

LGB Group, LLC v. Booty

In *LGB Group, LLC v. Booty*, 2004 WL 1058958 (Md. Cir. Ct.), the Court considered a series of claims, counterclaims, motions and a bench trial all relating to a situation where the president of a limited liability company was found to have been stealing money from it. Defendant Booty had been president of LGB Group, LLC (“LGB”) as well as one of its original members. LGB was a limited liability company that owned and operated a World Gym. Eventually, it was discovered by the other members of LGB that Booty was stealing LGB assets using various fraudulent schemes. The other members sought Booty’s removal as President but did not do so in accordance with LGB’s Operating Agreement. Booty sued LGB over his removal and was reinstated as the President by the Court. However, the jury also found that Booty had in fact been misappropriating money from LGB and entered a judgment against him for nearly \$100,000. Immediately following judgment, Booty again engaged in fraudulent acts against LGB, obtaining money from its bank account without approval by using a fraudulent resolution authorizing his actions. In response to Booty’s continued misbehavior, LGB again removed him as President, this time, in accordance with the terms of the Operating Agreement. After seeking the advice of legal counsel, LGB’s members voted to amend LGB’s Operating Agreement to eliminate the office of President and allow for governance by LGB’s Executive Committee. LGB also exercised its option to force Booty to forfeit his interest. Booty filed counterclaims, asserting that he, again, had been improperly removed as President and that LGB owed him certain monies as reimbursement for various expenses.

The Court held that with a vote of almost ninety percent of the members for the amendments, LGB had properly abolished the office of president despite the fact that the previous court decision had reinstated Booty to that position. Booty argued that a certain general provision in LGB’s Operating Agreement stated that the consent of all of LGB’s members was needed for changes to be made, but the Court held otherwise, pointing to a specific clause relating to amending the Operating Agreement. The Court, citing to *Federal Ins. Co. v. Allstate Ins. Co.*, 341 A.2d 399, 407 (Md. 1975), explained that where two clauses or parts of a written agreement are in apparent conflict, and one is general in character while the other is specific, the specific clause takes precedence over the general clause. The Court also held that, given Booty’s numerous thefts from LGB, LGB had a common law right to remove him as a member and officer of the company, regardless of whether the Operating Agreement so provided.

When considering the propriety of LGB’s actions in forfeiting Booty’s interests, the Court referred to Section 4A-502(c) of the Maryland Limited Liability Act. Section 4A-502(c) provides that any member failing to make a payment which they are required to make is subject to specified remedies that may take the form of forfeiture of the defaulting member’s interest in the limited liability company. Because Booty owed and failed to pay the judgment of almost \$100,000 to LGB, the Court held that LGB was entitled to judgment and permitted LGB to treat Booty’s interests as forfeited, as partial payment of his debt.

The Court further held that, pursuant to Section 4A-606 of the Maryland Limited Liability Act, Booty had ceased to be a member of LGB. Section 4A-606 states that a person ceases to be a member of a limited liability company if they file a petition or answer seeking for that person any reorganization, arrangement, composition, readjustment, liquidation, dissolution,

or similar relief under any statute, law or regulation. Since a counterclaim filed by Booty contained a request for the sale of the company and the appointment of an administrator, the Court deemed that action sufficient to terminate his status as a member.

Finally, the Court stated that all of LGB's actions in response to Booty's actions were due significant deference under the business judgment rule. After Booty was reinstated as President, LGB's members were free to exercise all the rights accorded to them under the Operating Agreement. The Court held that LGB's members made a legitimate business decision to eliminate the office of president and that that decision was protected. Citing *Zimmerman v. Bell*, 800 F.2d 386, 392 (4th Cir. 1986) (interpreting Maryland law) and *Devereux v. Berger*, 284 A.2d 605 (Md. 1971), the Court indicated that a corporate control group is presumed to act in good faith and that the Court would not substitute its business judgment for that of the managers. The Court also noted several decisions holding that the business judgment rule precludes judicial review of a legitimate business decision of an organization absent fraud or bad faith. See *Black v. Fox Hills*, 599 A.2d 1228, 1231 (Md. 1992). See also *NAACP v. Golding*, 679 A.2d 554 (Md. 1996). Because Booty could not demonstrate any bad faith, the Court applied the business judgment rule and declined to second guess LGB's decision.

This case is noteworthy because very few cases across the country have dealt with the governance of limited liability companies or articulated the duties of an LLC's managers, directors and officers to the members.