

## Delaware Court of Chancery Upholds Forum Selection Clause in LLC Agreement Under State Law

Article By:

Scott E. Waxman

---

In *Li v. LoanDepot.com, LLC*, C.A. No. 2019-0026-JTL (Del. Ch. Apr. 24, 2019), the Delaware Court of Chancery upheld the enforceability of a forum selection clause in a company's operating agreement.

Timothy Li (the "Plaintiff") was an employee of LoanDepot.com, LLC (the "Company"). The Company's operating agreement (the "LLC Agreement") granted employees the right to indemnification, which included the right to advancement of expenses for any proceeding in which the indemnified person might ultimately be entitled to indemnification. In a prior case, the Company had commenced, and subsequently dismissed without prejudice, arbitration against Mr. Li, which implicated Mr. Li's indemnification and advancement rights. Subsequently, Mr. Li filed a separate lawsuit in the Delaware Court of Chancery (the "Court"), in which he sought to enforce his right to advancement of expenses from the Company. In response, the Company filed a motion to dismiss, contending that a mandatory forum selection clause in the Company's LLC Agreement required any disputes relating to or arising out of such agreement to be heard in federal or state courts in Los Angeles, California.

As an initial matter, the Court noted that forum selection clauses are generally valid and will be enforced unless the resisting party can clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for a reason such as fraud or overreaching. In his complaint, the Plaintiff cited to Section 18-109(d) of the Delaware Limited Liability Company Act (the "LLC Act"), which states in relevant part that "a member who is not a manager may not waive its right to maintain a legal action or proceeding in the courts of the State of Delaware with respect to matters relating to the organization or internal affairs of a limited liability company." In reliance on this provision, Mr. Li alleged that he could not have agreed to a provision that divested him of his ability to maintain a legal action in Delaware state court for a dispute relating to the internal affairs of the Company.

The Court rejected the Plaintiff's argument and found that the LLC Agreement's forum selection clause was binding on Mr. Li for purposes of his advancement claim. The Court held that the relevant portion of Section 18-109(d) cited above "does not encompass other types of claimants under an LLC agreement, and it does not mandate that all litigation involving internal governance disputes with non-managing members take place in the Delaware courts." The Court found that the Plaintiff was acting as an employee or agent of the Company; he did not bring the lawsuit in his

capacity as a non-managing member and did not commit any of the alleged wrongdoing giving rise to the Company's separate claims in his capacity as a non-managing member. Because the Plaintiff was not suing in his capacity as a member, the Court found that Section 18-109(d) of the LLC Act did not apply. As a result, the Court concluded that, under Delaware law, the forum selection clause in the Company's LLC Agreement must be enforced and the Plaintiff's complaint dismissed.

[Li v. LoanDepot.com, LLC](#)

Copyright 2025 K & L Gates

---

National Law Review, Volume IX, Number 304

Source URL: <https://natlawreview.com/article/delaware-court-chancery-upholds-forum-selection-clause-llc-agreement-under-state-law>