

Chancery Court Declines to Move Books and Records Dispute to New York Despite New York Venue Clause in LLC Agreement

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In *Joseph Stanco v. Rallye Motors Holding LLC*, C.A. No. 2019-0751-SG (Del. Ch. Dec. 23, 2019), a former managing member of a Delaware limited liability company (“LLC”) brought an action to compel inspection of the company’s books and records in the Delaware Court of Chancery (the “Court”). The company moved to dismiss the action on the basis that (i) its LLC Agreement designated New York as the venue for dispute resolution and (ii) a different plaintiff was simultaneously pursuing a similar action with respect to the same documents in New York. The Court was not persuaded by either of the company’s arguments and denied its motion to dismiss.

Defendant Rallye Motors Holding LLC (“Rallye”) is a Delaware LLC that acts as a holding company for five auto dealerships on Long Island, New York. Plaintiff Joseph Stanco (“Stanco”) began working for Rallye around 1980. Stanco was promoted to President and CEO of Rallye in 2006, and joined the board of directors as Managing Member in 2011. In 2017, Stanco was fired without cause, but continued to hold 5.5% of Rallye’s membership units.

In August 2019, Stanco demanded inspection of Rallye’s books and records under Section 18-305 of the Delaware Limited Liability Company Act and Section 8.3 of Rallye’s LLC Agreement. Through the inspection, Stanco sought to determine the status and value of his ownership interest in Rallye, as well as Rallye’s business and financial condition, the performance and independence of its management, the propriety of its public disclosures, and the current business being transacted by it. Rallye moved to dismiss.

In reviewing the motion, the Court found that the LLC Agreement did not constitute a contractual waiver of Stanco’s right to make an information demand in Delaware. Under Delaware law, members of an LLC generally have the statutory right to enter books and records demands with the Court, except as may be limited by contractual waiver. To be enforceable, such a waiver must encompass (i) a knowledge of the right and (ii) a clear expression of intent to relinquish the right. Here, the LLC Agreement’s New York venue provision applied to “any and all disputes arising out of” the LLC Agreement, but the Court reasoned that the dispute in the present matter instead related to Stanco’s statutory information rights. The LLC Agreement did not explicitly waive such statutory

rights. Further, the Court found that, in entering into the LLC Agreement, Stanco had not intended to vindicate his rights as a *member* of Rallye. Section 18-109(d) of the Delaware Limited Liability Company Act provides that a member not exercising management rights cannot waive its ability to bring an action in the Court. Here, Stanco was a manager and a member of Rallye at the time of execution of the LLC Agreement, but was only a member at the time of the demand. The Court observed that, as the Managing Member of Rallye, Stanco would have had access to Rallye's books and records, and it was only because Stanco was removed as a manager that he sought to enforce his statutory right as a member. As such, the Court found that the New York venue provision in the LLC Agreement could not have been intended to apply to Stanco at present, when he was a non-managing member. On these two bases, the court held that the LLC Agreement did not require Stanco to bring the dispute in New York, despite the New York venue provision.

Next, the Court held that it would not dismiss the motion on grounds of *forum non conveniens* on account of there being a prior action pending elsewhere, in a court capable of doing prompt and complete justice, involving the same parties and the same issues. In the present case, Stanco and another member of Rallye had filed a breach of contract action against Rallye in New York with respect to the terms of their employment agreements and alleged unpaid or underpaid distributions (the "NY Breach of Contract Action"). At the same time, the other member had filed an action in New York with respect to Rallye's books and records (the "NY Books and Records Action"), and Stanco had filed this action in Delaware. The Court found that the NY Breach of Contract Action concerned Stanco's contractual employment rights, whereas the present action concerned his statutory and contractual interests as a member of Rallye. With respect to the NY Books and Records Action, the Court reasoned that the intent of controlling precedent was to promote efficient litigation where a party to an action seeks to defeat the plaintiff's choice of forum by later filing another action in another jurisdiction. Here, the NY Books and Records Action involved a third party's contemporaneous filing in another jurisdiction, and the Court did not find sufficient evidence that the two matters involved the same parties and the same issues. Therefore, the Court found that neither the NY Breach of Contract Action nor the NY Books and Records Action had a sufficient connection to the present action for the Court to exercise its discretion.

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