

Actual Domination and Control Required Before Minority Member Owes Any Fiduciary Duty

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Absent contractually created fiduciary duties, a minority member owes a fiduciary duty to other members only if he exercises domination and control over the LLC. [Lafayette Village Pub, LLC v. Burnham](#), 2022 NCBC 50 (J. Davis). Because Plaintiffs' complaint failed to provide specific factual allegations evidencing Defendant's domination and control over the LLC, the Business Court dismissed Plaintiffs' individual claims for breach of fiduciary duty.

Plaintiffs are two brothers and member-managers of Lafayette Village Pub, LLC ("Company"), a company formed to run a restaurant in Raleigh, North Carolina. Over time, Plaintiffs acquired a collective majority ownership in the Company. Defendant Burnham was also a member-manager and minority owner in the Company, running the day-to-day operations of the restaurant business. Despite Plaintiffs' combined majority ownership, Defendant Burnham allegedly refused to allow Plaintiffs access to the Company's financial information, treated the Company as though he were the sole manager, utilized company funds for his own personal expenses, and undertook major renovations of the restaurant against Plaintiffs' direction. Frustrated with Defendant's actions, Plaintiffs filed suit asserting individual claims for, *inter alia*, breach of fiduciary duty and unfair and deceptive trade practices ("UDTP"). Defendant moved to dismiss, contending Plaintiffs' complaint failed to state claims against him.

The Business Court agreed. Recognizing that North Carolina case law has repeatedly held that LLCs are creatures of contract (i.e., the Operating Agreement) and that fiduciary duties are often discussed therein, the Business Court noted here that the Company had no Operating Agreement and, therefore, Plaintiffs had no contractual basis to claim Defendant owed them a fiduciary duty. (Opinion, ¶36). Moreover, based upon their own allegations, Plaintiffs collectively own a majority interest in the Company, with Defendant only owning a minority interest. Under North Carolina law, the Business Court held, a minority member will only owe a fiduciary duty to other members if he "exercises actual domination and control" over the organization (*Id.*, ¶37-39), something the Business Court noted would be a "rare instance." (*Id.*, ¶1). To survive a motion to dismiss, the Business Court explained, a plaintiff must allege "well-pled facts" (and not mere conclusory allegations) which evidence the required "domination and control." (*Id.*, ¶39). In this case, the Business Court concluded, Plaintiffs' complaint simply lacked the required "well-pled" facts from which a fiduciary duty could be found. As a result, the Business Court dismissed Plaintiffs' individual claims for breach of fiduciary duty .

Additional Legal Point:

Based upon a plethora of prior Business Court cases, North Carolina will not recognize an intracompany dispute as one that is “in or affecting commerce” for purposes of allowing a UDTP claim to go forward (Opinion, ¶19-31)

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