

Chancery Court Enforces Provision in LLC Agreement Waiving the Right to Petition for Judicial Dissolution

The Delaware Court of Chancery recently issued its decision in *R&R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, CA No. 3803-CC (Del. Ch. August 19, 2008), enforcing the waiver of a member's right to petition for judicial dissolution and for appointment of a receiver contained in a limited liability company agreement. This case deals with an issue of first impression under Delaware law and further highlights Delaware's strong policy in favor of freedom of contract in limited liability company agreements.

Petitioners R&R Capital, LLC and FTP Capital, LLC (collectively, "Petitioners") are members of seven Delaware limited liability companies (the "Waiver LLCs") and are also members of the sole member of another two entities (together with the Waiver LLCs, the "LLCs"). Petitioners sought judicial dissolution of the LLCs or, alternatively, the appointment of a receiver to wind up the affairs of the LLCs.

The Waiver LLCs moved to dismiss Petitioners' law suit on the grounds that Petitioners waived their rights to petition for judicial dissolution and the appointment of a receiver under the Waiver LLCs' limited liability company agreements. In addressing whether such waivers were enforceable, the court first emphasized that limited liability companies are creatures of contract and that the Delaware Limited Liability Company Act (the "LLC Act") specifically provides for giving maximum effect to the principles of freedom of contract and to the enforceability of a limited liability company's operating agreement. The court rejected Petitioners' statutory



arguments and found nothing in the statute to indicate that waiver of a member's right to petition the court for dissolution or the appointment of a receiver violates the LLC Act. The court also rejected Petitioners' arguments that the waivers at issue in this case should be unenforceable because they violate public policy. It pointed to freedom of contract and opined that there are legitimate business reasons why a limited liability company would want to set up its governance structure so that its members could not petition the court for dissolution, including protecting the company from a "disgruntled member." Finally, the court stated that there is no threat to equity associated with such waivers because the LLC Act provides the "unwaivable protection of the implied covenant [of good faith and fair dealing] that allows the vast majority of the remainder of the LLC Act to be so flexible." (Op. at 20).

In sum, the court, in granting the motion to dismiss as to the Waiver LLCs, concluded that the "allure of the limited liability company would be eviscerated if the parties could simply petition this court to renegotiate their agreements when relationships sour." (Op. at 21). Thus, the court fortified Delaware's policy of giving maximum effect to the freedom of contract in limited liability company agreements by holding that where members of a limited liability company "knowingly, voluntarily, and unambiguously waived their rights to petition [the] Court for dissolution or appointment of a receiver under the LLC Act...[such waiver will be] enforceable because it contravenes neither the LLC Act itself nor the public policy of the state." (Op. at 21).