

DANYA D. DUFFY

NO. 18-C-563

VERSUS

FIFTH CIRCUIT

RICHARD M. MILLET

COURT OF APPEAL

TRAVEL 5, LLC

STATE OF LOUISIANA

October 25, 2018

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Mary E. Legnon  
Chief Deputy Clerk

IN RE TRAVEL 5, LLC

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APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT,  
PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE M. LAUREN  
LEMMON, DIVISION "D", NUMBER 63,652

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Panel composed of Judges Jude G. Gravois,  
Marc E. Johnson, and John J. Molaison, Jr.

**WRIT GRANTED; JUDGMENT REVERSED, IN PART;  
PRELIMINARY INJUNCTION VACATED**

In this writ application, relator, Travel 5, LLC, challenges the issuance of a preliminary injunction against it in favor of petitioner, Danya Duffy, in a community property partition proceeding against her former spouse to which relator is not a party. For the following reasons, we grant relief and vacate the trial court's issuance of the preliminary injunction directed to Travel 5, LLC.

**Factual Background and Procedural History**

Danya Duffy and Richard Millet were divorced in April 2006. The community of acquets and gains formerly existing between them, however, has not been partitioned; partition proceedings are currently pending.

Richard is a 13.5% minority member of Travel 5, LLC, a multiple-member, limited liability company that was formed during the existence of the former community, and is a legal entity separate and distinct from Richard.<sup>1</sup> Since 2000,

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<sup>1</sup> It is undisputed that the former community existing between Danya and Richard includes an undivided 13.5% ownership interest in Travel 5, LLC. According to the pleadings, the remaining 86.5% membership interests in Travel 5, LLC is held by Richard's parents, David and Shirley Millet. Richard is the registered agent for service of process for Travel 5, LLC.

in accordance with La. C.C. art. 2352, Richard has managed the community's membership interest in Travel 5, LLC.<sup>2</sup>

Travel 5, LLC is a 16% minority member of Metro-Investments, LLC, which is also a multi-member limited liability company that was formed during the existence of the former community. In May 2018, Metro-Investments sold a piece of real estate and chose to make a cash distribution to its members, resulting in a \$684,244.94 distribution to Travel 5, LLC.

In anticipation of the distribution, Danya instituted community property partition proceedings against Richard wherein she identified Richard's 13.5% undivided ownership interest in Travel 5, LLC as an asset of the former community. In her petition, seeking to preserve the former community's interest in the anticipated cash distribution Travel 5, LLC was to receive from Metro-Investments, LLC, Danya requested that the trial court issue an *ex parte* temporary restraining order pursuant to La. R.S. 9:371 and La. C.C. art. 3944, without bond, directed to Richard and to Travel 5, LLC, a non-party, prohibiting Richard and Travel 5, LLC from using in any manner any of the monies Travel 5, LLC received from Metro-Investments, LLC. This temporary restraining order was issued *ex parte* against Travel 5, LLC (and Richard), on April 23, 2018. Travel 5, LLC did not receive the cash distribution from Metro-Investments, LLC until May 2018.

Subsequent to an evidentiary hearing held on July 18, 2018, the trial court issued judgment on August 22, 2018 in favor of Danya and ordered that a preliminary injunction be issued against Travel 5, LLC pursuant to La. R.S. 9:371, restraining, enjoining, and prohibiting Travel 5, LLC from alienating, encumbering, or disposing of 13.5% of the company's cash (representing the interest in Travel 5, LLC that was held in Richard's name) pending the partition of the community property. Travel 5, LLC was further ordered not to make any cash distribution to Richard unless an equal distribution was contemporaneously made to Danya.<sup>3</sup>

The August 22, 2018 judgment also ordered that a preliminary injunction be issued against Richard enjoining him "from alienating, encumbering, disposing of any and all of the community property or co-owned property pending the partition of the community property."

## **DISCUSSION**

In this writ application, relator argues that the trial court erred by issuing a preliminary injunction against Travel 5, LLC pursuant to La. R.S. 9:371, which, in effect, enjoins Travel 5, LLC from exercising its business discretion to alienate, encumber, and/or use 13.5% of its cash assets. For the following reasons, we agree and grant relief.

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<sup>2</sup> La. C.C. art. 2352 provides, in pertinent part, that "[a] spouse who is a member has the exclusive right to manage, alienate, encumber, or lease the limited liability company interest."

<sup>3</sup> The August 22, 2018 judgment denied Danya's requests to: (1) preliminarily enjoin Travel 5, LLC from alienating, encumbering, or disposing of the entirety of the cash distribution received by Travel 5, LLC from Metro-Investments, LLC; (2) have the cash distribution deposited into the registry of the court; and (3) receive an advance payment.

## *Standard of Review*

Generally, the trial judge has broad discretion in deciding whether to grant or deny an injunction, and its ruling will not be disturbed on appeal absent a clear abuse of discretion. *Delesdernier v. Floyd*, 15-331 (La. App. 5 Cir. 12/23/15), 182 So.3d 1159, 1163-64. However, where the trial court's decision is based on an erroneous interpretation or application of law, rather than a valid exercise of discretion, such an incorrect decision is not entitled to deference by the reviewing court. *Yorsch v. Morel*, 16-662 (La. App. 5 Cir. 7/26/17), 223 So.3d 1274, 1281, *writ denied*, 17-1475 (La. 11/13/17), 230 So.3d 207. Because this writ application involves the proper application and/or scope of a trial court's authority, in a suit to partition community property, to issue a preliminary injunction pursuant to La. R.S. 9:371 against a non-party limited liability company in which the former community owns a minority interest, we review this question of law *de novo*.

According to Danya, the trial court was authorized to issue the preliminary injunction against Travel 5, LLC "in order to preserve the former community property held by Travel 5, LLC" pursuant to "[t]he plain language of La. R.S. 9:371(B)," which "explicitly authorizes injunctions effective against third parties or business entities."<sup>4</sup> La. R.S. 9:371, which addresses a spouse's right to demand an injunction against alienation or encumbrance of community property, provides:

A. In a proceeding for divorce, a spouse may obtain an injunction restraining or prohibiting the disposition or encumbrance of community property until further order of the court.

B. To be effective against a federally insured financial institution, an injunction granted under the provisions of this Section shall be served in accordance with the provisions of R.S. 6:265(C).<sup>5</sup> An injunction

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<sup>4</sup> In support of her contention that La. R.S. 9:371(B) provides a basis upon which a spouse may obtain a preliminary injunction enjoining a limited liability company from disposing or encumbering any of its assets belonging to the former community—a contention the trial court erroneously accepted—Danya relied upon the case of *Lytal v. Lytal*, 00-1934 (La. App. 1 Cir. 11/14/01), 818 So.2d 111, *writ denied*, 01-3272 (La. 3/8/02), 810 So.2d 1164. In *Lytal*, following an evidentiary hearing during which the wife successfully "pierced the corporate veil" to reveal that the corporation was indistinguishable from the husband, the trial court issued a preliminary injunction to the husband enjoining him, his agents, and corporate officers of a community-owned corporation from disposing of or concealing the net proceeds from the sale of an offshore supply boat. The evidence showed that all of the stock of the community-owned corporation was issued in the husband's name, and established that he was engaged in a pattern of bad faith by systematically disposing of the assets and removing funds from the corporate structure for his personal benefit, to the detriment of the wife's interest in the corporate stock value or net worth. Once it was established that all of the corporate assets were actually community property rather than corporate property, and that the corporate assets and funds resulting from their sale were community property, the trial court extended the scope of the preliminary injunction to include the agents and officers of the corporation "without the need to post bond or show irreparable injury" under La. R.S. 9:371. *Lytal*, 818 So.2d at 113-14. In effect, the court found that the corporation was indistinguishable from the husband, such that an injunction against the corporation was tantamount to an injunction against the husband. In the instant case, there has been no allegation or showing that Richard, a minority member with a 13.5% ownership interest in Travel 5, LLC, "pierced the corporate veil" or has in any way acted in bad faith to the detriment of the former community's interest in the company. *Lytal* is factually distinguishable from the case *sub judice* and, to the extent the trial court relied upon *Lytal* as authority to issue an injunction against Travel 5, LLC, such reliance was misplaced.

<sup>5</sup> La. R.S. 6:265 pertains to the elections, powers, and duties of the officers and agents of *state banks* (not of limited liability companies or corporations); subsection C specifically addresses the bank's designation of a corporate agent for service of process.

granted pursuant to the provisions of this Section shall be effective only against accounts, safe deposits boxes, or other assets listed or held in the name of the following:

- (1) One or both of the spouses named in the injunction.
- (2) Another party or business entity specifically named in the injunction.

C. A federally insured financial institution shall not be liable for loss or damages resulting from its actions to comply with the injunction provided that the requirements of this Section have been met.

A review of La. R.S. 9:371(B) (2) *in its entirety* clearly shows that the statute is limited to the issuance of an injunction directed to a “federally insured financial institution,” *i.e.*, such as a bank, and is effective only against those accounts, safe deposit boxes or other assets *held in that financial institution* that are in the name of the spouse, another party, or business entity. Nowhere in the statute does it provide authority for a spouse to demand that an injunction issue against a third party or business entity, such as a limited liability company, enjoining it from alienating or encumbering property in which the former community may have an ownership interest. Based upon the particular factual circumstances presented herein, we find the trial court erred as a matter of law in expanding the scope of La. R.S. 9:371(B) (2) to include the imposition of an injunction against a third party or business entity that is not a federally insured financial institution, or the alter ego of the spouse as was the case in *Lytal, supra*.

Further, by enjoining Travel 5, LLC and prohibiting it from alienating, encumbering or disposing of 13.5% of its cash assets acquired from Metro-Investments, LLC, and from distributing money to Richard unless it contemporaneously distributed an identical amount to Danya, we find the trial court exceeded its authority by imposing restrictions upon the business operations and management of Travel 5, LLC’s assets. Limited liability companies are governed by the provisions of the Louisiana Limited Liability Company laws set forth in La. R.S. 12:1301 *et seq.* A limited liability company (LLC), such as Travel 5, LLC, is an entity to which the law attributes personality and is, therefore, a juridical person. La. R.S. 12:1301. As a general proposition, the law considers an LLC and the member(s) comprising the LLC, as wholly separate persons. La. C.C. art. 24. Additionally, pursuant to La. R.S. 12:1329, “[a] membership interest shall be an incorporeal moveable. A member shall have no interest in [LLC] property.” Thus, individuals with ownership interests in a LLC *do not own* the property or assets of the LLC; the LLC owns the assets. *Moise v. Moise*, 06-876 (La. App. 5 Cir. 3/13/07), 956 So.2d 9, 12. Similarly, acquisitions by the corporate entity are not community property of the spouses even if the latter have an ownership interest in the corporate entity. *McClanahan v. McClanahan*, 03-1178 (La. App. 5 Cir. 2/23/04), 868 So.2d 844, 848-49, *writ denied*, 04-1175 (La. 9/3/04), 882 So.2d 609.

The distribution of cash or other assets of a limited liability company to its members is governed by the LLC’s articles of organization or written operating

agreement.<sup>6</sup> La. R.S. 12:1324. It is only upon distribution or dissolution that a LLC's assets become the property of its individual members.<sup>7</sup> For that reason, our jurisprudence recognizes that “individuals cannot assert property claims as members of an LLC where the disputed property interests are the property of the separate legal entity.” *S. La. Ethanol L.L.C. v. CHS-SLE Land*, 14-0127 (La. App. 4 Cir. 2/4/15), 161 So.3d 83, 93, *writ denied*, 15-0481 (La. 5/15/15), 170 So.3d 967.

Applying these legal principles to the instant case, we find that until such time as Travel 5, LLC makes a distribution of the cash it received from Metro-Investments, LLC to its members, or there is a dissolution of the company, the cash asset remains the property of Travel 5, LLC. Based upon the record before us, Travel 5, LLC has made no distribution of the cash it received from Metro-Investments, LLC to its members; thus, the entirety of the cash remains the property of Travel 5, LLC. The trial court erred when it determined that, by virtue of Richard's 13.5% incorporeal ownership interest in Travel 5, LLC, the former community owns and is entitled to receive 13.5% of the cash distributed to Travel 5, LLC by Metro-Investments, LLC.

Lastly, we find the trial court's judgment provided Danya with sufficient protection of the former community's interest in Travel 5, LLC by enjoining Richard and prohibiting him from alienating, encumbering, or disposing of property held with Danya. To the extent Richard may be mismanaging his minority interest to the detriment of the community—which Danya has neither pleaded nor shown—La. C.C. art. 2369.3 affords Danya a right of action for damages against Richard for such mismanagement. Specifically, La. C.C. art. 2369.3 imposes a duty upon a former spouse to preserve and manage former community property under his control until that property is partitioned, and he is answerable for any damage caused by his fault, default, or neglect. *Wood v. Wood*, 14-405 (La. App. 5 Cir. 11/25/14), 165 So.3d 181, 190.

For the foregoing reasons, we grant relator's writ application and reverse the trial court's August 22, 2018 judgment, in part, to the extent that it orders a preliminary injunction be issued against Travel 5, LLC pursuant to La. R.S. 9:371; and we vacate the preliminary injunction directed to Travel 5, LLC.

Gretna, Louisiana, this 25th day of October, 2018.

**JJM**  
**JGG**  
**MEJ**

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<sup>6</sup> The record does not contain Travel 5, LLC's articles of organization or written operating agreement.

<sup>7</sup> Distributions to members of a limited liability company are authorized by La. R.S. 12:1324 through 1326. Restrictions are placed on the making of any distributions by La. R.S. 12:1327(A), which, among other things, prohibits distributions to members if, after giving effect to the distribution, the company would not be able to pay its debts as they become due, or if the company's total assets would be less than the sum of its total liabilities, or the payment would be contrary to the company's articles of organization or operating agreement.

SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
ROBERT A. CHAISSON  
STEPHEN J. WINDHORST  
HANS J. LILJEBERG  
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JUDGES



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**NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/25/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU  
CLERK OF COURT

**18-C-563**

**E-NOTIFIED**

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Robert L. Raymond (Relator)

**MAILED**

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