

May 16, 2011

Waccamaw Sailing Club  
PO Box 753  
Lake Waccamaw, NC 28450

Mr. Gil Vick  
4619 Blanchard Road  
Durham, NC 27713

Dear Gil,

Enclosed is a copy of the attorney opinion letter (from attorney's email) that was provided to the WSC Board in response to questions regarding the stock restriction issue.

The Board cannot authorize the issuance of stock (as "unrestricted") that enables holders to not abide by the corporation Charter and Bylaws. We trust that you will come to the same accommodation for the benefit of the Club and the conclusion of your debate over the issue.

Butch

A handwritten signature in cursive script that reads "Butch".

November 19, 2010

Harold C. Blanchard  
Yeoman & Secretary  
Waccamaw Sailing Club, Inc.  
PO Box 753  
Lake Waccamaw, NC 28450

Re: Waccamaw Sailing Club Stock

Dear Butch,

This letter is in response to your request for my opinion concerning the enforceability of share restrictions on the stock of Waccamaw Sailing Club, Inc. (WSC). In investigating this matter, I have reviewed the articles of amendment to the charter of the Waccamaw Sailing Club which were dated December 12, 1978, the letter addressed to Mr. Gil Vick, from Attorney David M. Rooks, III dated November 13, 2007, notes from Mr. Vick dated May 4, 2007, NCGS § 55-6-27, undated letter to stockholder from Harold C. Blanchard concerning letter of receipt for stock, letter from Butch Blanchard to Gil Vick dated September 29, 2010, letter from J. Gilbert Vick to the Waccamaw Sailing Club Board of Directors dated August 5, 2010, 1975 Yearbook of Waccamaw Sailing Club, various provisions of the bylaws of Waccamaw Sailing Club, Inc. and various North Carolina cases including Lynn vs. Lynn, NC App. 2010, and Crowder Construction Company vs. Kaiser, 134 NC App 190 (1999) and Whitacre Partnership vs. Biosignia, Inc., 358 NC 1 (2004).

The issue is as follows: Is a share of stock in a closely held corporation restricted by the terms its bylaws when the certificate itself does not recite the restrictions on its face?

As I understand the history of the corporation, this question only arises for stock shares issued between February 6, 1973 and December 31, 2001. Any stock certificate or letter of receipt to stockholders after 2001 clearly has restrictions on the face of the certificate or within the letter of receipt. It is also my understanding that all bylaws of the WSC since its inception contain language which restricted the transfer of the WSC shares to persons who "must be approved by the Governing Board."

The controlling statute on this issue is NCGS § 55-6-27. The general rule is that in order for a restriction to be enforceable, the restriction must be noted conspicuously on the certificate. The statute adds, "Unless so noted, a restriction is not enforceable except against a person who receives actual written notice of the restrictions (emphasis supplied)." The question then becomes What constitutes "actual written notice of the restriction"? In my opinion, based on all the circumstances in this case, a court will likely rule that all of the stock shares issued by the Waccamaw Sailing Club, Inc. are restricted shares.

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Harold C. Blanchard  
Waccamaw Sailing Club  
OFN: 4004

Although there is much uncertainty involved in any litigation, I believe that the court would recognize that all shareholders, since the beginning of WSC, understood that all of their shares were restricted. This information was provided in the original bylaws and the various amendments to the bylaws. Specifically, the bylaws provide that, "Stock will be transferable except that the person receiving the stock must be approved by the Governing Board." It was common knowledge that in a social club situation such as WSC that the shares were restricted. Although the courts have a history of construing these types of restrictions strictly, I believe the court in this case would find that all members had actual written notice of the restrictions.

There has also been an issue raised about subsequent transferees of WSC stock. I believe those members who receive stock from other members took those shares subject to the restrictions as the original recipient of the stock. In other words, the transferee of the stock would step into the shoes of the transferor of that stock. Otherwise, someone could simply transfer the certificate to someone who ultimately had no "notice" of any restriction.

I also believe that any shareholder can voluntarily consent to have their share restricted if there is a question about the status of those shares.

Finally, there is an issue concerning the role of the Waccamaw Sailing Club, Inc. Board of Directors in determining whether these shares are restricted and determining the value of these shares. I believe that the board should take the position that the shares are restricted in accordance with the bylaws. All communications with shareholders however, should urge each shareholder to seek his or her own legal opinion concerning the transferability of the shares.

Similarly, the board should be cautious in setting a value for the shares. The board could entertain an offer by the shareholder to purchase a share of stock from a share holder for \$250.00. for example. However, the board should make clear that all persons should seek independent counsel as to the value of their individual WSC certificates. Any member who is transacting business with the board should be encouraged to seek independent legal and/or accounting advice.

I hope this information is of some benefit to you and your board. If you need further information about any other issues related to this matter, please let me know. I have enclosed a statement for my services.

Sincerely yours,  
POWELL & POWELL ATTORNEY

J. Coburn Powell

JCP/kn