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

INTERTRUST GCN, LP,	:	October Term 2013
INTERTRUST GCN, GP, LLC, general partner,	:	
And H.F. LENFEST,	:	No. 000654
Plaintiffs,	:	
v.	:	
INTERSTATE GENERAL MEDIA, LLC and	:	Commerce Program
ROBERT J. HALL,	:	
Defendants,	:	
v.	:	3178 EDA 2013[1]
GENERAL AMERICAN HOLDINGS, INC.,	:	
Defendant-Intervenors.	:	

OPINION

This appeal is relative to this court's order dated November 22, 2013 granting in part and denying in part Plaintiffs' petition for Preliminary Injunction. For the reasons set forth below, this court's order should be affirmed. Petitioners Intertrust GCN, LP ("Intertrust"), a Delaware limited partnership whose principal is Lewis Katz ("Katz"), and H.F. Lenfest ("Lenfest") are two of six members collectively owning 42.5456% of Interstate General Media, LLC ("IGM"). IGM is a Delaware limited liability company and is presently known as Interstate General Media Holdings, LLC having changed its name in July 2012. 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, and General American Holdings, Inc. on behalf of its principle George Norcross, III ("Norcross").[2] IGM owns the Philadelphia Inquirer, Philadelphia Daily News and Philly.com. Lenfest is the chairman of IGM.

[1] Appeal 3422 EDA 2013 was quashed by the Superior Court as duplicative on January 27, 2014.

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

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.[3] Accordingly we have looked to Delaware law to resolve this matter. Defendant Robert J. Hall is the publisher of the Philadelphia Inquirer, Philadelphia Daily News and Philly.com and is the Chief Executive Officer of Philadelphia Media Network, Inc.

The Agreement which governs IGM's affairs provides in part as follows:

Section 5.2 Management Committee

> (a) The day-to-day business and operations of the Company (which for purposes of ARTICLES 5 and 6 shall be deemed to include its Subsidiaries) shall be managed by, or under the direction of A Management Committee (the "Management Committee"), which shall be appointed by the Managing Member Designees as provided in Section 5.2 (b). The Management Committee shall have the right, power, and authority to make decisions with respect to all business and operational matters in the ordinary course of business and will oversee and advise the senior management of the Company regarding the performance and execution of the business and strategic plans. The authority of the Management Committee shall be confined to the business and operational aspects of the Company, and the members of the Management Committee shall have no authority with respect to editorial or journalistic policies and decisions of the Company and will not attempt to control or influence such policies and decisions.
>
> (b) The Management Committee shall be comprised of two (2) members…
>
> (c) …no action shall be taken by the Management Committee unless both members of the Management Committee approve such action.

The Management Committee is composed of Katz, the appointee of Intertrust and Norcross, the appointee of General American Holdings, Inc.

The Agreement also includes a non-interference provision. The provision provides as follows:

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[3] Limited Liability Agreement §15.9 Governing Law.

> Section 5.6 Non-Interference Policy. Neither the Management Committee, the Board of Directors, the Community Board nor any Member, Manager or Officer shall attempt to directly or indirectly control or influence any of the editorial or journalistic policies and decision of the Company.

Additionally, the owners took the following pledge of non-interference:

> The editorial function of the business shall at all times remain independent of the ownership and control of the company and no owner shall attempt to influence or interfere with editorial policies or news decisions.[4]

In or about April 2012, Katz and Norcross hired Gregory Osberg as the CEO and Publisher for the newspaper. On April 10, 2012, the Management Committee, Katz and Norcross, authorized the hiring of William J. Marimow ("Marimow") for the position of Editor. As editor, Marimow would be responsible for the editorial content and the journalistic content of the paper. (Volume I, November 13, 2013 p. 109-110). Marimow would report to the Publisher. At the time Marimow was hired, Gregory J. Osberg ("Osberg") was the Publisher. (Id. at 100). When offered the position as Editor, Marimow was relocating from Arizona and expressed concern that Osberg could terminate his employment after moving his family from Arizona to Philadelphia. In response to Marimow's concern, Norcross and Katz represented they alone could fire Marimow. (Volume I, November 13, 2013 p. 88-89, 91). Based on this assurance, Marimow accepted the position and his employment became effective May 1, 2012 for a two year term with a contract expiration of April 30, 2014.

Osberg was not involved in the hiring of Marimow and would not have agreed to hire Marimow if given a voice in the decision. (Volume I, November 13, 2013 p. 130-131). Osberg was of the opinion that since he did not hire Marimow, he could not fire him. (Volume I November 13, 2013 p. 134). Osberg eventually left the Inquirer because he felt that the role of

[4] Exhibit P-3 Non-Interference Pledge.

the Publisher at the Inquirer was being marginalized under the new management. (Volume I, November 13, 2013 p. 141).

After Osberg's departure, on May 1, 2012, Robert J. Hall ("Hall") was hired by the Board of Directors for IGM as the full time Publisher for an eight- month term ending December 31, 2012, renewable by mutual agreement between Hall and IGM's Board of Directors. Hall's contract was subsequently renewed for an additional eight months ending August 31, 2013, with a modification that during the renewal term, he was to be part-time rather than full time Publisher. Hall was also opposed to the hiring of Marimow. (Volume II, November 14, 2013 p. 10).

In July, 2012, Hall indicated to the Board of Directors his dissatisfaction with Marimow's performance and his desire to terminate Marimow. At Lenfest's urging, Hall gave Marimow an opportunity to remedy any performance issues. On October 7, 2013, Hall unilaterally and without the consent, approval or authorization of the Management Committee, fired Marimow prior to the expiration of his employment contract. Hall testified that the only issue remaining in October 2013, between Marimow and Hall, involved a decision to terminate three editors. Hall wanted to terminate the editors and hire reporters while Marimow wanted to shift the editors to different positions within the newspaper. Although Hall respected Marimow as a person, and testified he harbored no animosity toward Marimow (Volume III November 15, 2013 p. 36), Hall was of the opinion that Marimow's firing was justified. Hall and Marimow agreed that changes were necessary for the newspaper but disagreed on the speed in which the changes were to occur. Marimow believed in "evolution not revolution". (Volume III, November 15, 2013 p. 27). Hall testified he believed that as the Publisher he had the authority to fire Marimow without the approval of the Management Committee or Board of Directors. Hall also testified he believed

his authority originated from §5.6 of the Limited Liability Agreement, that is, the non-interference policy, an opinion letter from Cozen & O'Conner which interpreted various provisions of the Limited Liability Agreement as giving Hall the authority to fire Marimow (based on information Hall provided), and his past experience in the newspaper industry. (Volume III, November 15, 2013 p. 27-28). Interestingly, Norcross made the initial contact with Cozen & O'Conner to review the Limited Liability Agreement in order to determine whether Hall had the authority to fire Marimow without the approval of the Board or the Management Committee. (Volume III November 15, 2013 p. 45-46). Katz, the only other member of the Management Committee, was not made aware of the law firm's retention. (Volume III, November 15, 2013 p. 50).

After the firing, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision, an assertion that was later established to be incorrect. Katz did not concur in Hall's firing of Marimow and neither did Lenfest. On October 10, 2013, Intertrust and Lenfest instituted the instant action against IGM and Hall seeking to declare the firing of Marimow null and without effect. The action also sought to declare Hall's employment as IGM's publisher ceased effective September 1, 2013.[5] Intertrust and Lenfest filed suit alleging they were deprived of their ability to exercise their contractual voting rights. (Volume I, November 13, 2013 p. 190; Volume II November 14, 2013, p. 37-38).

In addition to filing the complaint, plaintiffs also filed a Petition for Preliminary Injunction alleging irreparable harm and loss if the illegal termination of the editor Marimow was not declared null and void, and the employment of Hall was not declared ended. On

[5] As it pertains to Hall, the court denied the preliminary injunction to declare Hall's employment contract expired and not renewed. The court's decision regarding this denial is not the subject of this appeal.

October 16, 2013, the court entered an order requiring defendants to file a response by October 21, 2013 and appear for a status conference with the court on October 22, 2013.

In the meantime, on October 18, 2013, defendant Hall filed preliminary objections seeking to dismiss the complaint under the "internal affairs" doctrine, improper venue-forum *non conveniens*, failure to make demand on the Board before filing a derivative suit, failure to state a claim against Hall, failure to join an indispensible party[6] and Lenfest's lack of standing to pursue this action. On October 21, 2013, General American Holdings, Inc. filed a Petition to Intervene. On October 23, 2013 the court granted General American Holdings, Inc's Petition to Intervene. Thereafter, General American Holdings, Inc. joined in the preliminary objections filed by Hall as well as Hall's opposition to the Preliminary Injunction. On October 28, 2013, the court heard oral argument on the preliminary objections.[7] On October 31, 2013, the court overruled defendants' preliminary objections and scheduled a hearing on the petition for preliminary injunction.[8]

On November 13, 2013 through November 15, 2013 and continuing on November 20, 2013, the court heard testimony on the petition for preliminary injunction. After considering the parties submissions and testimony, on November 22, 2013, the court entered an order granting in part and denying in part the petition for preliminary injunction and reinstated William K. Marimow as the Editor of the Philadelphia Inquirer. The court further denied the petition in regard to the Publisher Robert Hall.

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[6] The preliminary objection asserting indispensible party was withdrawn.

[7] Plaintiffs filed preliminary objections to preliminary objections which were disposed of in a separate order issued by the court.

[8] Attached hereto as Exhibit "A' is a true and correct copy of said order and opinion.

On November 26, 2013, defendants filed a notice of appeal of this court's order dated November 22, 2013. On December 13, 2013, defendants filed a statement of matters complained of on appeal. Aside from challenging this court's decision to reinstate Marimow, defendants also alleged error in this court's assumption of jurisdiction contrary to the internal affairs doctrine and standing. The issues regarding the assumption of jurisdiction contrary to the internal affairs doctrine, and standing, were not the subject of this court's November 22, 2013 order granting in part and denying in part Intertrust's preliminary injunction. Those issues were the subject of this court's order overruling defendants' preliminary objections dated October 31, 2013. The later order is not a final order as defined by Pa. R. A. P. 341, nor was permission granted to appeal said order as defined by Pa. R. A. P. 312 and 1311. Notwithstanding the foregoing, the court attaches hereto as Exhibit "A" its order and opinion addressing said issues.

Discussion

A petitioner seeking a preliminary injunction must establish each and every one of the following prerequisites: First, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages. Second, the party must show that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings. Third, the party must show that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct. Fourth, the party seeking an injunction must show that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits. Fifth, the party must show that the injunction it seeks is reasonably suited to abate the offending

activity. Sixth, and finally, the party seeking an injunction must show that a preliminary injunction will not adversely affect the public interest.[9] For a preliminary injunction to issue, every one of the prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.[10]

Mandatory injunctions command the performance of some positive act to preserve the status quo. A petitioner seeking mandatory injunctive relief must establish the party seeking relief has a clear right in an actionable claim, although every injunction is extraordinary, the injunction that commands the performance of an affirmative act, a mandatory injunction, is the rarest. The case of mandatory injunction must be made by a very strong showing, one stronger than that required for a restraining-type injunction.[11] However, this does not mean that the party seeking a mandatory preliminary injunction must establish his or her claim absolutely.[12] Pennsylvania law places the burden upon the party seeking an injunction to establish his or her own rights as well as the inequitable nature of the defendant's conduct. Nevertheless, the defendant must show that his or her conduct was reasonable or that a defense exists to the plaintiff's claims.[13] Here, Intertrust and Lenfest sought a mandatory injunction, the reinstatement of William K. Marimow, as the Editor of the Philadelphia, Inquirer ("Inquirer").

The core issue before this court was whether the decision to fire Marimow was an "editorial or journalistic" decision and therefore within the parameters of the Publisher's

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[9] *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount. Inc.* , 573 Pa. 637, 646-47, 828 A.2d 995, 1001.

[10] *Allegheny County v. Com.*, 518 Pa. 556, 544 A.2d 1305, 1307 (1988).

[11] *Big Bass Lake community Ass'n v. Warren,* 950 A.2d 1137, 1145 (Cmwlth Ct. 2008) (citiations omitted).

[12] *Sovereign Bank v. Harper, 449 Pa. Super.* 578, 591, 674 A.2d 1085, 1092 (1996), citing Sh*enango Valley Osteopathic Hospital v. Department of Health,* 499 Pa. 39, 51, 451 A.2d 434, 440 (1982).

[13] *Dougherty v. Pennypack Woods Home Ownership Ass'n,* 181 Pa.Super. 121, 126, 124 A.2d 703, 705–06 (1956).

authority or was a "business and operational" matter in the ordinary course of business and therefore within the parameters of the Management Committee's authority. Paramount in resolving this issue was the interpretation of the Limited Liability Agreement, § 5.2 (a) regarding the Management Committee and § 5.6, the Non-Interference policy. As it pertains to § 5.2 and §5.6 when read in conjunction with each other, a reasonable interpretation removes from the Management Committee's authority, the right, power and authority to fire the Editor since the firing of the Editor arguably relates to the "editorial or journalistic" policies and decisions of the Inquirer. Alternatively, an equally reasonable interpretation of § 5.2 and §5.6 is that hiring and firing is a "business and operational" matter within the ordinary course of business and therefore within the purview of the Management Committee's authority. The terms "editorial or journalistic" and "business and operational" were not defined by the Limited Liability Agreement. Under Delaware law, "[c]ontract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language."[14] However, "[w]hen the provision in controversy is fairly susceptible of different interpretations or may have two or more different meanings, there is ambiguity."[15] In the case *sub judice,* whether firing an editor is "editorial or journalistic" or "business and operational" under the Limited Liability Agreement clearly created an ambiguity. As such, the court invited extrinsic evidence to ascertain the parties' intent at the time the agreement was signed as well as the trade usage and custom in the newspaper industry.

The testimony offered in this case demonstrated that the hiring and firing of an Editor in the newspaper industry is traditionally and customarily left to the discretion of the Publisher.

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[14] *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997).

[15] *Id.*

However, it was clear from the testimony and evidence that the Management Committee and the Company as a whole did not share that same opinion in practice. For example, Lenfest, the chairman of the Board for the Company, testified that Marimow's firing required the approval of Katz as a member of the Management Committee. (N.T. November 13, 2013, Volume I p. 183). Additionally, Osberg testified that even though an announcement was made by the Company that he concurred with the decision to hire Marimow, he was not involved in the decision to hire Marimow and therefore he could not fire Marimow. (Id. at 164, 166-167). He further testified that he resigned as Publisher because he felt the position was becoming marginalized. Ms. Phillips, the City Editor for the Philadelphia Inquirer, further testified that the non-interference pledge was narrowly crafted so that the hiring and firing of the editor would not affect the pledge. (Id. at 163). One could infer from this testimony that the Management Committee and the owners wanted to create a perception that it was business as usual with no interference from management, but it clearly was not the case.

While the stated intent of the owners was not to directly or indirectly control, influence or interfere in any of the editorial or journalistic policies and decisions of the newspaper as evidenced by the non interference policy found in § 5.6 of the Agreement, and the pledge taken by the owners; it was clear from the testimony that the Limited Liability Agreement as crafted, created a two member Management Committee with ultimate control over the decision making, impelling interference. [16]

Based on the testimony, Intertrust had a clear right to relief since the Management Committee reserved for itself the power to hire and fire the Editor. As such, Intertrust should

[16] Defendants' exploitation of the non interference pledge and § 5.6 of the Limited Liability Agreement is duplicitous since the record is replete with numerous instances of indirect interference by General American Holdings, Inc.'s principal, such as the retention of counsel to offer an opinion on the Publisher's authority to fire the Editor. Nor did the court find Hall's testimony that it was his decision alone to fire Marimow credible.

have had an opportunity to vote on whether Marimow should be fired. Intertrust was irreparably harmed as a result of this deprivation of its contractual voting right under the Limited Liability Agreement and Marimow was reinstated as the Editor of the Inquirer to return the parties to the status quo as it existed before his termination.

Petitioners also satisfied all the remaining elements necessary to grant a preliminary injunction. Petitioners established that greater injury would result from refusing the injunction based on the deprivation of Intertrust's right to vote. Reinstating Marimow restored the parties to their status as it existed immediately prior to the alleged wrongful conduct, firing Marimow. Petitioners' right to relief was clear and the injunction was reasonably suited to abate the wrong. Lastly, very little if any evidence was presented establishing whether the reinstatement of Marimow would adversely affect the public interest or the Philadelphia Inquirer. Indeed other than Hall's brief comment that reinstating Marimow would be disruptive, there was no evidence to support that comment, and even Hall's testimony was tempered by his admission that he harbored no personal animosity toward Marimow and respected him as a journalist.

Based on the foregoing, this court's order dated November 22, 2013 should be affirmed.

February 19, 2014

BY THE COURT,

PATRICIA A. McINERNEY, J.

Exhibit "A"

IN THE COURT OF COMMON PLEAS OF PHILDELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLANIA
TRIAL DIVISION-CIVIL

INTERTRUST GCN, LP, INTERTRUST GCN GP, LLC, general partner, H.F. LENFEST,	:	October Term 2013
Plaintiffs,	:	No. 000654
v.	:	
INTERSTATE GENERAL MEDIA, LLC, And ROBERT J. HALL,	:	COMMERCE PROGRAM
Defendants.	:	Control Number 13102335
v.	:	
GENERAL AMERICAN HOLDINGS, INC.,	:	
Defendant-Intervenors.	:	

ORDER

AND NOW, this 31st day of October 2013, upon consideration of Defendant Robert J. Hall's Preliminary Objections and Defendant Intervenor General American Holdings, Inc.'s joinder in said Preliminary Objections, all responses in opposition and after oral argument, it hereby is **ORDERED** that the Preliminary Objections are **OVERRULED.**

BY THE COURT,

PATRICIA A. McINERNEY, J.

IN THE COURT OF COMMON PLEAS OF PHILDELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLANIA
TRIAL DIVISION-CIVIL

INTERTRUST GCN, LP, INTERTRUST GCN GP, LLC, general partner, and H.F. LENFEST,	:	October Term 2013
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Defendants.	:	Control Number 13102335
v.	:	
GENERAL AMERICAN HOLDINGS, INC.,	:	
Defendant-Intervenors.	:	

OPINION

This is a declaratory judgment action filed by the plaintiffs Intertrust GCN, L.P. and Intertrust GCN, GP, LLC (collectively "Intertrust") and H.F. Lenfest ("Lenfest") seeking to declare null and void, the Philadelphia Inquirer's Publisher, Robert J. Hall's alleged *ultra vires* firing of the Editor, William K. Marimow.[1] Plaintiff Intertrust GCN, LP is a Delaware limited partnership. Intertrust GCN GP, LLC is the general partner of Intertrust GCN, LP. Lewis Katz ("Katz") is a representative for plaintiff Intertrust.

Defendant Interstate General Media, LLC ("IGM") is a limited liability company formed in Delaware with six members. The members of IGM include but are not limited to Intertrust, Lenfest and General American Holdings, Inc. 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. and maintains an office in Philadelphia, Pa. IGM owns the Philadelphia Inquirer, Daily

[1] The facts set forth herein are taken from Plaintiffs' complaint which at this stage of the litigation must be taken as true.

News and Philly.com. Lenfest is the chairman of IGM. IGM's business affairs and operations are controlled by a Limited Liability Company Agreement.

The Agreement which governs IGM's affairs provides in part as follows:

> Section 5.2 Management Committee
>
> (a) The day-to-day business and operations of the Company (which for purposes of ARTICLES 5 and 6 shall be deemed to include its Subsidiaries) shall be managed by, or under the direction of A Management Committee (the "Management Committee"), which shall be appointed by the Managing Member Designees as provided in Section 5.2 (b). The Management Committee shall have the right, power, and authority to make decisions with respect to all business and operational matters in the ordinary course of business and will oversee and advise the senior management of the Company regarding the performance and execution of the business and strategic plans. The authority of the Management Committee shall be confined to the business and operational aspects of the Company, and the members of the Management Committee shall have no authority with respect to editorial or journalistic policies and decisions of the Company and will not attempt to control or influence such policies and decisions.
>
> (b) The Management Committee shall be comprised of two (2) members...
>
> (c) ...no action shall be taken by the Management Committee unless both members of the Management Committee approve such action. [2]

The Management Committee is composed of Katz, the appointee of Intertrust and George Norcross III ("Norcross"), the appointee of General American Holdings, Inc.

On April 10, 2012, the Management Committee authorized the hiring of William J. Marimow ("Marimow") for the position of Editor. Marimow accepted the position and his employment became effective May 1, 2012. At or about the same time, Robert J. Hall ("Hall") was hired by the Board of Directors for IGM as the full time Publisher for an eight- month term ending December 31, 2012 renewable by mutual agreement between Hall and IGM's Board of Directors. Hall's contract was renewed for an additional eight months ending August 31, 2013

[2] Limited Liability Company Agreement -Exhibit "A" to the Complaint.

with a modification that during the renewal term, he was to be part-time rather than full time Publisher.

On October 7, 2013, Hall allegedly unilaterally and without the consent, approval or authorization of the Management Committee fired Marimow prior to the expiration of his employment contract. After the firing, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. Hall's representation was allegedly false since it is alleged that at least two directors (Katz and Lenfest) did not concur in Hall's firing of Marimow. Prior to Hall's termination, Katz, a member of the Management Committee informed Hall that he would not approve the firing of Marimow.

On October 10, 2013, Intertrust and Lenfest instituted the instant action against IGM and Hall seeking to declare null and without effect the firing of Marimow. The action also seeks to declare Hall's employment as IGM's publisher ceased effective September 1, 2013.

In addition to filing the complaint, plaintiffs also filed a Petition for Preliminary Injunction alleging irreparable harm and loss if the illegal termination of the editor Marimow is not declared null and void and the employment of Hall is not declared ended. On October 16, 2013, the court entered an order requiring defendants to file a response by October 21, 2013 and appear for a status conference with the court on October 22, 2013.

In the meantime, on October 18, 2013, Defendant Hall filed preliminary objections seeking to dismiss the complaint under the "internal affairs" doctrine, improper venue-forum non conveniens, failure to make demand on the Board before filing a derivative suit, failure to state a claim against Hall, failure to join an indispensible party[3] and Lenfest's lack of standing to pursue this action.

[3] The preliminary objection asserting indispensible party was withdrawn.

On October 21, 2013, General American Holdings, Inc. filed a Petition to Intervene. On October 23, 2013 the court granted General American Holdings, Inc's Petition to Intervene. Thereafter, General American Holdings, Inc. joined in the preliminary objections filed by Hall as well as Hall's opposition to the Preliminary Injunction. On October 28, 2013, the court heard oral argument on the preliminary objections.[4]

DISCUSSION

I. The Internal Affairs Doctrine is Inapplicable to this Case.

Under the "internal affairs" doctrine, courts will choose not to take jurisdiction of a matter for the purpose of regulating or interfering with the internal management or affairs of a foreign corporation.[5] Where the matter falls within the ambit of the "internal affairs" doctrine, the court is not deprived of jurisdiction but may voluntarily choose not to interfere in the internal affairs of the foreign corporation.[6] The general proposition that a court will not take jurisdiction of a case that involves regulating or interfering with the internal management of a corporation is based on a number of considerations such as the court's inability to enforce its order, a reluctance to interpret the laws of another state, a reluctance to get involved where the differences between the parties are merely a matter of business judgment, and the view that a Pennsylvania resident has no right to call upon the courts of his own state to protect him from the consequences of a voluntary membership of a foreign corporation.[7]

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[4] Plaintiffs filed preliminary objections to preliminary objections which are disposed of in a separate order issued by the court.

[5] Kahn v. American Cone & Pretzel Co. 365 Pa. 161, 74 A.2d 160, 161 (Pa. 1950).

[6] Plum v. Tampax, Inc., 399 Pa. 553, 160 A.2d 549 (Pa. 1960).

[7] Ski Roundtop, Inc. v. Hall, 265 Pa. Super. 266, 401 A.2d 1203, 1206 (Pa. Super. 1979).

The "internal affairs" of a foreign corporation are interfered with where the suit is predicated upon rights derived from some status within the corporate association, and where the suit is brought by or against persons in their capacities as shareholders, officers and directors. [8] In those cases, rights upon which those plaintiffs base their suits are derived exclusively from the fact that plaintiffs are shareholders in defendant corporations and suing directors of defendant corporations in their capacity as directors.

Application of the "internal affairs" doctrine is, however, subject to limitations, particularly where the facts of any one case indicate that the assumption of jurisdiction will not inextricably involve the "internal affairs" of a foreign corporation.[9] An action to enforce an individual or contractual right represents one such exception.

In the case *sub judice*, the crux of the dispute between the parties is the alleged deprivation of Katz and Lenfest's contractual right to cast votes as members of the Management Committee and Board of Directors, respectively. The question of whether Katz and Lenfest were deprived of their voting rights hinges on the interpretation of the Limited Liability Agreement Article 5.2 (a), that is, was the decision to fire the editor a day-to-day business decision or was it a journalistic and editorial decision outside the scope of the Management Committee and Board of Director's authority. The interpretation of the Limited Liability Agreement as with any contracts falls within the Commerce Program schema which was specifically and purposefully established to provide litigants with a specialized and expeditious forum for adjudication of corporate and commercial cases. The fact that Delaware law governs the interpretation of the Limited Liability Agreement does not pose any difficulty since the interpretation does not involve any novel or

[8] Tanzer v. Warner Co., 9 Pa. D.& C.3d 534 (Phila. C.P. Ct. 1978) (citations omitted).

[9] Colvin v. Somat Corporation, 230 Pa. Super. 118, 326 A.2d 590 (Pa. Super. 1974) *citing* Plum v. Tampax, Inc., 399 Pa. 553, 160A.2d 549 (1960).

complex issues. This court is quite capable of applying Delaware law and providing justice.[10] Although interpretation of this Limited Liability Agreement may have some effect on the internal affairs of IGM, any effect is merely incidental and not sufficient for this court to decline jurisdiction.

II. This action should not be stayed or dismissed on the basis of *forum non conveniens*.[11]

Defendants argue this court should stay or dismiss this action in favor of the pending Delaware Court of Chancery action which involves allegedly the same operative facts and legal issues. Defendants' objection is based on the fact that IGM is a Delaware corporation, the Limited Liability Agreement requires the application of Delaware law and the complaint raises issues related to the internal affairs of a foreign corporation which the courts of Pennsylvania should voluntarily choose not to hear. Having already determined that this matter does not implicate the internal affairs of IGM to the degree requiring relinquishment of jurisdiction, this court will focus on whether venue is indeed appropriate in Philadelphia.

A personal action against a corporation or similar entity may be brought in and only in a county where its registered office or principal place of business is located, a county where it regularly conducts business, the county where the cause of action arose, a county where a transaction or occurrence took place out of which the cause of action arose, or a county where the property or a part of the property which is the subject matter of the action is located. [12] This matter concerns a local newspaper which has served this community for many years. The parties

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[10] EuroCapital Advisors, LLC v. Colburn, 2008 WL 401352 (De.Chan. February 14, 2008).

[11] Although improper venue may be raised by preliminary objection, *forum non conveniens* is to be raised by petition. See Note to Pa. R. Civ. P. 1028 (a) (1). As such, the court will convert the objection to one for improper venue.

[12] See Pa. R. Civ. P. 2179 (a).

are either located here or are located in areas which are readily assessable to our courthouse. IGM does business in Philadelphia. Its publication and dissemination of its papers are in Philadelphia and the surrounding areas. Three of the parties have Pennsylvania addresses and any witnesses associated with the Inquirer work in Philadelphia. Consequently, venue is appropriate in Philadelphia.

Moreover, this action was the first filed action. Delaware subscribes to the general rule that "litigation should be confined to the forum in which it is first commenced and a defendant should not be permitted to defeat the plaintiff's choice of forum in a pending suit by commencing litigation involving the same cause of action in another jurisdiction of its own choosing."[13] Plaintiffs' choice of forum should not be disregarded so easily. Based on the foregoing, defendants' preliminary objection is overruled.

III. Demand was not required since this is not a derivative action.

Defendants argue the instant action should be dismissed since it is a derivative suit and plaintiffs failed to make the required pre-suit demand on the Board. The Delaware Supreme Court has set forth the test for distinguishing between direct and derivative claims. The analysis must be based solely on the following questions: Who suffered the alleged harm-the corporation or the suing stockholder individually-and who would receive the benefit of the recovery or other remedy? [14]

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[13] Brookstone Partners Acquisition XVI, LLC v. Tanus, 2012 WL 5868902 (De. Chan. November 20, 2012), (quoting McWane Cast Iron Corp. v. Pipe Corp. v. McDowell- Wellman Eng'g Co., 263 A.2d 281, 283(Del. 1970); see Lisa, S.A. v. Mayorga, 993 A.2d 1042, 1047 (Del. 2010). (Where the Delaware action is not the first filed, the policy favoring strong deference to a plaintiff's initial choice of forum requires the court freely to exercise its discretion in favor of staying or dismissing the Delaware action.).

[14] Tooley v. Donaldson, Lufkin & Jenrette, Inc., 845 A.2d 1031, 1035 (Del. 2004)

Here, plaintiff Intertrust suffered the harm when Katz, its designee, to the Management Committee and Board of Directors was deprived of his right to vote on the firing of Marimow. Lenfest also suffered harm when Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. Lenfest did not concur. Delaware courts have recognized that a limited liability company member's right to vote and a director's right to decide issues are direct claims.[15] The alleged deprivation of the right to vote is a unique harm to plaintiffs. The injuries to Katz and Lenfest resulted directly from the defendants' actions, and a favorable decision would remedy their injuries by potentially invalidating the votes taken at any meetings and the resulting transactions. Plaintiffs therefore have standing to pursue their direct claims and defendants' preliminary objection is overruled.

IV. Hall's demurrer to the complaint is overruled.

Defendants argue the complaint against Hall fails to state a claim for relief. Defendant Hall argues that since he is not a member of IGM or a party to the IGM agreement he cannot be sued for any alleged breach of the agreement including the alleged violation of section 5.2 (a) which is the gravamen of this lawsuit. [16] While it is true that Hall is not a party to the IGM agreement nor a member of IGM, the absence of same does not justify dismissing Hall as defendant at this juncture. Taking all the facts and all inferences therefrom in a light most favorable to plaintiffs, as this court must at this stage in the litigation, sufficient allegations exist to impose liability upon Hall.

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[15] See, Kalisman v. Friedman, 2013 WL 1668205 (Del. Ch. Apr. 17, 2013), Bakerman v. Sidney Frank Importing Co., Inc., 2006 WL 3927242 (Del. Ch. Oct. 10, 2006)

[16] Defendant Hall's memorandum of law in support of preliminary objections pg. 18.

Plaintiffs have not filed a breach of contract action against Hall. Instead, plaintiffs seek declaratory relief. Plaintiffs ask the court to declare that the purported firing of Marimow by Hall on October 7, 2013 is null and void and without effect. Plaintiffs allege the following:

> 14. Notwithstanding the clear and unambiguous language of 5.2 of the Agreement, on October 7, 2013, Hall unilaterally and without the consent, approval, or authorization of the Management Committee required for such decisions, summarily fired Marimow prior to the expiration of Marimow's employment contract (expiring April 30, 21014). In fact, shortly before October 7, 2013, Lewis Katz, one of the two members of the Management, specifically told hall that he (Lewis Katz) would *not* approve the firing of Marimow. Shockingly, neither prior to nor at the time of Hall's firing of Marimow did Hall advise Lewis Katz of the firing.
>
> 15. After the firing of Marimow, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. Hall's representation was and is false. At least two directors (Katz and Lenfest), one of whom is also a member of the Management Committee (Katz), have in fact not concurred in hall's firing of Marimow.

Based on the foregoing, defendants' preliminary objection is overruled.

V. Lenfest has standing to pursue this action at this time.

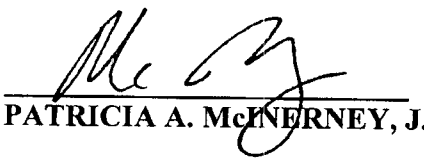
Defendant argues Lenfest lacks standing to pursue this action because he is not a member of the Management Committee and has not suffered any direct injury to his personal interest. Although Lenfest is not a member of the Management Committee, the complaint alleges that he did suffer a direct injury by being deprived of his voting rights as a Board Director. The complaint alleges that after the firing of Marimow, Hall represented that he had received the concurrence "of each and every director and shareholder but one" on his firing decision. The complaint further alleges that Hall's representation was and is false because Katz and Lenfest did not concur in Hall's firing of Marimow. [17] Based on the foregoing allegation, the court finds that Lenfest has standing to pursue this action at this time.

[17] Complaint paragraph 15.

CONCLUSION

For the foregoing reasons, defendants' preliminary objections are overruled.

BY THE COURT,



PATRICIA A. McINERNEY, J.