Casella Waste Sys. v. GR Tech., Inc., No. 409-6-07 Rdcv (Eaton, J., Feb. 13, 2009)

STATE OF VERMONT
RUTLAND COUNTY

CASELLA WASTE SYSTEMS, INC., FCR, LLC, GREEN MOUNTAIN GLASS, LLC, and CULCHROME, LLC	)	Rutland Superior Court
	)	Docket No. 409-6-07 Rdcv
v.	)	
GR TECHNOLOGY, INC., ANTHONY C. LAME, and ROBERT CAMERON BILLMYER	)	

DECISION
Defendants' Motion to Dismiss (MPR #7), filed October 8, 2008

The question presented is whether this court has subject matter jurisdiction to dissolve two limited liability companies organized under Delaware law.

Green Mountain Glass LLC and CulChrome LLC are both limited liability companies organized under Delaware law for the purpose of developing and licensing intellectual property related to the recycling of mixed-color waste glass. The majority interest in both companies is held by plaintiff FCR, LLC. The minority interest in both companies is held by defendant GR Technology, Inc., along with another entity that is not a party to this litigation.

The complaint alleges that the managing members are so deeply divided over the management of the companies that the business relationship has become "irretrievably broken." In broad terms, the first four counts in the complaint seek declarations regarding fiduciary duties and the members' rights to certain intellectual property developed during the course of the business relationship, as well as rights to associated revenues. The fifth count of the complaint requests judicial dissolution of Green Mountain Glass LLC and CulChrome LLC on the grounds that it is no longer reasonably practicable to carry on the business purposes for which the limited liability companies were formed.

Defendants denied the allegations in the complaint, and filed counterclaims for breach of contract, breach of fiduciary duties, fraud, and various other torts. In addition, Defendants filed the present motion to dismiss the fifth count of the complaint on the

grounds that this court lacks subject matter jurisdiction to grant the request for judicial dissolution. V.R.C.P. 12(b)(1).

Oral argument on the motion to dismiss was heard on November 6, 2008. Plaintiffs were represented by attorneys Ritchie Berger and Harry Ryan. Defendants were represented by attorneys Lisa Chalidze and David Dunn.

Limited liability companies and enabling statutes

Limited liability companies first became popular among business planners during the 1990s as a way of combining favorable characteristics of corporations and partnerships. In particular, limited liability companies offered members an opportunity to develop their own solutions to business-relationship problems by drafting operating agreements governing the affairs of the company and the relationships between members. In other words, the essential attribute of the limited liability company is the primacy of the operating agreement. This attribute is commonly referred to by describing limited liability companies as creatures of contract, rather than creatures of statute. *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 290–91 (Del. 1999); *R&R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318 at *4 (Del. Ch. Aug. 19, 2008).

An enabling statute is required before limited liability companies may be formed in a particular state. In this case, the enabling statute is the Delaware Limited Liability Company Act, 6 Del C. § 18-101 et seq. The parties agree that the Delaware LLC Act applies.

The Delaware LLC Act is often described as a "flexible statute" because it provides members with a great deal of freedom when planning their business. It accomplishes this by furnishing default provisions that govern the affairs of the company unless modified in the operating agreement. In other words, the default provisions apply only in the absence of more specific terms in the operating agreements. This means that members are generally free to structure their company in any way they see fit, so long as they do not contravene one of the few mandatory provisions in the Act. *Elf Atochem*, 727 A.2d at 290–91; *R&R Capital*, 2008 WL 3846318 at *4–5.

Delaware courts normally enforce the terms set forth in the operating agreement, and resort to the default rules in the Delaware LLC Act only when the operating agreement is silent as to a particular issue. This arrangement affords members a great deal of certainty that their operating agreements will be enforced according to their terms; it also places a significant emphasis on well-drafted operating agreements. *Elf Atochem*, 727 A.2d at 290–91; *R&R Capital*, 2008 WL 3846318 at *4–5.

Dissolution in the Delaware LLC Act and the operating agreements

The Delaware LLC Act contains several default rules regarding the dissolution of limited liability companies. The first rule generally provides that LLCs may be dissolved upon the happening of any of five enumerated circumstances, including written consent,

the occurrence of an event specified in the operating agreement, or the entry of a decree of judicial dissolution. 6 Del. C. § 18-801. The second rule grants authority to the Delaware Court of Chancery to grant judicial dissolution "whenever it is not reasonably practicable to carry on the business of a limited liability company in conformity with a limited liability company agreement." *Id.* § 18-802. The remaining rules establish guidelines regarding the winding up of company affairs, distribution of assets, appointment of trustees and receivers, and revocation of dissolution. *Id.* §§ 18-803 through 18-806. All of these provisions are subject to modification in the operating agreement. *R&R Capital*, 2008 WL 3846318 at *5.

The operating agreements for Green Mountain Glass LLC and CulChrome LLC contain four specific provisions regarding dissolution. The first provision specifies three circumstances in which the company may be dissolved: (1) unanimous written consent, (2) dissociation of a member under specified circumstances, or (3) the entry of a decree of judicial dissolution "pursuant to" the Delaware LLC Act. The remaining provisions discuss the effect of dissolution, distribution of assets, and the winding up of company affairs. There are no specific provisions in the operating agreements regarding judicial dissolution.

Therefore, the only reference in the operating agreements to judicial dissolution specifies that it should occur "pursuant to" the Delaware LLC Act. This means that the parties intended for § 18-802 to apply to any petition for judicial dissolution. The court must therefore apply the default rule in this case.

The fundamental question presented by the motion to dismiss is whether the default rule, 6 Del. C. § 18-802, authorizes the Rutland Superior Court to dissolve Green Mountain Glass LLC and CulChrome LLC—and if not, whether any other source of authority does.

Whether § 18-802 confers subject matter jurisdiction upon this court

The court looks first to the plain language of § 18-802. In Delaware, as in Vermont, the goal of statutory construction is to ascertain and give effect to the intent of the Legislature by applying the plain meaning of the statute if doing so does not lead to an unreasonable or absurd result. *Director of Revenue v. CNA Holdings, Inc.*, 818 A.2d 953, 957 (Del. 2003); *Delta Psi Fraternity v. City of Burlington*, 2008 VT 129, ¶ 7.

Section 18-802 provides in full as follows: "On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the operating agreement." This language provides a standard of review, and grants subject matter jurisdiction to the Delaware Court of Chancery to hear and determine petitions for judicial dissolution. See *Elf Atochem*, 727 A.2d at 292 (explaining that similar references to the Court of Chancery elsewhere in the Delaware LLC Act are grants of subject matter jurisdiction).

Section 18-802 does not grant subject matter jurisdiction to any other court. It does not identify any other court by name, and it does not use permissive or generic terms suggesting that subject matter jurisdiction would be appropriate in any court where personal jurisdiction can be maintained. It says only that the Court of Chancery may decree dissolution whenever the standard has been met.[1] This phrasing is consistent with the only other grant of subject matter jurisdiction contained in the dissolution subchapter, which grants authority to the Court of Chancery to wind up company affairs after dissolution. 6 Del. C. § 18-803. Neither provision authorizes action by any other court. Therefore, a plain reading of the statute suggests that the default rules governing dissolution grant subject matter jurisdiction only to the Delaware Court of Chancery, and not to any other court. *Elf Atochem*, 727 A.2d at 292, 295–96; *In re TGM Enterprises*, 2008 WL 261035 at *2 (Del. Ch. Sep. 12, 2008).

There is some tension between the default rules governing dissolution and other provisions of the Delaware LLC Act that contemplate the possibility of jurisdiction in courts other than the Delaware Court of Chancery. For example, § 18-109(d) states that members "may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of Delaware." In addition, § 18-111 appears to suggest that actions to "interpret, apply, or enforce" the provisions of an operating agreement "may be brought" in the Court of Chancery while at least leaving open the possibility of jurisdiction elsewhere—at least where the parties have so consented.

There is an explanation for this tension, however: there is a fundamental difference between dissolution and actions that merely seek to interpret an operating agreement or resolve differences among members. Judicial dissolution is a drastic remedy that terminates the existence of an entity created pursuant to an enabling statute. As a matter of comity, courts have declined jurisdiction to dissolve business entities—corporations, limited liability companies, and limited partnerships alike—organized under the laws of another state. *Young v. JCR Petroleum, Inc.*, 423 S.E.2d 889, 892–93 (W. Va. 1992) (corporation); *Durina v. Filtroil, Inc.*, 2008 WL 4307892 at *2–3 (Ohio Ct. App. Sep. 18, 2008) (Nevada LLC); *Rimawi v. Atkins*, 840 N.Y.S.2d 217, 218–19 (N.Y. App. Div. 2007) (Delaware LLC); *Smyth v. Field*, 1993 WL 818732 at *3 n.5 (Mass. Super. Nov. 17, 1993) (Delaware limited partnership). These cases express the principle that courts should normally refrain from attempting to wind up the affairs of a business entity organized under the laws of another state, at least in the absence of express authority granting them permission to do so.

There is no reason why this principle (which derives from corporate law) should not apply to limited liability companies. The essence of limited liability companies is that they combine attributes of corporations and partnerships, and courts routinely

[1] The use of the term "may" in § 18-802 does not somehow confer subject matter jurisdiction upon this court. It means only that the Court of Chancery retains discretion to determine whether dissolution should be ordered even if the facts show that it is not reasonably practicable to carry on the business. *Haley v. Talcott*, 864 A.2d 86, 93 & n.18 (Del. Ch. 2004).

interpret LLC operating agreements and statutes by applying the law of the foundational business form that gave rise to the LLC characteristic in dispute. *Anderson v. Wilder*, 2003 WL 22768666 (Tenn. Ct. App. Nov. 21, 2003). Even acknowledging the split in Delaware authority regarding whether corporate law or partnership law applies when determining whether the standard for dissolution has been met,[2] there are enough similarities between corporations and limited liability companies—in particular, the involvement of the secretary of state in the formation and cancellation of the businesses—to conclude that the principle should be entitled to some persuasive weight here as an explanation for why dissolution proceedings are treated differently than other actions under the Delaware LLC Act.

In addition, a review of the reported cases supports the conclusion that dissolution is different. There are a number of cases in which the Delaware Court of Chancery has decided whether to grant dissolution under § 18-802.[3] However, this court has not found any decisions in which the courts of another state have dissolved a Delaware LLC pursuant to § 18-802.[4] Instead, the court has only found decisions in which courts concluded that they lacked jurisdiction to dissolve limited liability companies organized under Delaware law, e.g., *Rimawi*, 840 N.Y.S.2d at 218–19, and cases in which dissolution proceedings occurred in the Delaware Court of Chancery while other related claims were heard elsewhere. *In re TGM Enterprises*, 2008 WL 4261035 (Del. Ch. Sep. 12, 2008); *Citrin Holdings LLC v. Cullen 130 LLC*, 2008 WL 241615 (Del. Ch. Jan. 17, 2008). Taken together, the trend shown by these cases strongly supports the court's interpretation: that subject matter jurisdiction to dissolve a Delaware LLC exists solely in the Delaware Court of Chancery, at least as a default rule.

Plaintiffs raise a number of arguments against the court's interpretation. The first is that declining jurisdiction would be contrary to the spirit of freedom of contract embodied by the Delaware LLC Act. However, adhering to the principle of freedom of contract normally means honoring the choices actually made by the parties in their contract. In this case, even assuming that the members could have chosen to modify the default jurisdictional provisions of § 18-802, and thereby consented to dissolution proceedings in this court, they did not do so. Instead, the operating agreements expressly contemplated dissolution proceedings "pursuant to" the Delaware LLC Act—and § 18-

---

[2] Compare *Haley*, 864 A.2d at 93–96 (corporate law) with *In re Silver Leaf, LLC*, 2005 WL 2045641 at *10 (Del. Ch. Aug. 18, 2005) (partnership law).

[3] See, e.g., *Fisk Ventures, LLC v. Segal*, 2009 WL 73957 (Del. Ch. Jan. 13, 2009); *In re Seneca Investments LLC*, 2008 WL 4329230 (Del. Ch. Sep. 23, 2008); *In re Silver Leaf, LLC*, 2005 WL 2045641 (Del. Ch. Aug. 18, 205); *Haley v. Talcott*, 864 A.2d 86 (Del. Ch. 2004).

[4] The exercise of jurisdiction in *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005), can be attributed to a Tennessee statute that apparently provided the court with authority to dissolve a foreign limited liability company; as discussed in more detail in footnote 6, Vermont law does not contain a similar provision. Similarly, the exercise of jurisdiction in federal district courts, as in *Polak v. Kobayashi*, 2005 WL 2008306 (D. Del. Aug. 22, 2005) and 2008 WL 4905519 (D.Del. Nov. 13, 2008), can be explained by either federal diversity jurisdiction over state-law claims or the doctrine of supplemental jurisdiction: federal courts may exercise supplemental jurisdiction over pendent state claims arising out of the same case or controversy. See *Sriram v. Preferred Income Fund III Ltd. Partnership*, 22 F.3d 498, 501 (2d Cir. 1994) (discussing § 17-802 of the analogous Delaware limited partnership statute); *Jolly v. Pittore*, 1993 WL 277284 (S.D.N.Y. 1993) (same).

802 expressly grants authority to hear and determine petitions for judicial dissolution only to the Delaware Court of Chancery. Under these circumstances, the default rules must be applied as they are written if they are to have any meaning at all.

The second argument is that § 18-802 merely confers non-exclusive jurisdiction upon the Court of Chancery (for the purpose of authorizing action by a court of limited jurisdiction), and was not meant to divest any other court of subject matter jurisdiction. The problem with this interpretation is that it does not explain where this court's jurisdiction comes from. It is not enough to say that this is a court of "general jurisdiction"—that term is merely a general description of this court's authority to hear and determine causes of action rooted in the common law and equity. 4 V.S.A. § 113; *Lamell Lumber Corp. v. Newstress Intern., Inc.*, 2007 VT 83, ¶ 6, 182 Vt. 282. It always remains the burden of the party asserting jurisdiction to show that it exists. In this case, dissolution under § 18-802 is a purely statutory remedy, and the power to dissolve limited liability companies is conferred entirely by the enabling statute, rather than by any source of authority deriving from the common law, or by traditional equitable relief. *In re Seneca Investments LLC*, 2008 WL 4329230 at *1 (Del. Ch. Sep. 23, 2008); *In re Silver Leaf, LLC*, 2005 WL 2045641 at *12 n.95 (Del. Ch. Aug. 18, 2005). In other words, jurisdiction under § 18-802 is conferred completely by the Delaware LLC Act, and not by any other source.[5] The presumption of general jurisdiction does not allow this court to exercise jurisdiction over a statutory cause of action where the enabling statute does not grant it any authority to do so.

The third argument is that principles of comity do not apply because Delaware courts have no special interest in retaining jurisdiction over dissolution proceedings. This argument does not explain why the Delaware Legislature chose to vest subject matter jurisdiction over dissolution proceedings only in the Court of Chancery, at least as a default rule. This argument also does not account for the interests of the Delaware courts in providing a "default forum" for dissolution proceedings and centering interpretive litigation in Delaware. *Elf Atochem*, 727 A.2d at 292.

The fourth argument is that the Delaware Legislature has elsewhere conferred exclusive jurisdiction in express terms, as in a section of the general corporations law wherein the Legislature provided that "[t]he Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement . . . ." 8 Del. C.

---

[5] The court has considered whether the Vermont Limited Liability Company Act provides any authority to dissolve an LLC organized under the laws of another state. It does not. The Vermont LLC Act draws a clear distinction between "limited liability companies," which are defined as those companies organized under Vermont law, and "foreign limited liability companies," which are defined as those companies organized under the laws of another state or jurisdiction. 11 V.S.A. §§ 3001(10), (11); accord 6 Del. C. §§ 18-101(4), (6). The remedy of judicial dissolution provided by the Vermont LLC Act is available only to "limited liability companies" organized under Vermont law. *Id*. § 3101; accord 6 Del C. § 18-802. There is no provision in the Vermont LLC Act authorizing dissolution of a foreign limited liability company. Thus, unlike the decision in *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005), in which the Tennessee Court of Appeals found authority to dissolve a Delaware LLC in the Tennessee LLC Act, this court cannot conclude that Vermont law provides an independent basis for dissolution of a Delaware LLC.

§ 145(k). However, in the context of a "flexible statute" such as the Delaware LLC Act, language of "exclusive jurisdiction" raises only the question of whether the jurisdictional provision would be subject to modification in the operating agreement—an issue that is not raised by this case, where the parties did not modify the default jurisdictional rule. The fact that § 18-802 does not contain language of exclusiveness does not make it optional. Again, the default rules be given effect when the parties have not modified them in their operating agreements.

The last argument is that other provisions in the operating agreements show that the members intended to consent generally to jurisdiction anywhere where personal jurisdiction could be established, including for dissolution proceedings. It is true that there are several provisions in the operating agreements that contemplate litigation in other forums, but they are not relevant to dissolution. For example, according to the operating agreements, actions for breach of a funding commitment may be brought in other specified courts, but the consent to jurisdiction in those courts is specifically limited to that specific cause of action. Another provision allows arbitration awards to be confirmed by a court of competent jurisdiction, but this does not bear on dissolution proceedings commenced under § 18-802. Similarly, dissociation of a member may occur when the member is declared incompetent to manage his or her affairs by a court of competent jurisdiction—this has even less to do with dissolution proceedings. Taken as a whole, these provisions do not demonstrate an agreement among the parties to submit all disputes arising under the operating agreement, of whatever nature, to any court where personal jurisdiction can be established. The more specific reference in the operating agreements—that dissolution may be ordered "pursuant to" the Act—must control.

For all of the foregoing reasons, the court concludes that it does not have subject matter jurisdiction to dissolve Green Mountain Glass LLC or CulChrome LLC under § 18-802 of the Delaware LLC Act, or any other independent source of authority.

ORDER

(1) Defendant's Motion to Dismiss Count V (MPR #7), filed October 8, 2008, is ***granted***;

(2) Plaintiff's Motion for Partial Summary Judgment (MPR #4), filed September 17, 2008, is ***denied as moot***;

(3) Plaintiff's Motion for Stay Pending Decision on Summary Judgment Motion (MPR #5), filed September 17, 2008, is ***denied as moot***.

Dated at Woodstock, Vermont this ____ day of February, 2009.

_____

Hon. Harold E. Eaton, Jr.

Superior Court Judge