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

RITE CHOICE PHARMACY, INC., ET. AL.,	:	February Term 2025
	:	No. 1401
Plaintiff,	:	
	:	Commerce Program
v.	:	
ADRIAN ACCAY,	:	Control Nos. 25034116/25022077
Defendant	:	

OPINION

Patrick, J. **April 16, 2025**

Plaintiffs filed two motions for preliminary injunctive relief. After a hearing, the motions were denied in Court on the record. This Opinion is submitted in support of the Order denying the motions.

BACKGROUND

The Parties

Plaintiffs[1] are ten LLCs and one corporation (collectively "Companies") which operate or are wholly owned pharmacy businesses in the Philadelphia area under the brand name RiteChoice. (Docket ("Dkt.") 2-11-25, Motion ¶ 4). Companies operate pharmacies with a particular expertise in the highly regulated federal drug discount program known as 340B which provides pharmacy services to underserved and lower income communities. (Id. ¶ 5).

[1] Plaintiffs are RiteChoice Pharmacy, Inc., AA Pharmacy Holdings, LLC, AA Pharmacy Holdings 275, LLC, RiteChoice Management LLC, RiteChoice Pharmacy I, LLC, 11th Street Pharmacy LLC, RiteChoice Pharmacy IV, LLC, RiteChoice Pharmacy V, LLC, RiteChoice Pharmacy VI, LLC, RiteChoice Pharamcy VII, LLC and RiteChoice Rx Hub, LLC. (Dkt. 2-10-25, Complaint).

Defendant Adrian Accay ("Adrian"), a pharmacist, opened the first RiteChoice Pharmacy in 2013. (Dkt. 2-10-25 ¶ 38, Complaint). Adam Accay ("Adam"), Adrian's brother and a lawyer, joined RiteChoice Pharmacy in 2015. (Id.). Adrian and Adam are the sole owners of RiteChoice Pharmacies. (Id. ¶ 32). RiteChoice Pharmacy I, LLC, 11th Street Pharmacy, LLC, RiteChoice Pharmacy IV, LLC, RiteChoice Pharmacy V, LLC and RiteChoice Management, LLC are owned by AA Pharmacy Holdings, LLC which is owned 50% by Adam and 50% by Adrian. RiteChoice Pharmacy VI, LLC is owned by AA Pharmacy Holdings 275, LLC which is owned 90% by Adam and 10% by Adrian. RiteChoice Pharmacy Inc. is owned 50% by Adam and 50% by Adrian. RiteChoice Rx Hub, LLC is owned 90% by Adam and 10% by Adrian. (Id. ¶¶ 32-37).

The Letter of Intent

In 2020, Adrian decided to decrease his role in the pharmacy businesses. On November 13, 2020, Adrian and Adam executed a Letter of Intent (LOI) to supplement and clarify their respective positions with existing pharmacy businesses and any future pharmacy businesses that may be opened after the LOI became effective. (Dkt. 2-10-25, Complaint, Exhibit A- LOI). The LOI contemplated that Adam would prepare operating agreements and a shareholder agreement for the businesses, but none were prepared.

The LOI contains an arbitration provision which states:

> 9. Arbitration. In the case of any controversy between the Parties concerning, but not limited to, the validity, construction, or interpretation of this LOI, the Parties shall refer such dispute in writing to an Arbitrator to be jointly agreed upon. …The decision of the arbitrator shall be final and binding on the Parties and shall be enforceable as any Arbitrator award. …" (Id.).

The Notice of Derivative Action and the Special Litigation Committee

In March 2024, Adam received a letter from counsel for Adrian, titled "Notice of Derivative Action". (Dkt. 2-10-25, Complaint, ¶ 45). The letter sets forth allegations regarding Adam's management of the Companies and demanded that the Companies take action to address them. Additionally, counsel for Adrian requested to review various documents and financial records from Companies. (Dkt. 2-10-25, Complaint, ¶ 45).

In response to the "Notice of Derivative Action', the Companies formed a Special Litigation Committee (SLC) in April 2024 to investigate the claims made by Adrian via written consent. (Dkt. 2-10-25, Complaint, ¶ 58). The SLC was tasked to investigate the claims made by Adrian and to determine whether pursuing the claims was in the Companies best interest. (Id. ¶ 69). The SLC was composed of Anthony B. Creamer, CPA and Alex Sedin, Esquire who retained Hangley Aronchick Pudlin & Schiller to serve as counsel. (Id. ¶¶ 72, 73). Adrian was not included in the decision to appoint a SLC.

The Arbitration

On April 9, 2024, at or about the same time the SLC was formed, Adrian filed a complaint in arbitration with the American Association of Arbitrators. The arbitration complaint was amended on September 4, 2024. The claims alleged that Adam was wrongfully paying himself a salary as president and CEO of the Companies, stopped paying Adrian a salary in 2023, took improper distributions by mislabeling them as legal expenses, and took improper distributions through payment to a construction manager. (Id. ¶¶ 48-49). Adrian requested injunctive relief to remove Adam as the manager and director of the Companies. (Id. ¶¶ 51-55).

First Motion to Stay Arbitration

Companies filed a motion to stay the ongoing arbitration proceeding pending the completion of the SLC investigation. (Dkt. 2-11-25, Motion ¶ 42). On November 7, 2024, the Arbitration Panel denied the motion to stay stating that the appointment of the SLC was not in accordance with the governing statutes and was not valid. (Dkt. 2-11-25, Motion ¶ 43). In particular, the Panel found that since every shareholder of RiteChoice Pharmacy, Inc. was also a director of the corporation, and since every member of the limited liability companies was also a manager of those companies, a SLC could not be appointed under the governing statutes. (Dkt. 3-5-25, Answer, Exhibit A- Arbitrator's Order 14).

The SLC Report

On January 17, 2025, the SLC issued a 61-page report setting forth its analysis of the claims asserted by Adrian. (Dkt. 2-10-25, Complaint ¶ 80). The SLC recommended in part that the derivative claims be dismissed, that Companies engage neutral experts to determine whether Adam's annual salary is a fair market salary and to determine whether the rent for the Companies' corporate headquarters is a fair market rent. (Id. ¶ 96). The SLC also discovered that Adam had overdrawn $237,000 from Companies and that there appeared to be approximately $29,000 difference in the historical distributions between Adam and Adrian. (Id. ¶¶96-97). The SLC, however, did not find these monetary discrepancies large enough to proceed with the derivative claims and recommended that they be dismissed.

Second Motion to Stay Arbitration

After the SLC was issued, Companies filed another motion to stay the arbitration proceedings. The Arbitration Panel once again denied the motion to stay the arbitration for the same reason it denied the first motion to stay, that is, the appointment of the SLC was not proper. (Dkt. 3-5-25, Answer, Exhibit A- Arbitrator's Order 14). The Panel concluded based on its interpretation of the LOI and the evidence before it that each member has equal rights in the management and conduct of the Companies' activities and affairs. (Dkt. 3-5-25, Answer, Exhibit A- Arbitrator's Order 14). Therefore, a SLC could not be appointed.

This Action

On February 10, 2025, Companies initiated this action against Adrian seeking preliminary and permanent injunctive relief to enforce the findings of the SLC under 15 Pa. C. S. §§ 1783 (f) and 8884 (f). (Dkt. 2-10-25, Complaint). On February 11, 2025, Companies filed a motion for preliminary injunction seeking to stay the arbitration proceeding until the Court adjudicates the mandates made by the SLC recommendations and objections to the recommendations and dismisses the derivative claims in arbitration based on the SLC recommendation. (Dkt. 2-11-25, Motion).

On March 20, 2025, Companies filed an emergency motion for a special injunction seeking an order preliminarily enjoining and restraining Adrian and his agents from interfering or attempting to interfere with the management of Companies, specifically the Companies' Accounting firm. (Dkt. 3-20-25, Motion). The Court held a hearing on March 26, 2025, on both motions for injunctive relief. After hearing the parties' respective positions, on April 2, 2025, the Court denied the respective motions. (Dkt. 4-2-25, Order).

DISCUSSION

I. Companies' Emergency Motion for Special Injunction (cn 25034116) is denied because there is no clear right to relief.

In order for a trial court to grant a motion for preliminary injunction, a moving party must show that it has satisfied the following prerequisites: the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; 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; a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 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; the injunction is reasonably suited to abate the offending activity and a preliminary injunction will not adversely affect the public interest. S*ummit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Every one of the prerequisites must be established; if any one of them is not proven, there is no need to address the others, as the request for an injunction will be denied. *Id.*

In this case, Companies do not have a clear right to relief. The LOI contains a very broad arbitration provision which gives the Arbitration Panel the authority to decide issues including but not limited to the "the validity, construction and interpretation" of the LOI which includes Adrian's management status with the Companies. Having been granted subject matter jurisdiction based on the arbitration provision in the LOI, the Arbitration Panel exercised its authority and concluded that the SLC was not properly appointed because Adrian and Adam have equal rights to manage the Companies' affairs and activities. When parties agree to arbitration in a clear and unmistakable manner, the court will make every reasonable effort to favor such agreements. *DiLucente*

Corporation v. Pennsylvania Roofing Co., Inc., 655 A.2d 1035, 1038 (1995), *allocatur denied,* 666 A.2d 1056 (1995). Companies now ask this Court to disregard the Arbitration Panel's findings and issue an injunction to stop Adrian from interfering in the Companies' business affairs. This Court does not have subject matter jurisdiction to reconsider nor review *de novo* the Arbitrator Panel's decision. Accordingly, the motion for injunctive relief is denied.

II. Companies' Motion for Preliminary Injunction (cn 25022077) to stay certain claims in arbitration is similarly denied because there is no clear right to relief.

In this motion for preliminary injunctive relief, Companies seek to stay the arbitration of the derivative claims while this Court evaluates and enforces the recommendations of the SLC. Judicial review of a petition to stay arbitration, "is limited to the question of whether an agreement to arbitrate was entered into and whether the dispute falls within the scope of the arbitration provision." *MBC Development, LP v. Miller,* 316 A.3d 51, 63 (Pa. 2024), citing *Kardon v. Portare*, 353 A.2d 368, 369 (1976). As discussed supra, the LOI contains an arbitration provision and a choice-of-law provision stating that the agreements would be construed and enforced according to Pennsylvania law. By selecting Pennsylvania law, the SLC procedure outlined in the Limited Liability Statute and the Business Organization Statute are applicable. See, 15 Pa. C. S. §1783 and §8884.[2]

At issue in this injunction is whether this Court has exclusive jurisdiction over the appointment of SLC. It does not. Generally, a SLC is appointed if the limited liability company or the corporation receives a demand to bring an action to enforce the right of the company. *Id.* Additionally, a SLC may be appointed if a derivative action commences before a demand is made

[2] Even though the statutes pertain to different types of entities, the contents of the statutes are somewhat identical. Where the statutes are identical, the Court will refer to each of them collectively as "statutes".

on the company or its members or manager. *Id.* The SLC is appointed to investigate the claims asserted in the demand or action and to determine on behalf of the company or recommend to the manager or members whether pursuing any of the claims asserted in the demand or action are in the best interest of the company. *Id.*

A Special Litigation Committee is not always appointed. According to the statutes, a SLC may not be appointed if (1) every member of the company is also a manager of the company or (2) the company is member-managed and every member is actively involved in the management of the company. *See, 15 Pa. C. S. §8884 (a) (1), (2).* Additionally, a SLC is not appointed if every shareholder of the corporation is also a director of the corporation. *See, 15 Pa. C. S. §1783 (a).*

If a SLC is appointed and a derivative action is commenced before or after the committee makes its determination or the board of directors determines to accept the recommendation of the committee, the statutes give the Court exclusive authority to determine whether the members of the committee met the qualifications of the statutes and whether the committee conducted its investigation and made its determination or recommendation in good faith, independently and with reasonable care. *See, 15 Pa. C. S. §1783 (f)(3), 15 Pa. C. S. §8884 (f) (3).* If the Court finds that the committee members satisfied the qualifications of the statutes and acted in good faith, independently and with reasonable care, the Court shall enforce the determination of the committee or take other action set forth in the statutes. *Id.*

This Court recognizes that the clear and unambiguous language of §§ 1783 (f) and 8884 (f) gives this Court exclusive jurisdiction over reviewing the qualifications of the SLC members, evaluating the recommendations of the SLC and enforcing their recommendations. The Legislature, however, by its plain language, did not give this Court exclusive jurisdiction over any questions arising from when a SLC should be appointed. This is evident by the omission from §§

1783 (f) and 8884 of any Court obligation to review the appointment of a SLC. Based on the foregoing, this Court does not have exclusive jurisdiction over the appointment of a SLC. *See*, *Shafer Elec. & Const. v. Mantia*, 626 Pa. 258, 96 A.3d 989, 994 (2014) (providing that "it is not for the courts to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include" (quoting *Commonwealth v. Rieck Inv. Corp.*, 419 Pa. 52, 213 A.2d 277, 282 (1965))).

In this case, Adam and Adrian agreed to arbitrate their disputes including, but not limited to, the validity, construction and interpretation of the LOI. Whether the SLC was properly appointed in this case necessitates interpretation of the LOI which falls squarely within the scope of the Arbitration Panel's authority. The Arbitration Panel has already determined that the appointment of the SLC was not proper because Adrian and Adam have equal management rights in the limited liability company and the corporation.[3] Its decision is final and binding.

Companies reliance on *MBC Dev. LP v. Miller*, is misplaced. In *MBC*, the Court only addressed the SLC's findings after the SLC had been appointed. There was no question raised concerning the validity of the appointment of the SLC. Here, however, Adrian raised questions as to the propriety of SLC's appointment, which is not exclusively within this Court's jurisdiction. Based on the foregoing, Companies do not have a clear right to relief and the motion to stay proceedings is denied.

[3] Interestingly, Companies rely upon the LOI to argue that Adam is the sole manager. Interpretation of the LOI is squarely within the jurisdiction of the Arbitrators not this Court. (Dkt. 2-10-25, Complaint, Exhibit A- LOI).

CONCLUSION

For the foregoing reasons, the Motions for Preliminary Injunctive Relief were Denied.

BY THE COURT:

PAULA A. PATRICK, J.