



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Decided: May 1, 2013
Date Submitted: February 18, 2013

Seth A. Niederman
Austen C. Endersby
Fox Rothschild LLP
919 North Market Street, Suite 1300
Wilmington, Delaware 19801

Stephani J. Ballard
Law Offices of Stephani J. Ballard, Esq.
1308 Delaware Avenue
Wilmington, Delaware 19806

Stephen W. Spence
Phillips, Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, Delaware 19806

Re: *Poppiti v. Conaty*
Civil Action No. 6920-VCG

Dear Counsel:

I. BACKGROUND

Divorce can be contentious, regardless of whether the partners are conjugal or professional. This case arises from a dispute between two former law partners and members of the Delaware Bar, James Curran and Thomas Conaty. Since December 2006, they operated their law practice through an entity named Conaty & Curran, LLC (the "Firm").¹ Conaty and Curran each had an equal share in Firm

¹ Compl. ¶ 4.

profits.² On September 24, 2010, Conaty and Curran entered into a Liquidation Agreement to dissolve their law practice and wind up the Firm's business.³ As part of the Liquidation Agreement, Conaty and Curran appointed a liquidating trustee, Vincent Poppiti, Esq. (the "Liquidating Trustee"), to manage the dissolution of the Firm.⁴

The Liquidating Trustee filed this action because Conaty disputed the Liquidating Trustee's authority to receive and disburse fees arising from a settlement between the Catholic Diocese of Wilmington ("CDOW") and plaintiffs who alleged that they were victims of sexual abuse for which CDOW was responsible.⁵ Prior to its dissolution, the Firm had agreed to represent 10 individual plaintiffs bringing civil claims against the CDOW.⁶ That litigation was stayed when the CDOW filed for bankruptcy in 2009.⁷ The litigation was ultimately settled in July 2011, and the bankruptcy court appointed Marla Eskin (the "Settlement Trustee") to oversee the distribution of victims' compensation,

² Compl. Ex. A (Operating Agreement) ¶ GP 26.

³ *Id.* ¶ 6. Compl. Ex. B (Liquidation Agreement) ¶ 1.

⁴ *Id.* Ex. B. (Liquidation Agreement) ¶ 1.

⁵ *Id.* ¶ 14. Conaty and Curran have also brought crossclaims against each other for breaches of duty arising out of the dissolution of the Firm. The parties agreed to bifurcate this proceeding, and first determine the question of whether the Liquidating Trustee is entitled to receive the disputed fees arising from the CDOW litigation. *See* Teleconf. Tr. 16:13-17:11, Aug. 15, 2012.

⁶ Compl. ¶ 14.

⁷ *Id.* ¶ 16.

costs, and attorneys' fees.⁸ The settlement portended a substantial fee award to the Firm.

Poppiti notified the Settlement Trustee by letter dated August 9, 2011 that all attorneys fees' and costs payable to the Firm were Firm assets and should be delivered to the Liquidating Trustee.⁹ Conaty, however, objected. He notified the Settlement Trustee on September 14, 2011, that fees from the settlement were payable to Conaty, because the individual plaintiffs were no longer clients of the Firm, but were clients of Conaty in his individual capacity.¹⁰ Conaty asserts that he did extensive post-dissolution work related to the CDOW cases, including "client meetings, work on non-monetary aspects of the settlement with the CDOW, motion practice, discovery practice, and participation in mediation sessions."¹¹

On October 6, 2011, the Liquidating Trustee filed this action, seeking a declaratory judgment that (1) the disputed fees are assets of the Firm, and (2) the Liquidating Trustee has the Authority to receive and distribute the disputed fees consistent with his duties and responsibilities under the Liquidation Agreement. Defendant Curran supports the position of the Liquidating Trustee.

⁸ *Id.* ¶ 18.

⁹ *Id.* ¶ 21.

¹⁰ *Id.* ¶ 22; *Id.* Ex. D at 1.

¹¹ Def. Conaty's Answer ¶ 99.

On September 13, 2012, I held an evidentiary hearing, in which Conaty presented evidence that, according to Conaty, demonstrated that Curran had waived his interest in the disputed fees prior to the signing of the Liquidation Agreement.¹² At that hearing, I found that Curran did not waive his interest in the disputed fees.¹³ Subsequently, Defendant Curran and Plaintiff Poppiti have jointly moved for partial summary judgment on the issue of whether the Liquidating Trustee is entitled to receive and distribute the disputed fees arising from the CDOW settlement. The Liquidating Trustee also made an oral petition for instructions, asking me to declare that his decision to distribute the disputed fees 50-50 between the Defendants is consistent with his duties and responsibilities under the Liquidation Agreement.¹⁴ Defendant Curran and the Liquidating Trustee have also asked me to order Defendant Conaty to pay their legal fees and costs, because Conaty has allegedly acted in bad faith in disputing the Liquidating Trustee's authority to distribute the disputed fees.

¹² Evid. Hr'g Tr. 1, Sept. 20, 2012.

¹³ *Id.* 260:19-261:6.

¹⁴ Oral Arg. Tr. 26:1-15, Mar. 7, 2013.

II. ANALYSIS

Summary judgment pursuant to Court of Chancery Rule 56 is appropriate when the moving party demonstrates that “no genuine issue of material fact exists and that [the movant] is entitled to judgment as a matter of law.”¹⁵

A. Motion for Summary Judgment

Defendant Curran and Plaintiff Poppiti have moved for partial summary judgment and have asked me to enter an order that the disputed CDOW fees are assets of the company, and that Plaintiff Poppiti is entitled to receive and distribute the disputed fees in his capacity as Liquidating Trustee of the company. Conaty concedes in his opening brief that the disputed fees are Firm assets and that the Trustee has the authority under the Liquidation Agreement to receive the disputed fees.¹⁶ Accordingly, I grant Defendant Curran’s and Plaintiff Poppiti’s motions for partial summary judgment on the questions concerning whether the Liquidating Trustee should receive and distribute the disputed fees.

¹⁵ *Levy v. HLI Operating Co.*, 924 A.2d 210, 219 (Del. Ch. 2007).

¹⁶ Def. Conaty’s Resp. Mot. Partial Summ. J. 1 (“Conaty now concedes that the Disputed Fees are company assets. . . . Accordingly, with the understanding that the Disputed Fees are Company assets, Conaty also concedes that the [Liquidating Trustee] has the authority under the Liquidating Agreement to receive the Disputed Fees.”).

B. Petition for Instructions

The only remaining issue before me, then, is whether the Liquidating Trustee's decision to distribute Firm assets 50-50 between the parties is consistent with his obligations under the Liquidation Agreement. Curran and the Liquidating Trustee contend that the Liquidation Agreement not only allows, but in fact requires the Liquidating Trustee to distribute Firm assets to the members in proportion to their interests in the Firm. Conaty maintains that Curran and Poppiti are not entitled to summary judgment on the distribution issue because (1) there is no legal basis supporting the Liquidating Trustee's decision to distribute the disputed fees 50-50, and (2) there are disputed, material facts concerning that issue.¹⁷ For the reasons that follow, I conclude that the Liquidating Trustee's decision to distribute the disputed fees equally to Conaty and Curran is consistent with his obligations under the Liquidation Agreement.

The Liquidation Agreement grants the Liquidating Trustee "sole authority to act on behalf of the [Firm]" in the course of winding up and distributing the assets of the LLC.¹⁸ The Trustee has the discretion to "take such actions as he deems appropriate in all matters relating to winding up the affairs of the [Firm]."¹⁹ The

¹⁷ Def. Conaty's Resp. Mot. Partial Summ. J. 2.

¹⁸ Def. Curran's Pre-Hr'g Br. Ex. JPC-BRF-1 (Liquidation Agreement) § 1.

¹⁹ *Id.*

Liquidation Agreement specifies that “the affairs of the [Firm] shall be wound up . . . [and] the remaining assets of the [Firm] shall be distributed by Poppiti according to § 18-804 of the [Delaware Limited Liability Company] Act.”²⁰

Section 18-804 of the Delaware Limited Liability Company Act (the “LLC Act”) provides that:

- (a) Upon the winding up of a limited liability company, the assets shall be distributed as follows:
 - (1) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members and former members under § 18-601 or § 18-604 of this title;
 - (2) Unless otherwise provided in a limited liability company agreement, to members and former members in satisfaction of liabilities for distributions under § 18-601 or § 18-604 of this title;²¹ and
 - (3) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, *in the proportions in which the members share in distributions.*²²

²⁰ Def. Curran’s Pre-Hr’g Br. Ex. JPC-BRF-1 (Liquidation Agreement) § 2.

²¹ Distributions under Section 18-601 and 18-604 concern, respectively, interim distributions and distributions upon the resignation of a member from an LLC. 6 *Del. C.* §§ 18-601, 18-604. Neither Conaty nor Curran assert that they are owed distributions under these sections.

²² 6 *Del. C.* § 18-804(a)(1)-(3) (emphasis added).

The Liquidation Agreement contains no other restriction on the Trustee's authority to act on behalf of the company and distribute the Firm's assets.

Conaty makes two arguments that the Liquidating Trustee's allocation decision is wrong. First, he contends that the Liquidation Agreement is silent as to how firm assets are distributed, and therefore Liquidating Trustee must make final membership distributions on the basis of *quantum meruit*. Second, Conaty argues that his post-dissolution work has made him a creditor under Section 18-804 of the LLC Act, and that he is therefore entitled to payment before any membership distribution can be made. Accordingly, Conaty concludes that summary judgment is inappropriate, because determining the amount that each member is owed is a disputed issue of material fact. Neither argument has merit.

1. Must the Liquidating Trustee Make Membership Distributions According to *Quantum Meruit*?

Conaty contends that the Liquidating Trustee must apply the doctrine of *quantum meruit* to compensate members of the Firm for the actual work they performed as part of the windup. In support of this position, Conaty cites cases which have applied the doctrine of *quantum meruit* to allocate contingency fees

among partners of a dissolved law firm.²³ However, those cases are inapposite to the question before me today. Not only do those cases deal with foreign partnerships, rather than Delaware LLC's, but they generally involve the question of whether fees arising from legal services rendered subsequent to a law firm's dissolution constitute assets of the defunct firm or whether they belong to the attorney who performed the work.²⁴ Here, Conaty has conceded that the disputed fees do belong to the Firm, and that the Liquidating Trustee has authority to receive and distribute them. Accordingly, the cases Conaty relies on are irrelevant to the issue of *how* a liquidating trustee should apportion assets under a liquidation agreement.

Contrary to Conaty's argument that the Liquidation Agreement is silent on the distribution issue, Section 2 of the Liquidation Agreement provides that the Liquidating Trustee should distribute firm assets in accordance with Section 18-804 of the LLC Act, and Section 18-804 of the LLC Act provides that after Firm creditors are paid and the members' capital contributions are reimbursed, distributions should be made to the members in the proportion in which the

²³ See Def. Conaty's Resp. Mot. Partial Summ. J. 7.

²⁴ See, e.g., *Santalucia v. Sebright Transp., Inc.*, 232 F.3d 293, 300-01 (2d Cir. 2000) ("We hold, therefore, that under New York law, when a professional corporation of lawyers dissolves and a lawyer leaves with a contingent fee case, absent an agreement to the contrary, that case remains a firm asset"); *Geron v. Robinson & Cole LLP*, 476 B.R. 732, 743 (S.D.N.Y. 2012) ("[U]nder New York law, a dissolved law firm's pending hourly fee matters are not partnership assets.").

members shared an interest in the Firm. Conaty does not contest that he and Curran shared the Firm's profits 50-50 in accordance with the Operating Agreement.²⁵ Accordingly, I must conclude that the Liquidating Trustee's decision to distribute Firm assets to members in proportion to their interest in the Firm is consistent with the plain language of the Liquidation Agreement.

2. Is Conaty a Creditor of the Firm?

Conaty's second argument is that Conaty and Curran, by virtue of their post-dissolution efforts to wind up the Firm, are "creditors" under Section 18-804(a)(1) of the LLC Act, and that the Liquidating Trustee must compensate them for their work *before* making final membership distributions. However, Conaty presents no evidence of an actual contract that would confer on him creditor status. Instead, he again relies on the principles of *quantum meruit* to support his argument.

This argument, too, must fail. As Curran and Poppiti both point out in their briefs, *quantum meruit* is a quasi-contractual principal that only operates in the

²⁵ Though Conaty argued in supplemental briefing that Curran repudiated the Operating Agreement, any repudiation is irrelevant to the question of whether the Liquidating Trustee is acting within the bounds of his authority by distributing firm assets 50-50. The Liquidating Trustee is not seeking to *enforce* the Operating Agreement. Rather, the Operating Agreement constitutes evidence as to what Conaty and Curran's interests were in the Firm, which in turn determines distribution rights under Section 18-804 of the LLC Act and the Liquidation Agreement. Accordingly, I do not address the parties' arguments concerning repudiation.

absence of an express agreement.²⁶ Here, the parties had an agreement—the Liquidation Agreement—under which the Liquidating Trustee had authority to manage the Firm’s affairs and ultimately distribute Firm assets. By conceding that the fees arising from the CDOW settlement are Firm assets, Conaty has conceded that the CDOW fees must be distributed in accordance with the Liquidation Agreement. In asking me to apply the doctrine of *quantum meruit* here, Conaty would have me ignore the existence of the Liquidation Agreement. The Liquidation Agreement expressly grants the Liquidating Trustee “sole authority” to act on the Firm’s behalf, including with regard to “issues which would ordinarily come before the members of the [Firm] in the absence of the appointment of a liquidating trustee.”²⁷ The decision to compensate members based on an equal division of the Firm’s profits, rather than based on the hourly work performed by each member, is exactly the kind of decision that would ordinarily lie with the Firm’s members. Indeed, the Operating Agreement indicates that Conaty and Curran themselves decided that a 50-50 split of profits was the preferred method of compensation. Because Conaty and Curran agreed to vest the Liquidating Trustee with authority to manage all aspects of the Firm’s operations in order to wind up

²⁶ See *Caldera Props.-Lewes/Rehoboth VII, LLC v. Ridings Dev., LLC*, 2009 WL 2231716, at *31 (Del. Super. May 29, 2009) *aff’d sub nom. Ridings Dev., LLC v. Caldera Props. - Lewes/Rehoboth VII, LLC*, 998 A.2d 851 (Del. 2010).

²⁷ Liquidating Agreement § 1.

the enterprise, it would be inappropriate for me to apply the *quantum meruit* doctrine here.²⁸

C. Request for Fees and Costs

Both Curran and the Liquidating Trustee have requested that I require Conaty to bear the costs of these proceedings on the grounds that Conaty has acted in bad faith in disputing the Trustee's authority to receive and distribute the CDOW fees. Nothing in this litigation convinces me that Conaty has acted in bad faith. Accordingly, the request for fees and costs is denied.

III. CONCLUSION

Defendant Curran's Motion for Partial Summary Judgment and Plaintiff Poppiti's Motion for Partial Summary Judgment are hereby granted, and I instruct the Liquidating Trustee that he may distribute residual Firm assets to the members in proportion to their membership interests. The parties should provide me with a form of order consistent with this opinion.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

²⁸ *Caldera*, 2009 WL 2231716, at *31.