

IN RE: DISSOLUTION OF T&S HARDWOODS KD, LLC.

OPINION REGARDING PLEADING STANDARD FOR LLC DISSOLUTION
SUMMARY AUTHORED BY JAMES J. ENGLISH

C.A. No. 2022-0782-MTZ

Court of Chancery of the State of Delaware

January 20, 2023

Key Takeaway: *Surviving a Rule 12(b)(6) motion in an LLC dissolution requires showing that the LLC ran into an impasse, is unable to function, and lacks any equitable exit mechanism for its members.*

In *In re Dissolution of T&S Hardwoods KD, LLC*, supplier T&S Hardwoods, Inc. (“T&S”) filed for the dissolution of T&S Hardwoods KD, LLC (“the Company” or the “LLC”), a two-member joint venture LLC. The wholesaler, Robinson Lumber Company, Inc. (“RLC”) moved to dismiss for failure to state a claim under Rule 12(b)(6). Vice Chancellor Morgan T. Zurn denied the motion, stating that the supplier had met the pleading standard for LLC dissolution.

The Delaware LLC Act (“DLLCA”) allows a court to dissolve an LLC when “[o]n application by or for a member or manager . . . of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.” One way to plead this is through deadlock, where a 50/50 partnership structure and the symbiotic relationship of a joint venture make an LLC unable to make any meaningful actions without the two sides reaching a unanimous decision.

T&S and RLC formed the LLC on October 1, 2016, so T&S could provide a steady supply of lumber for RLC to resell. The Company would provide T&S with financing between when it cuts the lumber and when the customer paid its invoice. The parties executed a Limited Liability Company Agreement (the “LLC Agreement”) and a Joint Venture Agreement (together the “Agreements”). Under the Agreements, T&S and RLC each owned a 50% stake in the Company, which was manager-managed by Thompson, majority stockholder of T&S and Robinson, president owner of RLC.

While the venture initially went well, the relationship between the parties eventually soured. In the eighteen months preceding the motion, T&S alleged that Robinson had caused the Company to stop paying T&S, owing over \$9 million to T&S for lumber purchased between October 2021 and May 2022. T&S stopped selling lumber to the Company due to its non-payments.

RLC then filed a derivative action against T&S for breaching fiduciary duties. The derivative action sought an order requiring T&S to continue selling lumber to the Company, stating that failure to do so “eliminate[d] the entire purpose of the [j]oint [v]enture.” In an effort to resolve the dispute, the T&S sent RLC a buy-sell purchase option provided by the LLC Agreement, giving each member the right to purchase all of the non-offering member’s membership interest or buy all of the offering member’s interest. However, RLC rejected T&S’s enactment of the buy-sell purchase option.

Accordingly, T&S sought dissolution under DLLCA Section 18-802, which gives the court the power to dissolve a limited liability company when it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement. RLC stated that T&S failed to state a claim for judicial dissolution because the petition did not adequately allege it is not reasonably practicable to carry on the business, and because the allegations do not constitute deadlock and the buy-sell purchase option is a valid exit mechanism.

Vice Chancellor Zurn denied RLC’s motion to dismiss, finding that T&S’s pleading for the Company’s dissolution could move forward. Although RLC argued that T&S failed to prove the LLC’s purpose was impossible to carry out or that it was not reasonably practicable to continue the business, Vice Chancellor Zurn determined that T&S presented sufficient evidence to show that carrying out the LLC’s purpose was no longer feasible due to the deadlock between the members.