

IN THE SUPREME COURT OF OHIO

**VOLZ EXCAVATING, INC., et al.,** : **Supreme Court Number:**  
**Appellee(s),** : **07-1941**  
**v.** : **On Appeal from the Butler County**  
**DONALD K. LYNCH,** : **Court of Appeals, Twelfth Appellate**  
: **District**  
**Appellant(s).** :

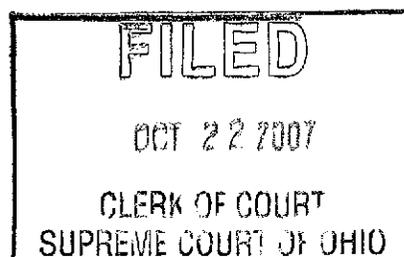
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**MEMORANDUM IN SUPPORT OF JURISDICTION OF THE  
SUPREME COURT OF OHIO ON BEHALF OF APPELLANT  
DONALD K. LYNCH**

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## **II. STATEMENT AS TO WHY THIS CASE PRESENTS QUESTIONS OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES SUBSTANTIAL CONSTITUTIONAL QUESTIONS.**

This case presents a question of both corporate and employment law which has not previously been decided. That question is whether or not a corporate director and officer who is employed solely in that capacity becomes an employee at will by performing work for the corporation.

In this case, Donald Lynch and Mark Volz were equal shareholders in a closed corporation known as Volz Excavating. They held the titles of director, shareholder and corporate officer. Mark Volz was the president and Donald Lynch was the vice president and treasurer.

A disagreement arose between the two and Mark Volz as president on July 1<sup>st</sup> handed Donald Lynch a notice of a special meeting to be called for the purpose of terminating the employment of Donald Lynch.

Donald Lynch did not attend the meeting and Mark Volz unilaterally terminated his "employment". He then closed the corporate account without notice to Donald Lynch and transferred all the funds of the business into a separate account, and barred Donald Lynch from entering the business.

At the time Article IV of the Code of Regulations provided that the business, power and authority of the corporation be exercised, conducted and controlled by the Board of Directors

The directors were elected at an annual meeting and held office until the next annual meeting.

Article V, Section 3.5 of the Code of Regulations provided that the Board of Directors may remove any officer at any time, with or without cause, by affirmative vote of all directors.

The Closed Corporation Agreement provided that upon termination of employment, the stockholder must sell his stock to the corporation. Neither employment or reasons for termination are defined in the Closed Corporation Agreement, as applied to officers and shareholders.

The Trial Court granted summary judgment to Volz Excavating holding that there was no dispute in fact and that Donald Volz, even though contradicted by his affidavit, was an employee at will because he also performed labor for the corporation.

This was upheld by the Court of Appeals in a decision which did not consider the fact that an officer could not be removed except by a vote of the directors, and that no director could be removed except by vote of all the shareholders.

Thus, the Court of Appeals held that one shareholder who owns half of the shares of stock can call a meeting unilaterally and terminate the other shareholder's employment. The Court of Appeals held that because Donald Lynch was "terminated as a laborer" he thus departed as a shareholder and "was no longer an employee of the corporation".

This decision is not only unique in the State of Ohio, but as near as defendant can

tell is unique in the United States. It is a question of great general interest.

The Court of Appeals and the Trial Court held that had Donald Lynch merely attended the meeting he could not have been terminated, and that therefore because Mark Volz unilaterally called a meeting which Donald Lynch did not attend and voted to terminate Donald Lynch he was properly terminated.

It further involves a question of when an officer or shareholder performing work for the corporation becomes an employee at will of the corporation. Both the Closed Corporation Agreement and the Code of Regulations are clear that a director or shareholder could only be terminated in certain ways, and termination of the employment was not defined in the Closed Corporation Agreement.

Thus, defendant submits that the Court should certify the record in this case to answer the question presented, that is, whether an officer, director and shareholder of a corporation becomes an employee at will noted by performing the task of the corporation.

The Court of Appeals found that both Mark Volz and Donald Lynch were the ones who generally conducted all the business of the corporation.

Thus, defendant submits that this Court should certify the record on this question.

### **III. Statement of the Case:**

As stated above in the statement as to why the case is of public or great general interest this case arose from the termination of Donald Lynch by Mark Volz.

Mark Volz filed suit seeking to force Donald Lynch to sell his shares of stock. The

Trial Court granted summary judgment finding that Donald Lynch was an employee at will and therefore Mark Volz could terminate him by calling a meeting at which only he attended.

The Court of Appeals affirmed.

**IV. Statement of Facts:**

Volz Excavating is an excavating and construction company engaged in the business of subdivision development. The company was incorporated in June 2000 by its two shareholders, Mark Volz and Donald Lynch.

Mark Volz and Donald Lynch adopted a code of regulations on July 1, 2000, as well as signing a closed corporation Agreement. They are both equal shareholders, and hold the titles of director, shareholder, corporation officer. At no time were either of them “employees” in the traditional sense.

On July 1, 2005 Mark Volz handed Donald Lynch a notice of a special meeting purporting to be called for the purpose of terminating the employment of Donald Lynch. Donald Lynch did not attend the meeting at which point all directors present, i.e., Mark Volz, the only other director, purportedly terminated the employment of Donald Lynch.

Mark Volz closed the corporate account without notice to Donald Lynch, transferred all the funds into his own separate account and barred Donald Lynch from entering the business.

**V. Proposition of Law I:**

**BY PERFORMING WORK FOR A CORPORATION AN OFFICER,  
DIRECTOR OR SHAREHOLDER DOES NOT BECOME AN EMPLOYEE  
SUBJECT TO TERMINATION AT WILL.**

**VI. Argument:**

The Code of Regulations and the Closed Corporation Agreement of Volz

Excavating provides as follows:

Article 3, Section I, provides for meetings of shareholders, and provides that a meeting of shareholders shall be held at 12:00 noon on December 15<sup>th</sup>.

At the shareholder's meeting the shareholders vote and elect directors who then elect officers. At the original shareholder's meeting Donald Lynch and Mark Volz were elected directors and Donald Lynch was selected vice-president and treasurer and Mark Volz was elected president and secretary.

Article 4, of the Code of Regulations provides that the business, power, and authority of the corporation shall be exercised, conducted and controlled by the Board of Directors, except where the bylaws or the Articles of Incorporation require action to be authorized or taken by the shareholders. Directors hold office until the next annual regular meeting, Article 4, Section 3.1.

Article 5, provides that the Board of Directors shall elect a president, a secretary and treasurer and vice-president. Donald Lynch was both the treasurer and vice-president. Section II sets forth the powers and duties of officers. The duty of the

treasurer if to have custody of the corporate funds and securities and keep full and accurate accounts of receipts and disbursements. Donald Lynch is the treasurer, who is the person responsible for this duty. However, after his purported termination Mark Volz closed the company's bank account and opened one in the name of Volz Excavating that could only be accessed by Mark Volz.

Article 5, Section 3.2 provides the Board of Directors may remove any officer at any time with or without cause by affirmative vote of all directors. Plaintiff cited no authority that allowed one director to terminate another director. Both Donald Lynch and Mark Volz were equal shareholders, both were directors and both were corporate officers. Directors are elected by a vote of the shareholders and corporate officers may only be removed by the affirmative vote of all directors.

Donald Lynch never voted to terminate himself. The powers of president do not include the right to fire another officer. As Donald Lynch stated in his affidavit he never was an employee of the corporation other than in his capacity as a corporate office holder, shareholder and director. In fact, his tax returns prepared by the same accountant who is the accountant for Volz Excavating lists his occupation as corporate officer. (Affidavit of Donald Lynch). The Closed Corporation Agreement defines termination of employment as that event other than death or disability which results in a shareholder no longer being an employee of the corporation, but does not define employee. Donald Lynch did not die, he did not terminate his employment, nor is he disabled. Thus, there is no such

termination, and he never departed the corporation.

The Closed Corporation Agreement provides that the Board of Directors shall consist of two directors, Mark Volz and Donald Lynch, and until new officers are elected the officers were Mark Volz and Donald Lynch, and that the officers were responsible for daily management of the corporation.

Furthermore, page 10 of the Closed Corporation Agreement, Paragraph 20, entitled Fiduciary Duties, specifically provides that no action shall be taken by any shareholder or officer unless taken to ultimately benefit the corporation and all its shareholders.

Paragraph 19 states that the law governing the corporation is 1701.59.1 of the General Corporation Laws. Case law interpreting 1701.59.1 makes it clear that shareholders have a fiduciary duty to each other and that a closed corporation more closely resembles a partnership than an actual corporation.

Despite these provisions, both the Trial Court and the Court of Appeals held Donald Lynch's "employment" could be terminated unilaterally.

In *Crosby v. Beam*, 7 O.S. 3<sup>rd</sup> 105, this Court held that the majority, or controlling stockholders in a closed corporation have a heightened fiduciary duty to those who they control. See also, *Digax v. Rebka*, 83 O.A. 3<sup>rd</sup> 15, 615 N.E. 2<sup>nd</sup> 644 in which the Court noted that there was a fiduciary duty owed to a minority shareholder and that shareholder could not be terminated by a majority of the controlling shareholders and

directors. The Court also held that a closed corporation more closely resembled a partnership in which there was a fiduciary duty between partners of the utmost good faith and integrity. See also *Yakel v. Kay*, 95 O.A. 3<sup>rd</sup> 472, 642 N.E. 2<sup>nd</sup> 1107 and *Frank Lerner Associates v. Vassy*, 74 O.A. 3<sup>rd</sup> 537, 599 N.E. 2<sup>nd</sup> 734.

The First District Court of Appeals noted in the *Estate of Schroer v. Stamco Supply*, 19 O.A. 3<sup>rd</sup> 34, 42 N.E. 2<sup>nd</sup> 975, that stockholders in a closed corporation owe one another substantially the same fiduciary duty in operation of the enterprise as in a partnership, i.e., to deal with one another in the utmost good faith.

In *Morrison v. Google*, 142 O.A. 3<sup>rd</sup> 244, 755 N.E. 2<sup>nd</sup> 404, the Court held that where a defendant shareholder of a closely held corporation, who was an equal shareholder, denied the plaintiff shareholder access to business premises, business records, and business checking account, deprived plaintiff of her salary by firing her and expressly instructing the accounting firm that its work was to be done at the exclusion of the plaintiff, this established that the defendant controlled the corporation to the exclusion of the plaintiff so defendant owed heightened fiduciary duties to the plaintiff, which defendant violated.

Mark Volz changed the corporate checking account so Donald Lynch no longer had access to it. He purportedly fired Donald Lynch, barred him from the premises, and has kept him out of the business.

Mark Volz took the position that he can call a special directors meeting and fire

Don Lynch if he does not appear. However, he cites no such authority for being able to remove a director or corporate officer in such a manner. Condoning such activity would lead one shareholder/partner to be able to seize the accounts with impunity under the guise of firing the other.

The Trial Court, in ruling on plaintiff's motion for summary judgment, found that Donald Lynch performed manual labor and that it was a full time job that required him to show up on the work site every day, and that he was paid on a weekly basis.

However, this was contradicted by Donald Lynch's affidavit which stated that he worked numerous hours and he set his own hours, and there was no cause for his termination. In fact, he was employed solely in the capacity of an officer and director. Plaintiff never argued that Donald Lynch was employed in any other capacity as a corporate officer or director.

The code of regulations provided that Donald Lynch could only be fired as an officer by a unanimous vote of all directors. Defendant's supposed employment was terminated by only one of two shareholders.

The Court in *Digax*, supra, noted that a close corporation is more in the nature of a partnership where each partner owes a fiduciary obligation to the other partners. *Digax* was employed as a shareholder and director. The Court therefore held that his firing was a breach of a fiduciary and that *Digax* was not an employee at will.

Plaintiff could not quote any section of the closed corporation agreement or the

code of regulations that allowed him to unilaterally fire Donald Lynch, and the Court in *Digax* held specifically that partners in a close corporation are not terminable at will.

Here the only method for terminating a director or an officer is by either the vote of the majority shareholders in the case of a director, or the unanimous vote of all directors in the case of an officer.

§6(A)7 (VII) of the close corporation agreement provides... “the termination of employment shall mean that event which results in a shareholder no longer being an employee of the corporation.” However, it contains no definition of employee of the corporation nor does it define event.

While Donald Lynch may not be a minority shareholder in the strict sense he was barred from the business and thus stood in the position of a minority shareholder. See *Morrison v. Google*, 142 O.A. 3<sup>rd</sup> 244, 755 N.E. 2<sup>nd</sup> 404.

Donald Lynch's is a 50% shareholder, director and a corporate officer, i.e., Vice-President/Treasurer of Volz Excavating, Inc. What plaintiff seeks to do is to transform Donald Lynch into something he is not, an at will employee who could be terminated in contravention of the corporate by-laws and the close corporation agreement.

Donald Lynch in his Affidavit states that he worked in a capacity as a corporate officer, director and shareholder, and that both he and Mark Volz engaged in day-to-day employment with the corporation consisting of whatever was necessary to be done to run Volz Excavating.

Here, Mark Volz has frozen Donald Lynch out of the corporation, the checking account which was accessible to Mark Volz and Donald Lynch was drained of all funds and placed solely in the name of Mark Volz.

The Court held that even though Donald Lynch was a 50% shareholder there was no deadlock and therefore the motion to amend the pleadings was disallowed.

The Court of Appeals affirmed the Trial Court's ruling that because Donald Lynch worked in the corporation and was an employee, relying on this Court's decision *Kuehml v. Industrial Commission*, (1940) 136 O.S 313. That case involved a worker's compensation claim and held an officer was entitled to participate in a state insurance fund while performing manual labor at a construction site, even though he was one of two officers and shareholders. This Court stated that because he was engaged in employment that was separate and distinct through his official duties falling upon him as an officer of the corporation he was eligible for worker's compensation. Certainly, performing manual labor for the corporation does not convert an officer performing duties into an employee at will.

There was no other authority to fire Donald Lynch and certainly his termination as a shareholder, director and corporate officer were dependent upon the Closed Separation Agreement and not on his performing employment.

Anyone performing labor for the corporation can become an employee for the purposes of Worker's Compensation, even the president or officer. Thus, *Kuehml* does

not stand for the proposition cited by the Court of Appeals.

This case therefore stands corporate law on its head, and thus, defendant submits that this Court should certify the record to address the proposition of law presented above.

**VII. Conclusion**

In conclusion defendant submits that this Court should certify the records to address the Proposition of Law presented above.

Respectfully submitted,



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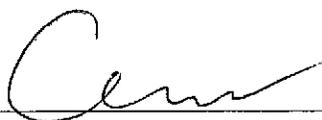
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Support of Jurisdiction was mailed by ordinary US mail to :

Gregory E. Hull, Esq.  
**Millikin & Fitton Law Firm**  
Key Bank Building 2<sup>nd</sup> & High Streets  
Hamilton, OH 45011

this 19<sup>th</sup> day of October, 2007.



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Timothy R. Evans (0018593)

## APPENDIX

COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

VOLZ EXCAVATING, INC., et al. : Case No.: CV2005 10 3552  
Plaintiff, : Appeal No. CA  
vs. : NOTICE OF APPEAL  
DONALD K. LYNCH, :  
Defendant. :

JUL 18 2006

COURT OF COMMON PLEAS

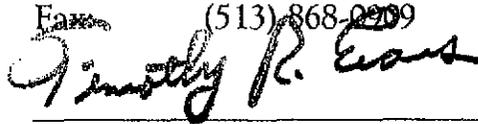
JUL 18 2006

CLERK OF COURTS

Now comes Donald K. Lynch, by and through counsel, Timothy R. Evans, and gives his Notice of Appeal to the Twelfth District Court of Appeals from the entry of the Common Pleas Court, Butler County, Ohio, entered by said trial court by its Judgment Entry filed on July 7, 2006.

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PRECIPE

TO THE CLERK OF COURTS  
COURT OF COMMON PLEAS  
BUTLER COUNTY, OHIO

Please prepare and forward for filing with the Clerk of Courts for the Twelfth Appellate District Court of Appeals a certified copy of the entire transcript of the journal entries, docket entries and original papers in the above numbered case.

*Timothy R. Evans*

Timothy R. Evans, Esq. (0018593)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was forwarded by ordinary U.S. Mail on the 18<sup>th</sup> day of July, 2006, to:

Gregory E. Hull, Esq.  
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*Timothy R. Evans*

Timothy R. Evans (0018593)

J

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

VOLZ EXCAVATING, INC., et al., :  
 :  
 Plaintiffs-Appellees, : CASE NO. CA2006-07-170  
 :  
 - vs - : OPINION  
 : 9/10/2007  
 :  
 DONALD K. LYNCH, :  
 :  
 Defendant-Appellant. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CV2005-10-3252

Millikin & Fitton Law Firm, Gregory E. Hull, 6 South Second Street, P.O. Box 598, Hamilton, Ohio 45012, for plaintiffs-appellees, Volz Excavating, Inc. and Mark Volz

Timothy R. Evans, 29 North "D" Street, P.O. Box 687, Hamilton, Ohio 45013, for defendant-appellant

**WALSH, J.**

{¶1} Defendant-appellant, Donald K. Lynch, appeals a decision of the Butler County Court of Common Pleas granting summary judgment in favor of plaintiffs-appellees, Volz Excavating, Inc. and Mark Volz, and denying Lynch's motion to amend the pleadings. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} Mark Volz and Donald Lynch are the sole shareholders in Volz Excavating, Inc., a closely held corporation formed in June 2000. The company performs excavating and

construction services in subdivision developments. Volz and Lynch signed a Close Corporation Agreement ("the CCA") and adopted a Code of Regulations ("the Regulations") on July 1, 2000. The two men are equal shareholders in the company, and both also serve as officers and directors. Volz is president and secretary, and Lynch is vice president and treasurer. Both also perform the day-to-day tasks associated with the business, such as manual labor, operating and maintaining heavy equipment, and other miscellaneous tasks.

{¶13} After becoming dissatisfied with Lynch's job performance, Volz gave Lynch a written notice of a special directors meeting to be held on July 12, 2005 to address the proposed termination of Lynch. Lynch admits to receiving the notice and being absent from the meeting. During the meeting, Volz moved to terminate Lynch and the motion was carried by a unanimous vote of all directors present. As Volz and Lynch were the only two directors, this consisted of one vote, Volz's.

{¶14} Following his termination, Lynch refused to sell his stock in accordance with the terms of the CCA. Under the CCA, a shareholder terminated from employment is required to sell his shares of stock to the corporation or to the remaining shareholders. The shareholder is also required to appoint an appraiser to value the corporation's major construction equipment to aid in establishing the purchase price for the stock. When Lynch refused to perform these actions, Volz filed suit in October 2005. The complaint prayed for an order directing Lynch to sell his shares as outlined in the CCA. In February 2007, Volz filed a motion for summary judgment. This was followed by Lynch's motion to amend the pleadings to include a cause of action for judicial dissolution of the corporation. In a decision issued on July 7, 2007, the trial court awarded summary judgment to Volz and denied Lynch's motion to amend the pleadings. Lynch timely appeals, raising one assignment of error.

{¶15} Assignment of Error No. 1:

{¶16} "THE COURT ERRED IN GRANTING SUMMARY JUDGMENT TO PLAINTIFF

AND IN OVERRULING DEFENDANT'S MOTIONS TO AMEND THE COMPLAINT."

{¶7} Lynch raises two issues for our review under his assignment of error. First, he argues that summary judgment was not proper because he was not an employee of Volz Excavating other than in his capacity as an officer and director of the corporation. Consequently, according to Lynch, he could not be fired as an employee in the manner utilized by Volz. Second, Lynch maintains that the trial court abused its discretion in denying his motion to amend the pleadings. Lynch insists that judicial dissolution of the corporation was the proper course of action because there was a deadlock in the management of the corporate affairs.

{¶8} A trial court's decision on summary judgment is reviewed *de novo*. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296. Summary judgment is proper where (1) there are no genuine issues of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. Civ.R. 56(C). See, also, *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the initial burden of informing the court of the basis for the motion, and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. If the moving party meets its burden, the nonmoving party has a reciprocal burden to set forth specific facts showing a genuine issue for trial. *Id.*

{¶9} After thoroughly reviewing the record, we find that there are no genuine issues of fact regarding Lynch's status as an employee of the corporation. In his affidavit, Volz attested that Lynch's daily duties primarily consisted of operating and maintaining heavy equipment and performing manual labor such as shoveling dirt and gravel. Lynch does not deny that he performed these duties, or that they were indeed his main job duties. Rather, he insists that he performed all duties associated with the corporation solely while acting in

his capacities as officer and director.

{¶10} In *Kuehnl v. Indus. Comm.* (1940), 136 Ohio St. 313, the Ohio Supreme Court ruled that a workers' compensation claimant was entitled to participate in the state insurance fund after being severely injured while performing manual labor at a construction site. The claimant was one of two officers and shareholders in a closely held corporation. The court held that the claimant was entitled to workers' compensation because, while he was "engaged in an employment palpably separate and distinct from the official duties falling upon him as an officer of the corporation[,]" he was acting as an employee of the corporation. *Id.* at 319-20, citing 71 Corpus Juris 507. Accord *Hillenbrand v. Indus. Comm.* (1943), 72 Ohio App. 427.

{¶11} Though the present matter does not involve workers' compensation, the reasoning of the *Kuehnl* court is instructive. Lynch and Volz were usually the only two workers who performed the excavating services for the company, occasionally hiring help on a project-by-project basis. While Lynch was engaged in manual labor and equipment operation and maintenance, he was performing the excavation and construction services for which Volz Excavation was organized. Such duties were separate and distinct from his executive duties as an officer and director of the corporation. Indeed, such labor is not typically thought to be performed while wearing one's "officer" or "director" hats, so to speak. Lynch was wearing his "employee" hat when he engaged in these duties, and such status exposed him to termination as an employee and the resulting ramifications thereof under the CCA.

{¶12} Article IV, Section 4 of the Regulations authorized Volz to call a special meeting of the Board of Directors after providing notice of the meeting to Lynch. As stated, Lynch concedes that he received notice of the July 12, 2005 special meeting, the subject of which was his proposed termination. Article IV, Section 5 of the Regulations provides that one-half

of the total number of directors constitutes a quorum for a special meeting. Where a quorum is present, "all acts, questions and business which may come before the meeting shall be determined by a majority of votes cast by the Directors present \* \* \*."

{¶13} Lynch's proposed termination was a business matter that fell within the above-quoted provision and could be voted on by a majority vote of all directors present at the meeting. At the July 12 meeting, Volz's presence constituted a quorum of directors and, being the sole director present, his vote to terminate Lynch constituted a unanimous and majority vote of all directors present. Had Lynch chosen to attend the meeting and vote against his termination, there would not have been a majority vote in favor of his termination. Lynch cannot choose to be absent from the meeting and thereafter assert the rules contained in the Regulations and the CCA by arguing that he was improperly terminated as an employee.

{¶14} We find that the procedures followed by Volz were proper for terminating Lynch as an employee. As a result of his termination, Lynch must sell his shares in the corporation in accordance with the CCA. Section 6.D.ii. of the CCA provides that a departing shareholder must offer to sell his shares to the corporation or the other shareholders at a purchase price defined in the agreement. As part of the determination of this purchase price, the departing shareholder is required to retain an appraiser to value the major construction equipment. The "Departure of a Shareholder" is defined by the CCA as the "death, Termination of Employment, or Disability of a Shareholder[.]" The CCA defines "Termination of Employment" as "that event (other than death or Disability) which results in a shareholder no longer being an employee of the Corporation." Volz's proper firing of Lynch as an employee falls within this definition of "Termination of Employment." As a result, Lynch must sell his shares to the corporation or remaining shareholders and hire an appraiser to conduct a valuation of the major construction equipment in order to help establish the purchase price

for the shares.

{¶15} In his second argument, Lynch argues that his motion to amend the pleadings to seek judicial dissolution of Volz Excavating was improperly denied. R.C. 1701.91 allows for judicial dissolution of a corporation when there is a deadlock in the management of the corporate affairs. Article XVII of the Regulations provides that the judicial dissolution procedures set out in R.C. 1701.91 shall not apply and, instead, R.C. 1701.91.1 shall be used to resolve the deadlock. R.C. 1701.91.1 provides for the appointment of a provisional director to resolve a deadlock when one arises. Lynch asserts that a close corporation agreement cannot lawfully alter R.C. 1701.91. See R.C. 1701.591(D)(2).

{¶16} A trial court's decision on a motion to amend the pleadings is reviewed for an abuse of discretion. *Simpson v. Kuchipudi*, Allen App. No. 1-05-50, 2006-Ohio-5163, ¶21. In the case at bar, the trial court did not abuse its discretion in denying Lynch's motion to amend the pleadings because the court rightly found that there was no deadlock. Lynch did not attend the July 12 special meeting and did not vote on his proposed termination at all. Without one vote for the termination and one vote against it, there was no deadlock. The deadlock provisions therefore were not invoked, and we need not address the propriety of the Regulations' use of the deadlock procedures in R.C. 1701.91.1 rather than R.C. 1701.91.

{¶17} We conclude that the trial court did not err in awarding summary judgment to Volz or in denying Lynch's motion to amend the pleadings. Lynch's first assignment of error is overruled.

{¶18} Judgment affirmed.

BRESSLER, P.J., and POWELL, J., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>