IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

AIBAR HUATUCO, M.D.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	*Civil Action No. 8465-VCG*
	)	
SATELLITE HEALTHCARE and SATELLITE DIALYSIS OF TRACY, LLC,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: September 25, 2013
Date Decided: December 9, 2013

Kenneth Aaron, of Weir & Partners, LLP, Attorney for the Plaintiff.

Kevin R. Shannon, Matthew J. O'Toole, and Matthew D. Stachel, of Potter Anderson & Corroon LLP; Of Counsel: Luke G. Anderson, of K&L Gates LLP, Attorneys for the Defendants.

GLASSCOCK, Vice Chancellor

Delaware law with regard to limited liability companies is contractarian; individuals may create an organization that reflects their perception of the appropriate relationships among the parties, most conducive to their interests, as represented by their mutual agreement. Chapter 18 of Title 6 of the Delaware Code provides default provisions applicable to Delaware LLCs where the parties' agreement is silent; where they have provided otherwise, with limited exceptions,[1] such agreements will be honored by a reviewing court.

Here, the parties agreed to reject all default provisions, and expressly limited members' rights to those provided in the LLC Agreement. That Agreement strictly limits member rights of withdrawal, and does not provide for judicial dissolution. Nonetheless, the Plaintiff seeks a judicial dissolution under Section 18-802 of the LLC Act, pointing to a member deadlock in the conduct of the business. The Defendants have moved to dismiss. Because the right to judicial dissolution is a default right which the parties may eschew by contract,[2] and because they have done so here, the Defendants' Motion must be granted.

---

[1] One important exception is our statutory prohibition on contracting out of the covenant of good faith and fair dealing. *See* 6 *Del. C.* § 18-1101(c) ("To the extent that, at law or in equity, a member or manager or other person has duties (including fiduciary duties) to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or manager's or other person's duties may be expanded or restricted or eliminated by provisions in the limited liability company agreement; *provided, that the limited liability company agreement may not eliminate the implied contractual covenant of good faith and fair dealing*.") (emphasis added).

[2] Whether the parties may, by contract, divest this Court of its authority to order a dissolution in *all* circumstances, even where it appears manifest that equity so requires—leaving, for instance,

I. BACKGROUND

The facts that follow are taken from the Verified Complaint, unless otherwise noted. Satellite Dialysis of Tracy, LLC (the "Company") is a Delaware limited liability company that owns and operates dialysis facilities in San Joaquin County, California. The Company consists of two members, Plaintiff Dr. Aibar Huatuco and Defendant Satellite Health Care ("Satellite"). The members entered into the Limited Liability Company Agreement of Satellite Dialysis of Tracy, LLC (the "LLC Agreement") on August 15, 2007. Each member holds a fifty percent interest in the Company, and Satellite manages the Company pursuant to the terms of a Management Services Agreement. The Company and A & I Huatuco, Inc., an entity affiliated with the Plaintiff, entered into a Medical Director Services Agreement ("MDSA") under which the Plaintiff would serve as the Company's Medical Director for a five-year term ending August 15, 2012.[3]

On March 1, 2010, the Company, via Satellite, and Union Bank entered into a business loan agreement, which contained a provision requiring that the Company maintain a certain ratio of EBITDA to debt service. Satellite, as manager, provided the loan documentation to the Plaintiff; however, the documentation did not contain the business loan agreement, and the Plaintiff

---

irreconcilable members locked away together forever like some alternative-entity version of Sartre's Huis Clos—is an issue I need not resolve in this Memorandum Opinion. As I find below, considerations fundamental to equity are absent here.

[3] Compl. ¶¶ 30, 48.

personally guaranteed the loan, unaware of the debt service ratio provision. Then, in August 2010, the Plaintiff again personally guaranteed a loan to the Company, this time for a $500,000 line of credit. On May 17, 2011, Satellite amended the initial business loan agreement with the bank to include a "borrowing base covenant" that immediately placed the Company in default of that provision. Finally, on May 26, 2011, Satellite, again without the Plaintiff's knowledge or consent, executed an additional $500,000 line of credit with Union Bank.

One month before the MDSA was set to expire, in July 2012, Satellite informed the Plaintiff that under new regulations issued by the Centers for Medicare & Medicaid Services, the Plaintiff was no longer eligible to serve as the Company's Medical Director. The Plaintiff suggested that the Company seek a waiver from the Centers for Medicare & Medicaid Services so that the MDSA could be renewed, but Satellite rejected that proposal. Instead, Satellite proposed a recapitalization plan, which "permitted Satellite the right to convert the Company's debts to Satellite for loans into an increase in Satellite's Percentage Interests to make Satellite the majority member . . . ."[4] The proposal also contained a provision increasing the percentage interests of a member who made a disproportionate capital contribution.[5] The Plaintiff understood Satellite's intent was to "force [the Plaintiff] to either 'pour more good money after bad' into the

[4] *Id.* at ¶ 46.
[5] *Id.*

Company controlled by Satellite or force [the Plaintiff] out of the Company."[6] Days before the MDSA was to expire, Satellite proposed an additional amendment to the LLC Agreement, which provided that, as manager, Satellite could enter into a medical director services agreement with a party other than the Plaintiff. The Plaintiff rejected that proposal on August 15, the day the MDSA expired, and Satellite informed the Plaintiff that it intended to sign a new medical director services agreement with another doctor the next morning. In addition, Satellite contended that the expiration of the MDSA constituted a "Transfer Event" under the LLC Agreement,[7] triggering its right to purchase the Plaintiff's interest in the Company.[8]

The Plaintiff responded by asserting that, because Satellite had failed to negotiate with the Plaintiff in good faith as required by the MDSA, the MDSA had not expired, and thus such expiration could not constitute a Transfer Event.[9] Instead, between August and October 2012, the Plaintiff identified the following Transfer Events, which he claimed triggered *his* right to purchase *Satellite's* interest in the Company: Satellite concealed information from the Plaintiff

---

[6] *Id.* at ¶ 47.
[7] *See* LLC Agreement § 7.2 ("Members of the LLC shall have certain repurchase rights upon the occurrence of a Transfer Event, which rights shall be exercised pursuant to the terms and conditions of Schedule 5."); *id.* Schedule 4 at ¶ 35(ix) (including in the definition of "Transfer Event" the "[t]ermination or expiration of the Medical Director Agreement between the LLC and A&I").
[8] Compl. ¶¶ 52, 55.
[9] *Id.* at ¶ 55.

regarding loans and unilaterally entered loan agreements without the Plaintiff's consent; Satellite induced the Plaintiff to sign loan guaranties without providing him comprehensive loan documentation; Satellite amended loan agreements without the Plaintiff's consent, and entered an additional line of credit without his knowledge; Satellite improperly paid itself a management fee while the Company was insolvent; Satellite failed to negotiate the MDSA in good faith; and Satellite entered into another medical director services agreement without the Plaintiff's consent.[10] In January 2013, the Plaintiff also asserted that Satellite had entered into an additional note in violation of Section 3.4.1 of the LLC Agreement, triggering yet another Transfer Event.[11]

Surprisingly, in this action, the Plaintiff does not seek a judgment that Satellite's breaches of the LLC Agreement constitute Transfer Events, and that he therefore has a contractual right under the LLC Agreement to purchase Satellite's interest in the Company. Instead, the Plaintiff filed a Complaint with this Court on April 8, 2013 seeking judicial dissolution of the Company under 6 *Del. C.* § 18-802.[12] Accordingly, the parties agree that this Motion to Dismiss is not reliant on the underlying facts alleged in the Complaint. Rather, the parties submit that

[10] *Id.* at ¶¶ 55, 67, 80
[11] *Id.* at ¶ 97.
[12] *See* 6 *Del. C.* § 18-802 ("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 a limited liability company agreement.").

whether the Plaintiff is entitled to judicial dissolution is governed by the interplay of 6 *Del. C.* § 18-802 and certain provisions in the LLC Agreement. First, Section 2.2 of the Agreement states:

> The respective rights of each Member to share in the capital and assets of the LLC, either by way of distributions or upon liquidation, will be determined by reference to the Percentage Interest of such Member; and each Member's interest in the profits and losses of the LLC shall be established as provided herein. *Except as otherwise required by applicable law, the Members shall only have the power to exercise any and all rights expressly granted to the Members pursuant to the terms of this Agreement.* No Member shall have any preemptive right to purchase or subscribe for additional Membership Interests in the LLC by reason of the admission of any new Member or the issuance of any new or additional Membership Interests or other debt or equity interests in the LLC.[13]

The Defendants argue that the second sentence of that paragraph applies generally, and forecloses a right to seek judicial dissolution. Second, Section 8 of the LLC Agreement provides that dissolution requires a super-majority[14] vote of the members:[15]

> Section 8.1 Dissolution. The LLC shall be dissolved, its assets disposed of, and its affairs wound up, on the first to occur of the following: (i) the approval of a Super Majority-in-Interest of the Members to dissolve the LLC; (ii) the sale or other disposition of all or substantially all of the LLC's assets and distribution to the Members of the net proceeds thereof; or (iii) upon the happening of

[13] LLC Agreement § 2.2 (emphasis added).
[14] A "Super-Majority-in-Interest of the Members" is defined as "any one or more Members who, in the aggregate, possess Percentage Interests in the LLC of more than seventy-five percent." LLC Agreement Schedule 4 at ¶ 33.
[15] Section 3.4 of the LLC Agreement also requires a super-majority vote to authorize dissolution of the LLC.

> any other event of dissolution specified in the Certificate of Formation or this Agreement.
>
> Section 8.2 Consequences of a Dissolution Event. The occurrence of a Dissolution Event with respect to a Member or Manager shall not cause or require the LLC to dissolve, notwithstanding any provision of the Act or any other laws applicable to the LLC to the contrary.[16]

Schedule 4, Paragraph 10 of the Agreement defines a "Dissolution Event" as "the Insolvency, dissolution or occurrence of any other event that terminates the continued membership of any Member, but does not include a change of ownership with respect to such Member or a transfer of such Member's Membership Interest as permitted by the Agreement."[17] The parties agree that a dissolution under the terms provided in Section 8.1 is unavailable here, and that the Agreement does not expressly provide a right to judicial dissolution. The Defendants argue that because the LLC Agreement does not expressly provide a right to seek judicial dissolution, and because the parties agreed to forgo any rights not explicitly granted by the Agreement, judicial dissolution is unavailable to the Plaintiff, as well.

II. STANDARD OF REVIEW

A motion to dismiss under Court of Chancery Rule 12(b)(6) will be granted only where a Complaint fails to state a claim under "any reasonably conceivable

[16] *Id.* §§ 8.1, 8.2.
[17] LLC Agreement Schedule 4 at ¶ 10.

set of circumstances."[18] Where the interpretation of contractual provisions determines the sufficiency of a complaint, such a determination is the appropriate subject for a motion to dismiss.[19]

III. ANALYSIS

The Plaintiff's Complaint seeks solely to judicially dissolve the LLC on the basis that it is not reasonably practicable to carry on its business due to deadlock between the Plaintiff and Satellite. Satellite has moved to dismiss the Complaint under Chancery Court Rule 12(b)(6) on the grounds that the express language of the LLC Agreement forecloses a member from seeking judicial dissolution.

Satellite points to the second sentence of Section 2.2 of the LLC Agreement, which provides that "[e]xcept as otherwise required by applicable law, the Members shall only have the power to exercise any and all rights expressly granted to the Members pursuant to the terms of this Agreement."[20] Satellite argues that judicial dissolution is not a mandatory provision of the LLC Act, and is therefore not "required" by law; further, the LLC Agreement provides for dissolution under certain circumstances not present here, but fails to grant a right to seek judicial dissolution. The Plaintiff contends that the second sentence of Section 2.2 does not

[18] *Cent. Mortgage Co. v. Morgan Stanley Mortgage Capital Holdings LLC*, 27 A.3d 531, 536 (Del. 2011).
[19] *See Allied Capital Corp. v. GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006) ("Under Delaware law, the proper interpretation of language in a contract is a question of law. Accordingly, a motion to dismiss is a proper framework for determining the meaning of contract language.").
[20] LLC Agreement § 2.2.

address a right to seek dissolution, as it is embedded in a paragraph that deals only with the members' economic interests in the LLC. In other words, the Plaintiff argues that Satellite has pulled the second sentence of Section 2.2 out of context, and that a right to seek judicial dissolution is not a right that must be made express pursuant to Section 2.2.

I disagree with the Plaintiff's interpretation of the LLC Agreement. Section 2 of the LLC Agreement addresses "Members and Membership Interests."[21] In particular, Section 2.1 governs member voting rights, while Section 2.2—"Other Member Rights"—serves as a "catch-all" addressing miscellaneous other rights associated with membership. While Section 2.2 addresses two kinds of economic rights—rights to distributions of assets upon liquidation, and preemptive rights—it also provides more generally that "the Members shall only have the power to exercise *any and all rights* expressly granted to the Members . . . ."[22] This statement is not qualified by reference to "economic" rights, but instead applies to "any and all" rights, that is, both economic and noneconomic, including a right—or lack thereof—to seek judicial dissolution. Further, the provision applies to any and

[21] I recognize that Section 12.11 of the LLC Agreement provides that "[t]his section, subsection and any paragraph headings contained herein are for the purpose of convenience only . . . ." While I do not rely on the section headings to give meaning to the LLC Agreement, such headings are useful for explaining the organization of the Agreement.
[22] LLC Agreement § 2.2.

all rights "pursuant to the terms of this Agreement," not, as the Plaintiff would have it, solely to rights under Section 2.2.

Reading Section 2.2 in this way, it is clear to me that judicial dissolution is not available to the Plaintiff here. The parties specifically considered, and addressed, dissolution and dissolution rights in Sections 8.1 and 3.4 of the LLC Agreement. So long as the LLC has assets and remains in operation,[23] those sections provide for dissolution only where a super-majority of the members so approve.[24] The parties did not agree to a right to judicial dissolution, and, as I have found above, instead rejected all default rights under the Act unless explicitly provided for in the LLC Agreement or "otherwise required" by law. As Satellite points out, a right to seek judicial dissolution under 6 *Del. C.* § 18-802 is not "required" by law. Rather, in *R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, this Court upheld a provision in an LLC agreement purporting to eliminate certain parties' rights to judicial dissolution otherwise expressly granted in the LLC agreement.[25] Permitting waiver of a contractual right to judicial dissolution, or enabling opting out of the statutory right altogether, is consistent with the broad policy of freedom of contract underlying the LLC Act, and

[23] A sale of all or substantially all of the assets of the LLC would itself require a super-majority vote. *See* LLC Agreement § 3.4.14 (requiring a super-majority vote to "[s]ell all or substantially all of LLC's or any Center's assets, or authorize the merger or dissolution of LLC").
[24] Other than upon liquidation and distribution, or a super-majority vote in favor of dissolution, Section 8.1 provides for dissolution "upon . . . any other event of dissolution specified in the Certificate of Formation or this Agreement." No other events of dissolution are so specified.
[25] 2008 WL 3846318 (Del. Ch. Aug. 19, 2008).

comports with the Act's approach of supplying default provisions around which members may contract if they so choose.[26] Accordingly, the relevant inquiry is whether the members here did opt out of the statutory default provided in 6 *Del. C.* § 18-802, or whether the LLC Agreement is silent on judicial dissolution such that the statutory default applies. Here, the LLC Agreement is not silent: rather, Section 2.2 provides that members are entitled *only* to the rights expressed in the LLC Agreement.[27] Since the LLC Agreement does not expressly contain a right to judicial dissolution, the members have effectively opted out of the statutory default contained in 6 *Del. C.* § 18-802.

The Plaintiff argues that *R & R Capital* is inapplicable here, because the Defendants have not demonstrated that the Plaintiff knowingly and intelligently waived his right to judicial dissolution, as he suggests is required under the holding in that case. The Plaintiff points to the Court's finding that the contractual waiver there was "knowing, voluntary and unambiguous."[28] That finding is unremarkable and imposes no positive burden on the moving parties to demonstrate anything

[26] *See Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 291 (Del. 1999) ("The basic approach of the Delaware Act is to provide members with broad discretion in drafting the Agreement and to furnish default provisions when the members' agreement is silent.").

[27] The Plaintiff suggests that reading the LLC Agreement in this way renders superfluous Section 8.2, which states that "[t]he occurrence of a Dissolution Event with respect to a Member or Manager shall not cause or require the LLC to dissolve . . . ." However, this Section is not superfluous, as it is meant to clarify the otherwise ambiguous distinction between events mandating dissolution of the LLC under Section 8.1, and events mandating the dissolution of an individual's membership interest as described in Schedule 4, Paragraph 10.

[28] *R & R Capital*, 2008 WL 3846318, at *8.

other than that a binding and unambiguous contract exists between these parties, which contract rejects judicial dissolution. Sophisticated parties entering unambiguous LLC agreements are presumed to understand the consequences of the language they have chosen, and are bound thereby, lest contract rights be subject to endless second-guessing and opportunistic revision.[29]

The Plaintiff also suggests that the LLC Agreement here is similar to that in *Lola Cars Int., Ltd v. Krohn Racing, LLC*, in which this Court found an LLC operating agreement did not supersede the statutory default of a right to judicial dissolution.[30] However, in that case, the LLC agreement contained a nonexclusive provision enumerating the circumstances in which dissolution was permissible. The Court sensibly reasoned that "[i]t simply cannot be true that a number of nonexclusive, permissive termination clauses in the Operating Agreement can preclude judicial dissolution as provided for in the Act."[31] By contrast, Section 2.2 of the LLC Agreement here specifically excludes all rights not expressly provided by the Agreement or required by law. Therefore, I do not find the reasoning of *Lola Cars* persuasive here.

---

[29] *See, e.g.*, *Progressive Int'l Corp. v. E.I. Du Pont de Nemours & Co.*, 2002 WL 1558382, at *1 (Del. Ch. July 9, 2002 (holding that, in the absence of fraud or other unconscionable circumstances, the plaintiff would be bound by the clear terms of its contract, including an unambiguous integration clause, and explaining that "[s]ophisticated parties are bound by the unambiguous language of the contracts they sign").
[30] 2009 WL 4052681, at *7 (Del. Ch. Nov. 12, 2009).
[31] *Id.*

Additionally, the Plaintiff argues that even if the LLC Agreement does foreclose judicial dissolution, as a matter of public policy the Court should not deprive the Plaintiff of such a remedy where no alternative exit options are available. First, as Satellite correctly points out, the explicit policy of the LLC Act is to "give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements."[32] Permitting judicial dissolution where the parties have agreed to forgo that remedy in the LLC Agreement would frustrate that purpose, and change in a fundamental way the relationship for which these parties bargained. This is especially true where several provisions in the LLC Agreement act to prevent one party from unilaterally changing the terms of the other members' investments.[33] Engrafting judicial dissolution rights onto an LLC agreement requiring a super-majority consent to dissolution, where default rights to dissolution under the Act have been rejected, would not preserve the bargain these parties made. Generally, our courts uphold

[32] 6 *Del. C.* § 18-1101(b).

[33] *See, e.g.*, LLC Agreement § 2.6 ("No member may withdraw or resign as a Member from the LLC without the approval of the other Members, except upon consummation of the transfer of the Members' entire Membership Interest to a transferee in compliance with the applicable provisions of Article VII hereof."); *id.* § 3.4.14 (requiring a supermajority vote of the members to "[s]ell all or substantially all of the LLC's or any Center's assets, or authorize the merger or dissolution of the LLC"); *id.* § 3.4.15 (requiring a supermajority vote to "[l]iquidate or dissolve the LLC or file any petition or other request for bankruptcy or insolvency protection of the LLC under any applicable law"); *id.* § 8.1 ("The LLC shall be dissolved, and its assets disposed of, and its affairs wound up, on the first to occur of the following: (i) the approval of a Super Majority-in-Interest of the Members to dissolve the LLC . . . ."); *id.* § 11 ("[U]pon the agreement of a Super Majority-in-Interest of the Members, the business of the LLC as a limited liability company may be transferred to a corporation to be formed for the purpose of conducting such business.").

rights bargained for by contract, and only where "a public policy interest even stronger than freedom of contract" must be vindicated will such rights go unenforced.[34]

To the extent that the Plaintiff argues that it would be inequitable to foreclose judicial dissolution as a remedy where he cannot withdraw as a member, the latter option does exist, although not in a form that may be palatable to the Plaintiff: while Section 2.6 of the Agreement states that "[n]o member may withdraw or resign as a Member from the LLC without the approval of the other Members,"[35] this Section does not *prevent* the Plaintiff from dissociating from the LLC; instead, it provides consequences for such a withdrawal. The Agreement provides that "[i]f a Member does withdraw or resign without such consent and in violation of the applicable provisions of Article VII hereof, the withdrawing Member shall not be entitled to receive any consideration for its Membership Interest."[36] In other words, there is no absolute prohibition on withdrawal, and the Plaintiff's argument that the LLC is insolvent and may require him to undertake further liability is equitably deficient.

In any event, the Plaintiff does have an alternative that would allow him to recover the value of his economic interest in the LLC, if any remains, and to

[34] *Universal Enter. Grp., L.P. v. Duncan Petroleum Corp.*, 2013 WL 3353743, at *15 (Del. Ch. July 1, 2013) (internal citations omitted).
[35] LLC Agreement § 2.6.
[36] *Id.*

remove himself from an association with Satellite in a way contemplated by the LLC Agreement: he may pursue an action against Satellite for breach of the LLC Agreement, and if he is successful in doing so, exercise his contractual right to purchase Satellite's interest in the Company. The Plaintiff contends in his Verified Complaint that the Defendants have committed a large number of breaches amounting to Transfer Events which trigger his contractual right to buy out Satellite.[37] The Defendants concede that breach may trigger such a right, under Schedule 5 to the LLC Agreement.[38] According to the Complaint, however, Satellite contends that *it* is the party entitled to purchase the *Plaintiffs'* interest under the contract. Here, where both the Plaintiff and the Defendants contend that a "Transfer Event" has occurred, triggering each party's rights under the LLC Agreement to purchase the others' interest in the Company,[39] a contract action—and *not* a judicial dissolution action, where those issues will necessarily go unresolved—is the appropriate venue for the parties to vindicate their rights.

With these alternatives available, I see no compelling equitable reason to grant a judicial dissolution remedy that the parties have bargained to forgo.

[37] *See* Compl. ¶¶ 55, 63, 67, 80, 97.
[38] Def.'s Reply Br. at 12.
[39] *See* LLC Agreement § 7.2 ("Members of the LLC shall have certain repurchase rights upon the occurrence of a Transfer Event, which rights shall be exercised pursuant to the terms and conditions of Schedule 5.").

IV. CONCLUSION

I have found that Section 2.2 of the LLC Agreement applies generally to exclude all rights associated with membership not required by law or expressly granted in the LLC Agreement. Because a right to judicial dissolution is not required by law or expressly granted in the LLC Agreement, and because reading the Agreement as a whole it is clear that the parties meant to exclude any right to judicial dissolution, I find that the Plaintiff does not have a right to seek a dissolution under 6 *Del. C.* § 18-802. Satellite's Motion to Dismiss is therefore granted. An order accompanies this Memorandum Opinion.