

Chancery Court Denies Motion To Perfect Service For Service On Dissolved Limited Liability Company

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In *Tratado de Libre Comercio, LLC v. Splitcast Technology, LLC*, C.A. No. 2019-0014-JRS (Del. Ch. Mar. 6, 2019), the Delaware Court of Chancery examined the requirements for perfecting service upon a dissolved limited liability company (“LLC”). In ruling that *Tratado de Libre Comercio, LLC* (“*Tratado*”) had failed to perfect service of process on a dissolved entity, *Splitcast Technology LLC* (“*Splitcast*”), the Court highlighted its broad authority to establish service of process requirements under Court of Chancery Rule 4(d)(7) (“Rule 4(d)(7)”) in claims against defunct entities. The Court’s decision both illustrates the scope of its authority and confirms its willingness to hold that court-mandated standards for delivering service upon defunct corporations also apply in the context of defunct LLCs.

Tratado brought suit against *Splitcast*, seeking to (i) nullify *Splitcast*’s certificate of cancellation; (ii) return assets to *Splitcast* to satisfy *Tratado*’s claim against the company; and (iii) appoint a former member of *Splitcast* as trustee to defend *Tratado*’s claim against it. Recognizing that *Splitcast* was properly dissolved in late 2015 (and therefore no longer had a registered agent or active officers upon whom personal service could be perfected), Vice Chancellor Slight’s reasoned that the traditional methods of service available to satisfy service requirements for claims brought against viable legal entities were inapplicable. Accordingly, the Court sought to utilize its ability to establish service of process requirements pursuant to Rule 4(d)(7).

Unable to find on-point precedent involving defunct LLCs, the Court looked to *In re Krafft-Murphy Co., Inc.* for guidance. The *Krafft* court demonstrated its authority to set forth service requirements in the context of a defunct corporation that was a necessary party to litigation, despite the expiration of a three-year statutory winding up period. Of note, Rule 4(d)(7) provides that the court may issue “[a]n order directing another or an additional mode of service of a summons in a special case . . .,” thereby providing the court with authority to require alternative modes of service in special situations. The *Krafft* court held that to perfect service on a defunct corporation that was a necessary party to litigation—a “special case” under Rule 4(d)(7)—the plaintiffs were required to (i) publish notice in newspapers in both Delaware and the state of the dissolved entity’s former senior officers; and (ii) provide written notice to an attorney associated with the defendant corporation.

Identifying the parallels to *Krafft*, the Court reasoned that a similar approach was warranted. Because Tratado sought to nullify Splitcast's certificate of cancellation and obtain an order requiring Splitcast's former members to return assets to the entity for the purpose of satisfying Tratado's alleged obligations, Splitcast was deemed a necessary party to the litigation. Similarly, the Court noted that Splitcast was lawfully dissolved and the company had completed its winding up period. Holding again that such circumstances constitute a "special case" justifying the Court's invocation of its broad authority under Rule 4(d)(7), the Court instructed Tratado to (i) publish notice in a widely-circulated Delaware newspaper daily for two consecutive weeks; (ii) mail copies of the summons, verified complaint/petition, and the Court's opinion separately to (a) Splitcasts' former senior officers at their last known addresses and (b) the counsel of Splitcasts' former senior officers; and (iii) file an affidavit of compliance with the Court.

Analogous to the *Krafft* court's reading of Section 279 of the Delaware General Corporation Law with respect to defunct corporations, the Court also noted that Section 18-805 of the Delaware Limited Liability Company Act explicitly provides that trustees may be appointed "at any time" if required to settle a cancelled LLC's unfinished business. Concluding that this provision imposes no temporal limitations on a plaintiff's ability to file a petition to appoint a trustee, the Court remarked that Section 18-805 did not otherwise limit Tratado's ability to make such a filing. The Court did note, however, that it will only consider such a petition once service has been perfected.

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