

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: April 25, 2016]

RUDOLPH J. PROCACCIANTI, individually, :
and RUDOLPH J. PROCACCIANTI, :
derivatively on behalf of :
PROFESSIONAL AMBULANCE, LLC, :
as a Member of the limited liability company, :

Plaintiff, :

v. :

JOSEPH J. BAGINSKI and :
EAGLE EMS, INC., :

Defendants. :

C.A. No. PB 2013-3440

DECISION

SILVERSTEIN, J. Plaintiff Rudolph J. Procaccianti is a resident of East Greenwich, Rhode Island. Plaintiff Professional Ambulance, LLC (Professional Ambulance) is a Rhode Island limited liability company; its principal place of business is Providence, Rhode Island. Defendant Joseph J. Baginski is a resident of Cranston, Rhode Island. Defendant Eagle EMS, Inc. (Eagle) is a Massachusetts corporation; its principal place of business is Attleboro, Massachusetts. This Court has jurisdiction over the subject matter of the instant dispute pursuant to G.L. 1956 §§ 8-2-13, 8-2-14, and 9-30-1.

Facts and Travel

When Professional Ambulance was formed in 2009, its members were Joseph J. Baginski (Joseph); Joseph's wife, Brenda A. Baginski (Brenda); Rudolph J. Procaccianti (Rudolph); and Rudolph's son, Neil J. Procaccianti (Neil), each of whom owned a twenty-five percent interest in

the company. The Operating Agreement of Professional Ambulance (Operating Agreement) stated the purpose of the business as “owning, operating, and otherwise engaging in the service of providing ambulance transportation.” Operating Agreement § 3. The Operating Agreement identified Joseph as the company’s “initial Manager,” Operating Agreement § 7.7, and gave him the “full and exclusive power on the LLC’s behalf to manage its daily business and affairs and to do or cause to be done anything deemed necessary or appropriate for the LLC’s business,” Operating Agreement § 7.1.

In 2010, Neil sold his twenty-five percent interest in Professional Ambulance to Rudolph and Joseph. As a result of the sale, Rudolph and Joseph each held a 37.5 percent interest in Professional Ambulance. Brenda retained her twenty-five percent interest in the company.

In April of 2012, Joseph formed Eagle. The officers and directors of Eagle include Joseph, Joseph’s son, Martin J. Baginski (Martin), and Joseph’s daughter, Jacquelyn Baginski (Jacquelyn). Rudolph neither holds an ownership interest nor is involved in the management or operation of Eagle.

In February of 2013, Brenda and Joseph purported to expel Rudolph from Professional Ambulance. The notice of expulsion stated, inter alia, that “[i]n accordance with Section 12.2 of the Operating Agreement of Professional Ambulance, LLC (the LLC), LLC members Joseph J. Baginski and Brenda A. Baginski . . . unanimously expel Rudolph J. Procaccianti from the LLC.” The notice further stated that “[u]nder the terms of the Operating Agreement, the LLC will pay Mr. Procaccianti an amount equal to the fair value of his LLC interest as set forth in Section 10.”

Section 12.2 of the Operating Agreement provides that

“[a]ny member may be expelled from the LLC on the unanimous decision of the other Members. However, the LLC must pay an

expelled Member an amount equal to the fair value of the expelled Member's LLC Interest. The fair value of an expelled Member's LLC Interest shall be determined in the same manner as set forth in Section 10.3 hereof . . .”

Under Section 10.3, fair value

“shall be that price that is mutually agreed upon by the Offering Member¹ and the purchasing Members. If the Offering Member and purchasing Members are unable to agree mutually on the fair value of the Offered Interest within ten (10) days from the date the purchase option is accepted by the purchasing Members . . .”

. . . fair value is determined by recognized, independent appraisers in accordance with the terms of Section 10.3. Operating Agreement § 10.3.²

¹ Section 10.2 states that an “Offering Member” is “[a] Member who wishes to Transfer any LLC Interest, or who has reason to believe that an involuntary Transfer or a Transfer by operation of law is reasonably foreseeable.”

² Under Section 10.3.1 of the Operating Agreement,

“[t]he Appraised Value of the LLC shall be determined by two appraisers, one to be selected by the Offering Member and one to be selected by the purchasing Members . . . Each of the appraisers designated hereunder shall be a recognized independent appraiser qualified to make a valuation of the LLC, having no direct or indirect relationship in or with any of the Members. The appraisers designated hereunder shall value the LLC at its liquidation value. Accordingly, they shall not consider any discount for lack of a majority interest, nor any premium for a controlling interest.”

Under Section 10.3.2 of the Operating Agreement,

“[t]he Appraised Value of the LLC agreed upon by the two appraisers shall be conclusive and binding upon the Members; provided however, that in the event that such two appraisers are unable to agree upon the Appraised Value of the LLC within sixty (60) days of their appointment, then they shall, within ten (10) days thereafter, together appoint a third similarly qualified appraiser to conduct a valuation of the LLC and issue a report in which that appraiser shall set forth each of the three appraisers' determination of the Appraised Value of the LLC. The Appraised

Rudolph rejected the expulsion notice on February 22, 2013. Between February 22, 2013 and April 30, 2013, Rudolph made requests for information regarding the finances of Professional Ambulance. Joseph responded by providing some, but not all, of the requested materials.

On July 12, 2013, Rudolph filed a Verified Complaint (Complaint) in Superior Court, wherein he named Joseph and Eagle as Defendants, and alleged Breach of Fiduciary Duty to Rudolph (Count I), Member Derivative Action—Breach of Fiduciary Duty to the Company (Count II), Breach of Contract—Wrongful Expulsion (Count III), Declaratory Judgment—Wrongful Expulsion (Count IV), Appointment of an Equitable Receiver (Count V), Unjust Enrichment (Count VI), Injunctive Relief (Count VII), and Accounting (Count VIII). On August 22, 2013, Joseph and Eagle (collectively, Defendants) filed a Verified Answer (Answer) in response to the Complaint. In their Answer, Defendants deny Counts I-VIII, and assert two Affirmative Defenses: lack of standing with respect to Count II, and breach of contract on the part of Rudolph.

Currently before the Court are Rudolph's Motion for Appointment of a Non-Liquidating Equitable Receiver, Or, Alternatively, for Injunctive Relief, and Plaintiffs' Motions to Compel Production of Documents Against Joseph and Eagle.

Value of the LLC determined by the third appraiser (which shall be made within thirty (30) days of his appointment) shall govern and be conclusive and binding upon the Members unless it varies . . . by more than twenty percent (20%) of either of the values determined by the first two appraisers, in which case the Appraised Value of the LLC shall equal the average of the three values determined by the three appraisers, which value shall govern and be conclusive and binding upon the parties. The respective Members, or their representatives, shall each bear the cost of their duly appointed appraiser, and shall share equally the cost of the third appraiser.”

Discussion

Rudolph asks this Court to appoint an equitable receiver to prevent waste of the assets of Professional Ambulance. To have standing to request appointment of an equitable receiver, Rudolph must prove that he is either currently a member of Professional Ambulance, or that he is a creditor of Professional Ambulance, and that he is suffering harm as a result of waste or mismanagement of company assets. See Tanner v. Town Council of Town of E. Greenwich, 880 A.2d 784, 793 n.5 (R.I. 2005) (“Standing is a constitutional prerequisite to suit in both federal courts and state courts . . . [T]he plaintiff must have suffered some threatened or actual injury resulting from the putatively illegal action”); see also Peck v. Jonathan Michael Builders, Inc., 2006 WL 3059981, at *8 (R.I. Super. Oct. 27, 2006, Silverstein, J.), aff’d, 940 A.2d 640 (R.I. 2008) (noting that “the Supreme Court has upheld the appointment of a receiver ‘for the benefit of the corporation and particularly to protect the interests of its numerous creditors’” (quoting Edwards v. Miller, 131 A. 554, 556 (R.I. 1925)).

Rudolph asserts that he is currently a member of Professional Ambulance, and bases his contention on the grounds that his expulsion was wrongful and invalid. Specifically, Rudolph contends that Joseph and Brenda attempted to expel him from Professional Ambulance in a manner inconsistent with their fiduciary duties, the implied duties of good faith and fair dealing, and the intent of the parties to the Operating Agreement. In support of his contention, Rudolph cites to Anderson v. Wilder, 2007 WL 2700068 (Tenn. Ct. App. Sept. 17, 2007) (Anderson II). Rudolph argues that, under Anderson, a plaintiff may be entitled to a remedy for harm related to expulsion from an LLC, if the purported expulsion is inconsistent with the implied duties of good faith and fair dealing.

Rudolph notes that, under Section 7.1 of the Operating Agreement, “[a]ctions that fall outside the daily business and affairs of [Professional Ambulance] shall be approved by the

affirmative vote of the Members holding in the aggregate at least three-fourths (3/4) of all the [Professional Ambulance] Interests.” Rudolph argues that this provision was intended to prevent Joseph and Brenda from taking corporate action in the manner alleged in the Complaint. Following the sale of Neil’s twenty-five percent interest in Professional Ambulance, Rudolph contends that the Operating Agreement should have been amended in accordance with the intent of the parties.

As Rudolph notes, “virtually every contract contain[s] an implied covenant of good faith and fair dealing between the parties.” Dovenmuehle Mortgage, Inc. v. Antonelli, 790 A.2d 1113, 1115 (R.I. 2002) (quoting Centerville Builders, Inc. v. Wynne, 683 A.2d 1340, 1342 (R.I. 1996)). However, “[o]ne well-accepted mode of analysis used in the resolution of conflicting contract provisions is that a general provision must yield to a more specific one.” Elliott Leases Cars, Inc., v. Quigley, 118 R.I. 321, 327, 373 A.2d 810, 813 (1977). Here, the specific provision in the Operating Agreement concerning expulsion states that “[a]ny Member may be expelled from [Professional Ambulance] on the unanimous decision of the other Members.” Operating Agreement § 12.2. Moreover, whereas the parties engaged in the practice of cross-referencing elsewhere in the Operating Agreement, see, e.g., Operating Agreement § 6.1.2, Section 12.2, by its terms, is not made subject to Section 7.1. The Court construes this as evidence that the parties meant for Section 12.2 to exclusively govern matters relating to expulsion.

Based upon its interpretation of the relevant provisions of the Operating Agreement, the Court concludes that it was the intent of the parties to allow for expulsion of a member to occur upon the unanimous decision of the other members, and that the affirmative vote of 3/4 of the members of Professional Ambulance was not required to expel Rudolph. Because Brenda and Joseph were the only members of Professional Ambulance other than Rudolph at the time of the

expulsion, and because they unanimously decided to expel him, the Court concludes that Rudolph was not expelled in a manner inconsistent with the intent of the parties, Joseph's fiduciary duties, or the implied duties of good faith and fair dealing. Thus, the Court finds that Rudolph's expulsion was valid and that an equitable receiver may not be appointed on the grounds that Rudolph is suffering harm as a member of Professional Ambulance.

However, under Rhode Island law, the Court may appoint an equitable receiver on the grounds that Rudolph is suffering harm as a creditor of Professional Ambulance. In Edwards, our Supreme Court upheld the appointment of a receiver "for the benefit of the corporation and particularly to protect the interests of its numerous creditors." Edwards, 131 A. at 556. Moreover, as was noted in Peck, an equity court may exercise its "inherent power" to protect the interests of persons—usually creditors and shareholders—entitled to possess mismanaged corporate property. Peck, 2006 WL 3059981, at *6.

Under the terms of the Operating Agreement, Rudolph—as an expelled member of Professional Ambulance—must be paid "an amount equal to the fair value of [his] LLC Interest". [sic] Operating Agreement § 12.2. Furthermore, this amount must be paid by the corporation itself. *Id.* Joseph does not contend that Rudolph has been paid for his interest. Thus, Rudolph, as "one to whom a debt is owed" by Professional Ambulance, is a creditor of Professional Ambulance. Black's Law Dictionary (10th ed. 2014) (defining the term "creditor" as "[o]ne to whom a debt is owed").

"[A]n equity court may properly appoint a receiver pendente lite where necessary to preserve the subject matter of a suit." Peck, 2006 WL 3059981, at *7. However, "[c]ourts of equity should usually hesitate to appoint a receiver at the petition of a creditor or minority shareholder." *Id.* at *6. By appointing a receiver, a court displaces a corporation's chosen

directors and managers, id. at *7; thus, before doing so, the court “ought to have the clearest evidence of the absolute necessity for such extraordinary action for the protection of the creditors, stockholders, and all parties concerned.” Id. at *7 (quoting Guardian Financing Co. v. Davidson, 23 Ohio App. 143, 154 N.E. 743, 744 (Ohio Ct. App. 1924)).

Here, Rudolph has offered no evidence of waste with respect to the assets of Professional Ambulance. However, such evidence may be contained within documents that Rudolph is urging the Court to compel Joseph and Eagle to produce. Thus, prior to ruling on Rudolph’s Motion for Appointment of an Equitable Receiver, the Court must decide whether to grant Rudolph’s Motions to Compel Production of Documents Against Joseph and Eagle.

In his Motions to Compel, Rudolph requests disclosure of documents relating to (1) alleged mismanagement or waste of Professional Ambulance assets, (2) the purported expulsion, and (3) evidence Defendants will seek to introduce at trial. Eagle has objected to requests for disclosure of documents relating to alleged mismanagement or waste on one or more of the following grounds: (1) the requested materials are not required to be produced by Eagle; (2) the requested materials are not relevant, and are not likely to lead to the discovery of admissible evidence; and/or (3) Eagle is not obligated to produce documents created subsequent to the purported expulsion. Additionally, Eagle has objected to requests for disclosure of documents relating to evidence Defendants will seek to introduce at trial on the grounds that it is not required to produce the requested materials under the Rhode Island Superior Court Rules of Civil Procedure. Joseph has objected to requests for disclosure of documents relating to alleged mismanagement or waste on the grounds that he is not obligated to produce documents created subsequent to the purported expulsion. Furthermore, Joseph has objected to the requests for disclosure of documents relating to evidence Defendants will seek to introduce at trial on the

grounds that he is not required to produce the requested materials under the Rhode Island Superior Court Rules of Civil Procedure.

Rudolph alleges, inter alia, that Joseph has paid himself and members of his family excessive compensation for work done on behalf of Professional Ambulance; that Joseph has misappropriated the assets of Professional Ambulance; that Joseph has engaged in self-dealing as it relates to company assets; and that Joseph has permitted the assets and accounts of Professional Ambulance and Eagle to become commingled. Rudolph contends he has been denied access to the financial records of Professional Ambulance and Eagle, and requests the Court's assistance in obtaining evidence necessary to prove his claims.

Generally, “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Super. R. Civ. P. 26(b)(1). “The philosophy underlying modern discovery is that prior to trial, all data relevant to the pending controversy should be disclosed unless the data is privileged.” Cabral v. Arruda, 556 A.2d 47, 48 (R.I. 1989). “The rationale for such disclosure is that controversies should be decided on their merits rather than upon tactical strategies.” Id.

Here, prior to ruling on Rudolph's Motion for Appointment of an Equitable Receiver, the Court must determine whether Rudolph is suffering harm as a result of waste or mismanagement of the assets of Professional Ambulance. To the extent the documents Rudolph requests contain evidence of waste or mismanagement which impacts or may impact Professional Ambulance's ability to comply with its obligations to Plaintiffs pursuant to Section 12.2 of the Operating Agreement, the Court finds that such documents are relevant to the subject matter involved in the pending litigation. Thus, in accordance with the Rhode Island Superior Court Rules of Civil Procedure, which are “designed to promote broad discovery among parties during the pretrial

phase of litigation,” Henderson v. Newport Cty. Reg’l Young Men’s Christian Ass’n, 966 A.2d 1242, 1246 (R.I. 2009), the Court grants Rudolph’s Motion to Compel with respect to materials relating to alleged waste or mismanagement of Professional Ambulance assets, including materials created subsequent to the purported expulsion.

Similarly, the Court grants Rudolph’s Motion to Compel with respect to materials relating to evidence Defendants will seek to introduce at trial. Disclosure of such materials is required when a failure to disclose creates “an element of surprise or otherwise prejudice[s] defendant.” Hernandez v. JS Pallet Co., 41 A.3d 978, 984 (R.I. 2012). Again, to “promote broad discovery among parties during the pretrial phase of litigation,” Henderson, 966 A.2d at 1246, and to prevent defendant from being prejudiced, the Court hereby orders that Defendants disclose the requested materials relating to evidence they will seek to introduce at trial.

However, the Court denies Rudolph’s Motion to Compel with respect to materials relating to the putative expulsion. The Court notes that Rudolph’s expulsion was valid, and that the documents relating to the reason(s) for his expulsion are therefore not relevant to the subject matter involved in the pending litigation.

Following disclosure of the documents ordered to be disclosed, the Court will resolve by hearing the issue of whether to appoint an equitable receiver, or, in the alternative, to grant injunctive relief.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Rudolph J. Procaccianti, Individually, et al. v. Joseph J. Baginski, et al.

CASE NO: C.A. No. PC 2013-3440

COURT: Providence County Superior Court

DATE DECISION FILED: April 25, 2016

JUSTICE/MAGISTRATE: Silverstein, J.

ATTORNEYS:

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For Defendant: Jeffrey C. Schreck, Esq.