

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

INTERTRUST GCN, LP, ET. AL.,	:	January Term 2014
Plaintiffs,	:	
v.	:	No. 99
INTERSTATE GENERAL MEDIA, LLC.,	:	COMMERCE PROGRAM
Defendant.	:	
	:	Control Number 14011070

DOCKETED
FEB 18 2013
C. HART
CIVIL ADMINISTRATION

OPINION

This Petition action was instituted by Intertrust GCN, LP, Intertrust GCN GP, LLC (collectively referred to as “Intertrust”) and H.F. Lenfest (“Lenfest”) against Interstate General Media, LLC (“IGM” or “Company”), a Delaware Limited Liability Company, seeking dissolution and the appointment of a trustee pursuant to 6 Del. C. § 18-802 and 15 Pa. C.S. § 8972. By stipulation the parties agreed to the intervention of General American Holdings, Inc. (“intervenor/defendant”), a Class A member of IGM as well as a member of the Management Committee, as an intervenor/defendant. Petitioners allege that it is no longer reasonably practicable for IGM to carry on its business in conformity with its governance arrangements after a dispute and resulting litigation between IGM’s two managing members. Defendant IGM and intervenor/ defendant General Holding, Inc. argue this court lacks jurisdiction to dissolve a Delaware Limited Liability Company. For the reasons set forth below, this court did not have jurisdiction.

IGM was formed in the Spring of 2012 for the purpose of acquiring all or substantially all of the capital stock of Philadelphia Media Network, Inc. IGM’s principal place of business is Philadelphia, Pa. The six members of IGM include, but are not limited to, Intertrust, Lenfest,

Intertrust Gcn, Lp Etal Vs Interstate Genera-OPFLD



and General American Holdings, Inc.¹ IGM owns the Philadelphia Inquirer, the Philadelphia Daily News and Philly.com. Lenfest is the chairman of IGM.

IGM's business affairs are controlled by a Limited Liability Company Agreement. The Limited Liability Agreement provides that it, and the rights of the parties under the agreement, are to be interpreted in accordance with the laws of the State of Delaware.² Accordingly, we looked to Delaware law in deciding this matter.

The Limited Liability Agreement which governs the Limited Liability Company requires any Board action to have the approval of the Directors appointed by Members or their Member Designees who hold a majority of the percentage interests. Ultimately, all actions must be approved by both members of the Management Committee.

On January 2, 2014, Petitioners filed a Petition for Dissolution and Appointment of Trustee in this court and an emergency motion for the dissolution of IGM and the appointment of a trustee. The petition and motion alleged the Managing Members were unable to agree on the management of IGM and in support thereof directed this court's attention to the actions captioned as Intertrust GCN, LP v. Interstate General Media, LLC et. al., October Term 2013 No. 654 and Intertrust GCN, LP v. Interstate General Media, LLC, et. al., October Term 2013 No. 168. The Petition and motion further alleged the Managing Members were deadlocked and unable to make important business decisions, including the hiring of an Editor and a Publisher. The Limited Liability Agreement did not provide for a means of resolving the deadlock and the resulting paralysis was threatening the viability of the enterprise.

¹ The other Class A members are Tequesta Investments, LLC, Bucklew Inquiries, LLC and Wayne Ave. Investments, LLC.

² Limited Liability Agreement §15.9 Governing Law.

On January 3, 2014, IGM and the other Managing Members filed a similar petition in the Delaware Court of Chancery alleging a deadlock and requesting judicial dissolution. Although Petitioners and IGM and intervenor/defendant agree on dissolution, they disagree on how the auction of interests in IGM should occur and which court should oversee the dissolution. Intertrust and Lenfest contend this court has jurisdiction to dissolve IGM and seek the appointment of a trustee to dispose of IGM's assets through a public auction involving a single sealed bid per bidder, which they believe is the best way to maximize the value of IGM and to ensure its future success. IGM and intervenor/defendant, on the other hand, contend Delaware has exclusive jurisdiction to dissolve IGM and seek a private auction among IGM's current owners as well as the appointment of a liquidating trustee.³

On January 13, 2014, the court conducted a status conference wherein IGM and intervenor/defendant raised the question of this court's jurisdiction to dissolve a limited liability company formed in Delaware. At the request of the court, the parties submitted briefs on the issue and on February 3, 2014, the court heard oral argument. On February 7, 2014, the court issued an order dismissing the Petition action as well as the emergency motion for lack of jurisdiction. This opinion is issued relative to this court's February 7, 2014 order.

DISCUSSION

In resolving the pending emergency petition for judicial dissolution and appointment of a trustee, the court preliminarily had to determine whether it had subject matter jurisdiction to dissolve a foreign limited liability company by this court's entry of a decree of dissolution. In resolving this issue the Limited Liability Agreement plays an integral role in the analysis.

Limited liability companies are creatures of contract, designed to afford the maximum amount of

³ In addition to American General Holdings, Inc., the Newspaper Guild also filed a petition to intervene in this matter.

freedom of contract, private ordering, and flexibility to the parties involved. The Delaware Limited Liability Act leaves to the members of a limited liability company the task of arranging a manager/investor governance relationship while the Act generally provides defaults that can be modified by contract. The Act itself provides that “it is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to enforceability of limited liability company agreements.”⁴ Indeed, the Limited Liability Agreement here defines the scope, structure, and personality of IGM and this court is constrained to honor the strictures in which the parties crafted this limited liability company.

IGM’s Limited Liability Agreement outlines the governance structure the members agreed would in their opinion best serve the company. Included within the governance structure is a section concerning dissolution which provides in part: “This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of Delaware, and all rights and remedies shall be governed by such laws.”⁵ Section 13.2 of the LLC Agreement states, “the company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events: ... (c) the entry of a decree of judicial dissolution under the Act.”⁶ Section 1.1 of the Limited Liability Agreement defines “Act” as the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 *et. seq.* In addition to dissolving pursuant to a judicial decree under the Act, the Limited Liability Agreement also contains alternative means in which the

⁴ *R & R Capital, LLC v. Buck & Doe Run Valley Farms, LLC*, 2008 WL 3846318 (Del. Ch. 2008).

⁵ LLC Agreement §15.9.

⁶ The court notes that in addition to the entry of a decree of judicial dissolution under the Act, there are three other events identified in § 13.2 that cause dissolution. One event is the determination of holders of at least a majority of the Class A Units then-outstanding, subject to any approval of the Members required under §6.2. Section 6.2 requires the prior written approval of the Managing Members or their Managing Member Designees and the prior written approval of the Class A members holding sixty-six and two-thirds percent of the percentage interest. Before the court entertained oral argument, the court asked the parties if they would agree in writing to dissolution since jurisdiction would not be in issue. Although Petitioners showed some interest, defendant and intervenor/defendant did not show any interest.

Company could dissolve, including by written consent of the majority Class A holders. Here, however, the parties in their respective papers have sought dissolution by way of an entry of a judicial decree under the Act and, therefore, 6 Del. C. § 18-802 was instructive.

Section 18-802, under the Delaware Act, provides in part as follows:

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.

This language grants exclusive subject jurisdiction to the Delaware Court of Chancery to hear and determine petitions for judicial dissolution.⁷ The court did not find persuasive the argument that the use of the term “may” indicates jurisdiction is not exclusive to the Delaware Chancery Court. The use of the term “may” in § 18-802 signifies that the Court of Chancery retained discretion to determine whether dissolution should be ordered even if the facts show that it is not reasonably practicable to carry on the business.⁸ The reference to the Court of Chancery in 6 Del. § 18-802 is consistent with 6 Del. § 18-803 which grants authority to the Delaware Court of Chancery to wind up company affairs after dissolution. These provisions refer specifically to “the” Court of Chancery rather than “a” Court of Chancery. As such, a plain reading of the statute implies that exclusive subject matter jurisdiction lies with the Delaware Court of Chancery.⁹

This interpretation is in accord with the nature of judicial dissolution. Judicial dissolution is a drastic remedy that terminates the existence of an entity created pursuant to an enabling

⁷ *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 268, 292 (Del. Supr. 1999) (explaining that similar references to the Court of Chancery elsewhere in the Delaware LLC Act are grants of subject matter jurisdiction).

⁸ *Haley v. Talcott*, 864 A.2d 86, 93, n. 18 (Del. Ch. 2004).

⁹ Although not authoritative, the court finds persuasive *Casella Waste Systems Inc. v. GR Technology, Inc.* 2009 WL 6551408 (Vt. Supr. 2009).

state's rules. Courts should exercise caution in such situations so that judicial dissolution may occur as the parties' desire, in this case within the state which enabled its creation. Here, IGM was created in Delaware and therefore should be dissolved, as requested by the parties, by a judicial decree entered by a Delaware court.

This court was hard-pressed not to give IGM's local connections any consideration as well as this court's competency to resolve said issues, however, the court was cognizant of the parties intent and the flexibility the Delaware Limited Liability statute offers companies. In this particular case, the parties sought judicial dissolution per the Delaware Limited Liability Act. As such, this court did not have jurisdiction.

CONCLUSION

Based on the foregoing, the court finds it did not have jurisdiction to dissolve the Company under section 18-802 under the Act and the Petition action and the emergency petition for dissolution and appointment of a trustee was dismissed.

Date: 2/11/14

BY THE COURT,



PATRICIA A. McINERNEY, J.