THE SUPREME COURT OF NEW HAMPSHIRE

Rockingham
Case No. 2025-0056
Citation: Peregrine Interests LLC v. Todd, 2025 N.H. 54

PEREGRINE INTERESTS LLC & a.

v.

JESSICA TODD

Argued: November 12, 2025
Opinion Issued: December 23, 2025

McLane Middleton, Professional Association, of Manchester (Scott H. Harris and Jesse J. O'Neill on the brief and Scott H. Harris orally), for the plaintiffs.

Pierce Atwood LLP, of Portsmouth (Michele E. Kenney on the brief and orally), for the defendant.

GOULD, J.

[¶1] The plaintiffs, Peregrine Interests LLC (Peregrine) and Jessica Todd LLC (the company), appeal orders of the Superior Court (Ruoff, J.) dismissing their claims against the defendant, Jessica Todd, for breach of fiduciary duty, breach of contract, and declaratory judgment. We affirm.

[¶2] The following facts are taken from the plaintiffs' complaint and accompanying documentation and are assumed to be true for the purposes of this appeal. See Boucher v. Town of Moultonborough, 176 N.H. 271, 272 (2023). In 2012, Peregrine and Todd sought to establish a "high end hair salon" located in Portsmouth. They formed the company that year and, in 2016, amended and restated the company's operating agreement "to identify how they would structure their combined efforts." In exchange for shares, each made certain contributions to the company. Peregrine contributed financial support. Specifically, "Peregrine's majority owner [H. Daniel Hughes II] utilize[ed] his parent company to supply capital, marketing, financial, and administrative expertise, and all 'back-office' support." Todd, who was an established hair stylist and "the public face of the eponymous business," provided "day-to-day management and active participation in the business." The 2016 amended and restated limited liability company agreement (the operating agreement) identifies Todd and Peregrine as the members of the company and Todd and Hughes as its managers.

[¶3] As part of Peregrine's financial support, the company obtained a line of credit from Diversified Group LLC (Diversified), of which Hughes is the president/CEO. The operating agreement provided that until Diversified, Peregrine, and Hughes had been repaid the total amount they had invested in the company, Todd would vote, as member and manager, as directed by Hughes.

[¶4] The operating agreement provided that no member could transfer all or part of that member's interest in the company without the approval of a majority of disinterested members. It further required that "for so long as [Todd] is a Member, she shall devote 100% of her business time to providing services to and as manager of the Company." It also prohibited both members from competing with the company during their memberships. It did not, however, as the trial court found, "mention [member] withdrawal in any form, either voluntary or involuntary."

[¶5] In 2022, Todd broached the idea of buying out Peregrine's interest in the company with Hughes. When the parties failed to reach a deal, Todd gave notice of her withdrawal from the business. Peregrine and the company then brought this action seeking damages for breach of fiduciary duty and breach of the operating agreement and a declaration that "if Todd works in the [salon] business she must dedicate 100% of her working time to the [company]."

[¶6] Todd filed a motion to dismiss for failure to state a claim, which the trial court granted in part and denied in part. The court determined that "the crux of the parties' arguments rests on whether Todd validly withdrew as a member of the [company] under the terms of the parties' operating agreement." Finding that Todd had validly withdrawn, the court concluded that the plaintiffs' fiduciary duty, contract, and declaratory judgment claims premised

upon her continued membership failed. It further ruled that "[t]o the extent [the plaintiffs'] claim alleges conduct that occurred before [the effective date of Todd's withdrawal], however, the breach of contract claim stands." The plaintiffs moved for reconsideration, which the court denied.

[¶7] Thereafter, Todd brought counterclaims against the plaintiffs and a third-party complaint against Hughes and his spouse. The plaintiffs then withdrew any remaining portion of their breach of contract claim so that their claims could be severed from Todd's counterclaims and the dismissal orders could be treated as final decisions on the merits as to all of the plaintiffs' claims, making them appealable pursuant to Superior Court Rule 46(c)(1). The parties jointly requested a ruling under Rule 46(c)(1), which the trial court granted. This appeal followed.

[¶8] "In reviewing an order granting a motion to dismiss, we assume the truth of the facts as alleged in the plaintiff[s'] pleadings and construe all reasonable inferences in the light most favorable to the plaintiff[s]." Boucher, 176 N.H. at 273. "The standard of review in considering a motion to dismiss is whether the plaintiff[s'] allegations are reasonably susceptible of a construction that would permit recovery." Id. "This threshold inquiry involves testing the facts alleged in the pleadings against the applicable law." Id. "The trial court may also consider documents attached to the plaintiff[s'] pleadings; documents, the authenticity of which is not disputed by the parties; official public records; and documents sufficiently referred to in the complaint." Id. at 273-74. "We will uphold the granting of the motion to dismiss if the facts pled do not constitute a basis for legal relief." Id. at 274.

[¶9] Resolving the issues in this appeal requires us to construe both RSA chapter 304-C, the New Hampshire Limited Liability Company Act (the Act), and the company's operating agreement. "We review the trial court's statutory interpretation de novo." Id. In interpreting the Act, "[w]e first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." Id. "We give effect to every word of a statute whenever possible and will not consider what the legislature might have said or add language that the legislature did not see fit to include." Id. "We also construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result." Id. "However, we do not construe statutes in isolation; instead, we attempt to construe them in harmony with the overall statutory scheme." Id.

[¶10] "Because the operating agreement is a form of contract, we will apply the general rules of contract interpretation." McDonough v. McDonough, 169 N.H. 537, 541 (2016) (quotation omitted). "When interpreting a written agreement, we give the language used by the parties its reasonable meaning, considering the circumstances and the context in which the agreement was negotiated, and reading the document as a whole." Id. (quotation omitted).

"We give an agreement the meaning intended by the parties when they wrote it." Id. (quotation omitted). "Absent ambiguity, however, the parties' intent will be determined from the plain meaning of the language used in the contract." Id. (quotation omitted). "The interpretation of a contract, including whether a contract term is ambiguous, is ultimately a question of law for this court to decide." Id. (quotation omitted). "Accordingly, we review a trial court's interpretation of a contract de novo." Id. (quotation omitted).

[¶11] We turn first to the operating agreement. It provides, in relevant part:

> [N]o Member may directly or indirectly Transfer all or any portion of its, her, or his Interest or any rights therein, except upon approval by a majority of disinterested Members (any such approved transferee, a "Permitted Transferee"). Any Transfer made in violation of this Agreement shall be null and void.

[¶12] "Transfer" is defined to mean "any transfer, sale, assignment, pledge, hypothecation, gift, creation of a security interest in or lien on, placement in trust (voting or otherwise), assignment or any other encumbrance or disposition of, directly or indirectly, and whether or not voluntarily, of any Interest or portion thereof." "Interest" is defined to mean "a Member's limited liability company interest in the Company, which includes such Member's Capital Account, Shares and other rights and obligations under this Agreement and the Act."[1] Finally, the operating agreement provides "that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided in this Agreement."

[¶13] The plaintiffs argue that the trial court erred in interpreting the operating agreement. They contend that Todd's withdrawal from the company was a "transfer," as defined by the operating agreement, which required Peregrine's approval. They then argue that, because Todd's unapproved transfer was void under the operating agreement, she "remained bound to the terms of the Operating Agreement." Accordingly, the plaintiffs argue, this lawsuit, "predicated on Todd's violation of the Operating Agreement, articulated a legally viable cause of action" and was erroneously dismissed.

[¶14] Todd disputes that a withdrawal falls within the operating agreement's definition of "transfer." She contends that because the operating agreement is silent as to member withdrawals, there is nothing "otherwise

[1] We note that while the operating agreement defines "Interest" to mean a member's "limited liability company interest," it purports to further define "Interest"/"limited liability company interest" to include more than is contained in the Act's definition of "limited liability company interest." See RSA 304-C:12 (2025). The plaintiffs do not contend that this distinction is pertinent to the resolution of this appeal, however, and we therefore do not consider it further.

provided" in the agreement about that subject and, therefore, the Act's provisions regarding withdrawals apply. Under those provisions, she argues, withdrawal does not transfer any portion of a member's interest in an LLC but rather "terminates certain membership rights." (Bolding omitted.)

[¶15] The Act provides that "[u]nless the operating agreement provides otherwise, a member may withdraw from a limited liability company at any time by giving 30 days' written notice to the other members, or such other notice as is provided for in writing in the operating agreement." RSA 304-C:103, I (2025). A member's voluntary withdrawal from a limited liability company causes the member to "be dissociated." RSA 304-C:100 (2025). Subject to provisions not relevant here, the Act defines "the dissociation of a member . . . [to] mean the termination of all of the member's membership rights except: I. The member's limited liability company interest; and II. The rights identified in RSA 304-C:99."[2] RSA 304-C:98 (2025). "'Membership rights' means the totality of the member's rights as a member under this act, including both economic rights, such as the member's limited liability company interest, and non-economic rights, such as the member's voting rights, if any." RSA 304-C:15 (2025). "'Limited liability company interest' means the right of a member to receive allocations of the profits or losses of a limited liability company and to receive distributions of the limited liability company's cash and other assets." RSA 304-C:12. Thus, under the plain language of the Act, Todd's limited liability company interest was retained and all other membership rights were terminated. As Todd argues, "[n]either a termination nor a retention [is] a 'transfer.'"

[¶16] The plaintiffs nevertheless assert that the operating agreement "defined transfers as including not only terms consistent with the common, bilateral meaning of the word—such as 'sale,' 'assignment,' and 'gift'—but also" what they characterize as "the unilateral catch-all, 'any other encumbrance or disposition.'" They then argue that by withdrawing from the company Todd "disposed of her non-economic membership interest rights." We are not persuaded. First, the operating agreement's transfer prohibition applies to a member's "Interest" which is defined as "a Member's limited liability company interest in the Company." As noted, because Todd withdrew from the company, she has retained, not transferred, that interest. To the extent the transfer prohibition applies to rights beyond the limited liability company interest, we do not agree that "disposed of" includes termination by action of law.

[¶17] The phrase "any other encumbrance or disposition" must also be read in the context of the language preceding it. In contract interpretation, the rule of ejusdem generis "applies when there is an enumeration or listing of

[2] The company's operating agreement expressly waives the provisions of RSA 304-C:99 (Certain Effects of Dissociation).

specific things, followed by more general words relating to the same subject matter, in which case the general words are interpreted as meaning things of the same kind as the specific matters to which the parties refer." 11 Richard A. Lord, Williston on Contracts § 32:10, at 745-46 (4th ed. 2012). Here, all of the preceding articulations of the meaning of "transfer" involve the conveyance of, or encumbrance on, a member's interest to, or for the benefit of, another. Thus, we interpret "any other . . . disposition" to be "of the same kind as," id., and no broader than, the terms that precede it and conclude that it refers to a disposition to another. Cf. Parkhurst v. Gibson (Parkhurst), 133 N.H. 57, 62, 63 (1990) (declining to read "[t]he general clause 'all other marital rights'" in introductory paragraph of the parties' antenuptial agreement to include "property settlement and alimony awards granted upon divorce" where "[t]he five paragraphs setting forth the parties' agreements are particular and specific, and concern only inheritance rights and inter vivos transfers of assets"). This interpretation of "transfer" as bilateral finds further support in the language of the operating agreement's transfer restriction itself, which requires approval for a transfer and then identifies "any such approved transferee, a 'Permitted Transferee.'"[3] Accordingly, Todd's withdrawal was not a "transfer" of her interest.

[¶18] The plaintiffs next contend that they have a viable claim for recovery under RSA 304-C:103, II, which provides:

> If the member has the power to withdraw but the withdrawal is a breach of the operating agreement, or the withdrawal occurs in connection with otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement or as a result of the wrongful conduct, which may include the reasonable costs of obtaining replacement of any services the withdrawn member was obligated to provide to the limited liability company.

RSA 304-C:103, II (2025). They argue that "Todd's determination to withdraw as a means of circumventing her fiduciary duty to her partner, Peregrine, constitutes the 'wrongful conduct' referenced" in this provision. Todd responds that the plaintiffs have not alleged that she "engaged in wrongful conduct separate and apart from her withdrawal" and argues that "it cannot be 'wrongful' for [her] to have exercised a statutory right of withdrawal that is not prohibited by the Operating Agreement" even if she had "the intent to thereafter compete with the [company]." We agree because the plaintiffs' argument is

[3] To the extent the plaintiffs contend that Todd's withdrawal effected a bilateral transfer of her 50% voting interest in the company to Peregrine because Peregrine held 100% of the voting rights after Todd's withdrawal, we are not persuaded. Peregrine's voting interest increased to 100% on Todd's withdrawal by virtue of Peregrine's being the only voting member remaining after Todd's voting rights were terminated by operation of law.

predicated upon the faulty premise that Todd's withdrawal was a breach of the operating agreement. The plaintiffs, moreover, cite no provision of the Act or of the operating agreement that prohibits a former member from competing with the company. Thus, we cannot conclude that Todd's intent to engage in legal activity was "otherwise wrongful conduct." Id.

[¶19] For the foregoing reasons, we affirm the trial court's dismissal of the plaintiffs' claims.

Affirmed.

MACDONALD, C.J., and DONOVAN and COUNTWAY, JJ., concurred.