

abuse of discretion in this case. Although there was testimony that the minor child worked part time and earned approximately \$60 per week, there was also testimony that the plaintiff provided the child with food and clothing and that she incurred medical expenses for the treatment of the minor child. This evidence supported the trial court's award.

Finally, the defendant argues that the court erred when it ordered the defendant to pay \$40 per week child support because the plaintiff's financial affidavit did not include the income of her new husband and other family members. *See Logan v. Logan*, 120 N.H. 839, 424 A.2d 403 (1980). During cross-examination of the plaintiff, the defendant's counsel was able to elicit from the plaintiff the admission that her financial affidavit did not contain this information and an estimate that her new husband earned approximately \$600 per week. The trial court, therefore, knew that the plaintiff had other sources of income and knew the approximate amount of such income when it determined the appropriate amount of child support. Furthermore, the defendant never filed a motion to compel the plaintiff to revise her affidavit. Thus, we conclude that the trial court did not abuse its discretion in considering this affidavit.

Affirmed.

All concurred.

Hillsborough
No. 82-118

WILLIAM D. MCGEEHAN

v.

BANK OF NEW HAMPSHIRE, NATIONAL ASSOCIATION & a.

January 26, 1983

Hampshire, National Association (Bank). Since April 1980, the sole shareholder of the Bank has been its holding company, the defendant Bank of New Hampshire Corporation (Holding Company). In November 1980, one group of shareholders began negotiations to purchase a controlling interest in the Holding Company. This ascendant group of shareholders would ultimately gain control of the Holding Company. Nevertheless, prior to this group's ascendancy, at a joint meeting of the boards of directors of the Bank and the Holding Company on December 17, 1980, the head of this shareholders' group was removed as chairman of both boards and terminated as an employee of both the Bank and the Holding Company. At that same joint meeting, a motion was passed to grant the plaintiff a one-year employment contract as executive vice-president of the Bank.

Soon thereafter, the Bank and the plaintiff entered into a twelve-months contract, effective January 1, 1981. The contract provided that the plaintiff could be terminated during the one-year term of the agreement only if he were convicted of a criminal act.

As a result of a lawsuit filed by the ascendant shareholders' group against the other Holding Company directors, the Superior Court (*Bean, J.*) on January 27, 1981, ordered that the annual meeting of the Holding Company's shareholders be held before March 30, 1981. The day after the superior court's order, the boards of directors of the Bank and the Holding Company met jointly and voted "[t]o ratify the actions of Edward J. Haseltine, former Chief Executive Officer, in signing [an] employment contract [] for . . . William D. McGeehan . . ." That vote "ratified" the recommendation of the joint executive committee of the Bank and the Holding Company to ratify the one-year contract entered into with the plaintiff "on behalf of the Bank."

On March 27, 1981, the Holding Company shareholders, of which the ascendant group now constituted a majority, elected a new board of directors of that organization. On April 13, 1981, the new board of the Holding Company elected a new Bank board of directors consisting of virtually the same individuals who were members of the Holding Company board. Both of these boards then voted to terminate the plaintiff's employment contract.

The plaintiff brought this action in superior court alleging tortious interference with his employment contract, wrongful termination of employment, breach of contract, and entitlement to attorney's fees under his employment contract. The defendants moved for summary judgment, which the trial judge granted. This appeal followed.

■ The basis for the defendants' summary judgment motion was

12 U.S.C. § 24, para. Fifth (1976), which in relevant part provides that a national banking association shall have power "by its board of directors to appoint a . . . vice president . . . [and to] dismiss such officer[] . . . at pleasure . . ." The case law uniformly interprets this section and substantially similar provisions as rendering unenforceable, as against public policy, all contractual provisions which do not allow a national banking association to discharge its officers at will without incurring liability for breach of contract. *See, e.g., Bollow v. Federal Reserve Bank of San Francisco*, 650 F.2d 1093, 1098 (9th Cir. 1981), *cert. denied*, 102 S. Ct. 1449 (1982) (construing 12 U.S.C. § 341, para. Fifth (1976) as allowing federal reserve bank employees to be dismissed at will); *Kozlowsky v. Westminster Nat. Bank*, 6 Cal. App. 3d 593, 596-97, 86 Cal. Rptr. 52, 53-54 (1970) (construing 12 U.S.C. § 24, para. Fifth); *Copeland v. Melrose National Bank*, 229 A.D. 311, 312-13, 241 N.Y.S. 429, 430, *aff'd*, 254 N.Y. 632, 633, 173 N.E. 898, 898 (1930) (construing 12 U.S.C. § 24, para. Fifth).

■ The plaintiff on appeal concedes that a *national banking association's* board of directors may discharge an officer with impunity. It is not disputed that the Bank is a national banking association under federal law. The superior court thus properly granted the Bank's summary-judgment motion.

We must now determine whether the trial court properly granted summary judgment in favor of the Holding Company. The plaintiff's employment contract and the other evidence before us clearly show that the plaintiff was employed as executive vice-president of *the Bank* and that he never held the position of executive vice-president of *the Holding Company*. In particular, the vote of the joint boards on January 28, 1981, was in response to the recommendation of the joint executive committee nine days earlier "[t]o recommend that the directors ratify the action of Edward J. Haseltine in executing . . . [an] employment agreement[] with . . . [William] McGeehan on behalf of the *Bank*." (Emphasis added.)

■■ It is well established that business organizations such as the Bank, and its holding company, are separate entities. *See* 6A W. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 2821, at 300-01 (rev. perm. ed. 1981). *But cf. First Financial Group of N.H., Inc. v. State*, 121 N.H. 381, 386, 430 A.2d 162, 165 (1981) (for tax purposes, degree of mutuality of identity exists between parent and subsidiary corporations). Similarly, it is widely recognized that the ratification by a corporation of a contract executed by its agents constitutes an adoption and affirmance of the contract *as executed*. *See Sawtelle v. Tatone*, 105 N.H. 398, 403, 201 A.2d 111, 115 (1964); 2A W. FLETCHER, *supra* § 751, at 409 (rev. perm. ed. 1982); *see also*

