wrongdoing, said party forfeits all right to protection in equity. *State by Head v. AAMCO Automatic Transmissions, Inc.*, 293 Minn. 342, 347, 199 N.W.2d 444, 448 (1972) (quoting *Kansas City Operating Corp. v. Durwood*, 278 F.2d 354, 357 (8th Cir. 1960)); see also *Weed v. Little Falls & D.R. Co.*, 31 Minn. 154, 161, 16 N.W. 851, 852 (1883) ("A court of equity will not, at the suit of a party to a fraud, grant affirmative relief from the consequences of it, but will leave the parties in the position in which they have placed themselves."). For this reason, Plaintiff is not entitled to a compelled buyout and Defendants are entitled to summary judgment on Plaintiff's claim under Minn. Stat. § 302.A751.

His motion for the equitable relief of a compelled buy-out must be denied.

. . . .

Beyond the clear and unambiguous terms on the [1989] Assignments, Plaintiff urges this Court to accept that a separate, secret oral agreement between the parties existed and that such agreement amounted to defrauding the City of Maple Grove into granting the parties a liquor license in violation of City ordinances through the alleged misrepresentations set forth on the Assignments Plaintiff executed. Defendants deny these facts. Assuming for the sake of argument that Plaintiff's version of the facts is true, the oral agreement Plaintiff seeks to enforce is an illegal and unenforceable agreement. In Minnesota, parties to illegal contracts that violate public policy are barred from recovering based on such contracts. *In re Trust Known as Great N. Iron Props.*, 263 N.W.2d 610, 620 (Minn. 1978); *see also AAMCO*, 293 Minn. at 347, 199 N.W.2d at 448; *Long v. Smead Mfg. Co.*, 383 N.W.2d 452, 455 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). The Minnesota Supreme Court has held that contracts to illegally operate liquor businesses are unenforceable. *Minter Bros. Co. v. Hochman*, 231 Minn. 156, 161-63, 42 N.W.2d 562, 566 (1950). If the facts as Plaintiff alleges are true, then the parties would have entered into an illegal oral agreement to illegally operate a liquor business. Such an agreement is fraudulent and unenforceable. Therefore the Court must leave the parties where they have placed themselves. *See Weed*, 31 Minn. at 161, 16 N.W. at 852.

Accordingly, the district court denied Little's motion for partial summary judgment and granted the defendants' motion for summary judgment./

The doctrine of *in pari delicto* precludes judicial consideration of disputes involving an illegal contract or a tortious transaction based on "fraud or similar intentional wrongdoing" in which both parties are "wrongdoers in equal fault." *AAMCO*, 293 Minn. at 347, 199 N.W.2d at 448. The doctrine is based on two principles. First, "courts should

not lend their good offices to mediating disputes among wrongdoers.” *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 306, 105 S. Ct. 2622, 2626 (1985); *see also Long*, 383 N.W.2d at 454-55. Second, courts should deter wrongdoing by “denying judicial relief to an admitted wrongdoer.” *Bateman*, 472 U.S. at 306, 105 S. Ct. at 2626. Although the doctrine of *in pari delicto* is an equitable doctrine, we apply a *de novo* standard of review to the district court’s analysis of the issue on a motion for summary judgment. *See SCI Minnesota Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 861 (Minn. 2011).

We are guided by the general principles of *AAMCO* as well as two opinions that speak more specifically to the issues in this case. In the first of those two opinions, the supreme court concluded that a scheme to circumvent liquor-license laws warranted the application of the doctrine of *in pari delicto*. In *Minter Brothers Company v. Hochman*, the parties agreed that Hochman, a liquor representative with no license to sell liquor, would purchase liquor on an account belonging to Minter Brothers Company, a licensed liquor wholesaler, and would resell the liquor in Minter Brothers Company’s name. 231 Minn. at 156-58, 42 N.W.2d at 563-64. Hochman and Minter Brothers Company agreed to share equally in the profits of the scheme. *Id.* at 158-59, 42 N.W.2d at 564. Eventually, Minter Brothers Company sued Hochman for breach of contract. *Id.* at 159, 42 N.W.2d at 564-65. The supreme court concluded that, in light of the doctrine of *in pari delicto*, Minter Brothers Company could not pursue its breach-of-contract claim because the claim “is based on the violation of a contract which provided for and involved transactions prohibited by statute” and that, in such a situation, “no relief can be given one party against another

party *in pari delicto* in respect to a transaction . . . tainted with such illegality.” *Id.* at 162, 42 N.W.2d at 566.

In the second opinion, we concluded that the parties’ cooperation in a fraudulent billing scheme warranted application of the doctrine of *in pari delicto*. In *Long v. Smead Manufacturing Company*, the owner of Smead Manufacturing Company requested and authorized Long, the owner of an advertising services company, to bill Smead Manufacturing Company for services that Long never performed. 383 N.W.2d at 453. After Long filed for bankruptcy, the bankruptcy court dismissed Smead Manufacturing Company’s adversary action to discharge its debt to Long. *Id.* Smead Manufacturing Company then sued Long in state court, but the parties stipulated to the dismissal of that case. *Id.* at 454. Long then sued Smead Manufacturing Company for malicious prosecution. *Id.* at 454. The district court applied the doctrine of *in pari delicto* to bar Long’s claim against Smead Manufacturing Company. *Id.* at 454. This court affirmed, stating:

One purpose of *in pari delicto* . . . is to prevent the courts from getting thrust into the position of finding facts where the parties have devised a scheme to deceive outsiders. See *Kansas City Operating Corp. v. Durwood*, 278 F.2d 354, 357-58 (8th Cir. 1960) (“[A]nyone who engages in a fraudulent scheme forfeits all right to protection, either at law or in equity.” *Id.* at 357 (alteration in original)). In such a case, the judicial system is thrust into the middle of a fraudulent scheme — forced to sort out truths and untruths in a make believe land. The doctrine thus insulates the courts, keeping them out of this awkward role. It is not solely designed to punish the wrongdoer.

. . . . The public policy purposes behind the doctrine of *in pari delicto* — to insulate the judicial system from engaging

in factfinding where the parties have engaged in a fraudulent scheme — applies here . . . .

*Id.* at 455.

In this case, Little’s claims are based on his allegation that he actually owns one-third of LSC, despite having executed assignments of most of his shares. In his complaint, he alleged that the assignments were “sham transactions” that were intended to circumvent Maple Grove’s liquor-license requirements. In his summary-judgment papers, he stated that he signed the 1989 assignments “with the explicit understanding that he was not actually transferring 700 of his shares in LSC to Streeter and Chafoulias but was only signing the sham Assignments to comply with Maple Grove’s alleged requirements at the time.” In light of Little’s own pleadings and his theory of the case, a fact-finder would need to determine whether the assignments were a “sham,” whether the three shareholders made oral agreements contrary to documented transactions, and whether they did so for the purpose of circumventing a city ordinance. To require a judge or a jury to find the relevant facts in such a dispute would cause the judiciary to be “thrust into the middle of a fraudulent scheme — forced to sort out truths and untruths in a make believe land.” *Id.* In such a situation, the doctrine of *in pari delicto* “insulates the courts, keeping them out of this awkward role,” thereby making it unnecessary to “engag[e] in factfinding where the parties have engaged in a fraudulent scheme.” *Id.*

We note Little’s contention in his reply brief that the doctrine of *in pari delicto* applies only to illegal contracts and that the parties’ 1989 agreements are not illegal. Little relies on *Brubaker v. Hi-Banks Resort Corp.*, 415 N.W.2d 680 (Minn. App. 1987), *review*

*denied* (Minn. Jan. 28, 1988), in which this court noted the absence of caselaw in which “the doctrine was used to defeat the performance of a contract which was in itself not illegal.” *Id.* at 684. Little’s interpretation of *Brubaker* is inconsistent with the supreme court’s statement in *AAMCO* that, “Although usually applied to parties to an illegal contract, . . . we think [the doctrine of *in pari delicto*] should be just as applicable to tortious transactions based upon fraud or similar intentional wrongdoing.” 293 Minn. at 347, 199 N.W.2d at 448. In addition, Little’s reliance on *Brubaker* is inconsistent with his own complaint, in which he alleged that the three shareholders entered into various agreements to operate two liquor stores in the same city in a manner that would be directly contrary to that city’s ordinances.

We acknowledge some discomfort with the consequences of applying the doctrine of *in pari delicto* in this case. Little’s allegations appear plausible. If he were able to convince a fact-finder that his allegations are true, he likely could establish that, after receiving one-third of the dividends of LSC for a quarter century, he had developed reasonable expectations that he owns one-third of the company and is entitled to one-third of its dividends. *See* Minn. Stat. § 302A.751, subd. 1(b) (2016). But the doctrine of *in pari delicto* does not depend on an assessment of the relative merits or demerits of the parties’ claims and defenses. Rather, the purpose of the doctrine is, and long has been, to preserve the integrity of the judiciary by not requiring a court to award relief to a party who has committed wrongdoing. As the United States Supreme Court has stated:

The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the

objection is ever allowed. . . . The principle of public policy is this; *ex dolo malo non oritur action* [out of fraud no action arises] . . . . It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.

*Bateman*, 472 U.S. at 306 n.12, 105 S. Ct. at 2626 n.12 (quoting *Holman v. Johnson*, 1 Cowp. 341, 343, 98 Eng. Rep. 1120, 1121 (K.B. 1775)) (alteration in original).

Thus, the district court did not err by applying the doctrine of *in pari delicto*. The doctrine operates to bar Little’s first and third claims. The doctrine also bars Little’s motion to amend the complaint to add a request for punitive damages, which would require a court to determine whether Little had established a *prima facie* case that Streeter and Chafoulias acted “in conscious or intentional disregard of” or “with indifference to the high probability of injury to” Little’s rights under the same facts alleged in the first and third claims. *See* Minn. Stat. § 549.20, subd. 1(b) (2016). Similarly, the doctrine bars Little’s argument that Streeter and Chafoulias are not entitled to indemnification and advances, which would require a court to determine, among other things, whether Streeter and Chafoulias had reason to believe that their conduct was unlawful and whether they reasonably believed that their conduct was in the company’s best interests. *See* Minn. Stat. § 302A.521, subd. 2(4)-(5) (2016). Therefore, the district court did not err by denying Little’s motion for partial summary judgment, by granting the defendants’ motion for summary judgment, and by denying Little’s motion to amend the complaint.

**Affirmed.**