

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JUGAL K. TANEJA,)
)
Appellant,)
)
v.)
)
CHANDRESH S. SARAIYA; DOWNTOWN)
ST. PETE PROPERTIES LLC; FIRST)
STREET AND FIFTH AVENUE, LLC;)
PATRICK T. LENNON; and MacFARLANE)
FERGUSON & McMULLEN, P.A.,)
)
Appellees.)
_____)

Case No. 2D18-294

Opinion filed January 31, 2020.

Appeal from the Circuit Court for
Hillsborough County; Paul L. Huey, Judge.

David A. Maney of Maney, Damsker &
Jones, P.A., Tampa, for Appellant.

Michael R. Carey of Carey, O'Malley,
Whitaker, Mueller, Roberts & Smith, P.A.,
Tampa, for Appellees Chandresh S.
Saraiya and First Street and Fifth Avenue,
LLC.

Patrick J. McNamara and David M.
Caldevilla of de la Parte & Gilbert, P.A.,
Tampa, for Appellee Downtown St. Pete
Properties LLC.

Nancy S. Paikoff and Stephen O. Cole of
Macfarlane Ferguson & McMullen,
Clearwater, for Appellees Patrick T.

Lennon and Macfarlane Ferguson & McMullen.

LaROSE, Judge.

For over a decade, Jugal K. Taneja and Chandresh S. Saraiya have engaged in extensive litigation regarding complex commercial real estate and loan transactions. See, e.g., MB Fin. Bank, N.A. v. Paragon Mortg. Holdings, LLC, 89 So. 3d 917, 918-20 (Fla. 2d DCA 2012). Mr. Taneja now seeks reversal of the trial court's final order dismissing the derivative action he filed on behalf of Downtown St. Pete Properties, LLC (DSPP). We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A). After careful review of the record and with the benefit of oral argument, we conclude that the derivative claims lack merit. Thus, we affirm the trial court's dismissal. We write to discuss the trial court's discretion and obligations, especially concerning discovery, under Florida's Revised Limited Liability Company Act when reviewing a report from a special litigation committee (SLC).

I. Background

On the eve of the 2007-08 financial crisis, Mr. Taneja and Mr. Saraiya formed DSPP to acquire, develop, and manage commercial real estate. As the financial crisis worsened, the parties' relationship soured. They could not satisfy the monetary obligations of the project. As the managing member of DSPP, Mr. Saraiya liquidated Mr. Taneja's interest in DSPP due to Mr. Taneja's failure to pay his portion of expenses. In response, Mr. Taneja filed an eight-count derivative action on behalf of DSPP against Mr. Saraiya, Mr. Saraiya's company, First Street & Fifth Avenue, LLC (FSFA), and Mr. Saraiya's and DSPP's attorneys, Macfarlane Ferguson & McMullen, P.A. (MFM), and Patrick Lennon.

DSPP moved to appoint a SLC pursuant to section 605.0804, Florida Statutes (2015), to investigate the derivative claims and determine whether pursuit of those claims was in DSPP's best interest. The trial court granted the motion and appointed Peter King, Esq., of Wiand Guerra King, P.A., to serve as the SLC. The trial court authorized the SLC to "[e]ngage persons who are necessary . . . to assist the Special Litigation Committee in carrying out its duties and responsibilities." Mr. King engaged his law partner, Jared J. Perez, Esq., for that purpose. The trial court exempted the SLC from "discovery except by leave of Court for good cause shown."

About a year later, the SLC filed with the trial court a fifty-nine-page report and hundreds of pages of supporting exhibits. The report offered an introduction and summary of the SLC's investigation, provided a history of the events leading to the derivative action, and set forth the SLC's analysis and recommendations. The SLC identified the witnesses that it interviewed and the depositions, trial testimony, and documents it reviewed during its investigation. The SLC concluded that pursuing the derivative claims was not in DSPP's best interest. Consequently, the SLC recommended dismissal "because the claims . . . lack[ed] merit and the alleged wrongdoing was not the proximate (or sometimes even actual) cause of DSPP's damage."

Mr. Lennon, MFM, Mr. Saraiya, and FSFA moved to enforce the SLC's report. DSPP set the matter for hearing. Mr. Taneja objected to the report and moved to continue the hearing to permit discovery concerning the independence, objectivity, and reasonableness of the report. Mr. Taneja faulted the SLC for failing to (a) explain its investigatory process in preparing the report, (b) differentiate factual and legal conclusions in its report, (c) identify key documents it relied on in reaching its

conclusions and opinions, (d) identify witnesses interviewed and the substance of the interviews, (e) identify facts discovered during the investigation, (f) describe the document review and collection process, and (g) examine DSPP's records. Mr. Taneja also claimed that he had good cause for discovery because the evidence did not support some of the SLC's conclusions, there was a conflict of interest between MFM's representation of Mr. Saraiya and its representation of DSPP, and the SLC failed to explore various documents and facts.

At the hearing, the trial court noted the large record before it and the voluminous discovery the parties had engaged in over the years. The trial court doubted that additional discovery would reveal any new facts. Thus, the trial court denied Mr. Taneja's request to continue and for further discovery. The trial court proceeded with the evidentiary hearing on the report. Mr. King testified. Mr. Taneja's counsel extensively cross-examined Mr. King regarding his independence and investigatory process.

Mr. King explained the applicable standards for the SLC's independence, good faith, and due diligence. He stated that the SLC was "very careful in analyzing those issues on the front end so [the SLC] didn't wind up on the back end being accused of not having done that." Mr. King testified that the SLC conducted conflict checks and found no reason to think that he, Mr. Perez, or anybody "could [be] accuse[d] of not being independent." Mr. King had no financial or social ties to any of the parties or their representatives. Mr. King assured the trial court, "I didn't feel like anybody attempted to influence the report in any way either. I didn't feel any pressure to do anything in particular other than what I was required to do under the order."

Mr. King described how the SLC prepared and drafted the report. He and Mr. Perez "spent a fair amount of time" reviewing the deposition transcripts and exhibits in the record. Mr. King examined DSPP's records. He testified that all the documents he relied on in preparing the report were attached to the report. Mr. King also identified the witnesses that he and Mr. Perez interviewed at length and the interview process itself. Mr. King took notes of the interviews, notes that none of the parties requested prior to the hearing. Mr. King did not attach his notes to the report, but he explained that the SLC did not learn "anything of any great significance that added to or changed what [the SLC] were seeing in the court file or the deposition transcripts." Mr. King also testified that his notes provided background information about the parties and the history of the case. His notes were not the predicate for the SLC's report. Rather, the predicate for the report was "the 49 exhibits that are attached and referenced in the report," "the voluminous litigation files," "the transcripts of the depositions, court files, pleadings, and so forth."

Mr. King testified that the SLC invited the parties to submit any documents they wanted to; the SLC accepted and reviewed Mr. Taneja's submission. Mr. King testified that he felt confident that the SLC had the information necessary to reach the conclusions set forth in the report in good faith. Mr. King and Mr. Perez did not refuse information from anyone in this case. Mr. King further testified:

I think Mr. Perez and I spent not only a significant amount of time in preparation of the report, but last week and earlier this week spent a considerable amount of additional time reviewing it for just that purpose, to see if there's anything maybe we missed or we should have changed or rethought, and tried to be critical in our analysis of it. And we're comfortable with the report as it sits.

The trial court found that the SLC's "work was clearly disinterested, independent, and done in good faith." The trial court stated:

I think the report is outstanding in its detail. It cites the law; probably could have been done a lot thinner, could have been done without that explanation. Mr. King put it all out there, showed everybody, you know, he stuck his neck out there. He cited statutes, he cites cases, he cited from the record. I don't think he was required to do any of that. . . . So, I think it was done in good faith, disinterested, independent. I think it's sound, legally sound. And the Court's going to adopt it. . . . You've brought a wonderful court reporter here today, and I just think you can put in; The Court finds that the -- for the special litigation committee was done in a disinterested, independent, and good faith fashion and with reasonable care. And the committee has met its burden of proof here today.

The trial court accepted the SLC's report, agreed with its recommendation, and dismissed the derivative action, with prejudice. Mr. Taneja appealed.

II. Discussion

Mr. Taneja argues that the trial court erroneously denied his motion to continue the hearing to permit additional discovery. He wanted discovery on the issues of the SLC's independence, good faith, and reasonable investigation in preparing the report. Neither the Florida statutes nor case law support Mr. Taneja's position. Quite simply, our record reflects a textbook example of how a SLC should proceed.

In a derivative action, a limited liability company "may appoint a special litigation committee to investigate the claims asserted . . . and determine whether pursuing the action is in the best interest of the company." § 605.0804(1). Then, upon a motion to enforce the SLC's determination, "the court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith,

independently, and with reasonable care, with the committee having the burden of proof." § 605.0804(5). "If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court may enforce the determination of the committee." Id.

Chapter 605 does not require the trial court to allow discovery from the SLC. As in other instances, "[a] trial court is given wide discretion in dealing with discovery matters." Alvarez v. Cooper Tire & Rubber Co., 75 So. 3d 789, 793 (Fla. 4th DCA 2011). In the SLC context, the trial court's broad discretion is particularly appropriate because "discovery is 'intended more as an aid to the [c]ourt than it is as a preparation tool for the parties.'" LR Tr. on behalf of SunTrust Banks, Inc. v. Rogers, 270 F. Supp. 3d 1364, 1382 (N.D. Ga. 2017) (quoting (Kaplan v. Wyatt, 484 A.2d 501, 510 (Del. Ch. 1984), aff'd by 499 A.2d 1184 (Del. 1985)).

Clearly, then, discovery relating to a SLC's report is not a matter of right. Rather, the trial court, in its discretion, may determine whether discovery is needed to enable it to make its statutorily-required findings as to the derivative claims. Delaware case law amply supports this conclusion.¹ See, e.g., Kaplan, 484 A.2d at 510 (explaining that "discovery is not afforded to the plaintiff as a matter of right but only to such extent as the Court deems necessary for the purpose of facilitating its inquiries"); Long v. Odland, No. 11-CV-80702, 2012 WL 13019034, at *12 (S.D. Fla. Aug. 15, 2012)

¹"We may also look to the law of Delaware for guidance because '[t]he Florida courts have relied upon Delaware corporate law to establish their own corporate doctrines.'" Boettcher v. IMC Mortg. Co., 871 So. 2d 1047, 1052 n.5 (Fla. 2d DCA 2004) (quoting Connolly v. Agostino's Ristorante, Inc., 775 So. 2d 387, 388 n.1 (Fla. 2d DCA 2000)).

(explaining—based on Delaware case law—that "[t]he Court, not the plaintiff, is entitled to 'limited discovery' in order to facilitate inquiries as to whether the SLC's investigation satisfied its burden of independence, good faith, and reasonableness" (citing Kaplan, 484 A.2d at 507)). It is also within the trial court's discretion to deny a motion for continuance. See Rice v. NITV, LLC, 19 So. 3d 1095, 1099 (Fla. 2d DCA 2009).

Absent a clear abuse of discretion, we will not disturb the trial court's order. See Gaspar's Passage, LLC v. RaceTrac Petroleum, Inc., 243 So. 3d 492, 500 (Fla. 2d DCA 2018) ("We review '[a] trial court's determination with regard to a discovery request' for an abuse of discretion." (alteration in original) (quoting Overton v. State, 976 So. 2d 536, 548 (Fla. 2007))); Rice, 19 So. 3d at 1099 ("Ordinarily, 'the granting or denying of a motion for continuance is customarily within the discretion of the trial court' and an appellate court should 'refrain from substituting its judgment for that of the lower court absent an abuse of discretion.' " (quoting Outdoor Resorts at Orlando, Inc. v. Hotz Mgmt. Co., 483 So. 2d 2, 3 (Fla. 2d DCA 1985))).

The trial court confronted an overly broad and nonspecific discovery request from Mr. Taneja. Essentially, Mr. Taneja asserted that the SLC lacked independence and did not conduct the investigation in good faith and with reasonable care. But, after listing these grounds as good cause, Mr. Taneja merely asked the trial court to delay the evidentiary hearing and permit him to take discovery. Mr. Taneja did not request to depose any specific individuals or obtain any specific materials. Mr. Taneja did not allege or explain what discovery, if any, was necessary to facilitate the trial court's inquiry as to whether the SLC satisfied its burden of independence, good faith, and reasonableness. And, of course, Mr. Taneja had the opportunity to cross-examine Mr. King.

As the trial court explicitly noted, the record before it was voluminous, reflecting the extensive discovery already conducted by the parties. Moreover, Mr. King was present at the hearing and testified fully about his investigation and report. The trial court correctly found that delaying the hearing and granting discovery was not necessary for it to render a decision. After all, in his testimony, Mr. King addressed much of Mr. Taneja's concerns about the investigation and report. He emphasized that the report cited to the pertinent documents and included the documents as exhibits. All witnesses were disclosed in the report.

The only documents that Mr. Taneja's counsel appeared to take issue with during the evidentiary hearing were Mr. King's interview notes. However, Mr. King repeatedly explained that the notes contained information that was already available in the record. Besides, Mr. Taneja never requested the notes. Under these circumstances, the trial court did not abuse its discretion in denying Mr. Taneja's motion to continue and his overly broad, nonspecific discovery request. Cf. Muhammad v. State, 132 So. 3d 176, 201 (Fla. 2013) (concluding that "the court did not abuse its discretion in denying the motion [for public records]" where "[t]he requests are overly broad and Muhammad did not clearly demonstrate how the records were relevant to a colorable claim").

Affirmed.

MORRIS and ATKINSON, JJ., Concur.