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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2628-09T1

ALL SAINTS UNIVERSITY OF
MEDICINE ARUBA; ASUMA LLC;
and RICHMOND PAULPILLAI,

Plaintiffs,

and

JOSHUA YUSUF,

Plaintiff-Appellant,

v.

GURMIT SINGH CHILANA,

Defendant-Respondent,

and

PETER SILBERIE,

Defendant.

Submitted December 5, 2011 - Decided December 24, 2012

Before Judges A. A. Rodríguez, Sabatino and Ashrafi.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-147-08.

Samuel D. Bornstein, attorney for appellant.

Ferro Labella & Zucker, L.L.C., attorneys for respondent (Arthur P. Zucker, of counsel

and on the brief; Michael A. McDonough, on the brief).

PER CURIAM

This case involves what is termed the "judicial dissociation" of two shareholders in a New Jersey limited liability company, ASUMA, LLC ("ASUMA" or "the LLC"), through a final order expelling them from further involvement in the LLC's business. The LLC was formed in connection with the operations of a fledgling medical school in Aruba. After the medical school developed a host of financial and other problems, litigation over the entity's operations ensued in the Chancery Division involving the LLC's four shareholders, plaintiffs Joshua Yusuf and Richmond Paulpillai, and defendants Gurmit Singh Chilana and Peter Silberie.[1] The trial court appointed a fiscal agent to oversee the LLC's affairs. Meanwhile, Chilana, a minority shareholder, infused a substantial amount of his personal funds to pay the medical school's expenses and to prevent its closing.

Following a six-day bench trial, the Chancery judge ordered that Yusuf and Paulpillai be expelled from the LLC, upon finding

[1] Although Yusuf and Chilana have professional degrees, we refrain, solely for stylistic reasons and without any disrespect, from referring to them as "Dr. Yusuf" and "Dr. Chilana." We also note that the parties' respective briefs are inconsistent in their use of the "Dr." title for the opposing litigants.

that they had engaged in conduct authorizing such judicial dissociation, pursuant to both subsections 3(a) and 3(c) of N.J.S.A. 42:2B-24(b). The judge also concluded, based upon the unrebutted testimony of defendants' financial expert, that plaintiffs' shares in the LLC had no value.

Yusuf now singularly[2] appeals the trial court's findings, arguing that his conduct and that of Paulpillai violated neither of the two statutory provisions alternatively relied upon by the trial judge. Yusuf further contends that the judge erred in attributing zero value to his shares in the company.

For the reasons that follow, we affirm the trial court's final judgment ordering plaintiffs' dissociation from the LLC. We do so based solely upon subsection 3(c) of the statute, without the need to reach the separate grounds cited under subsection 3(a).

We further clarify that, despite what the parties and the trial judge may have otherwise assumed, N.J.S.A. 42:2B-24(b) does not compel the sale of the shares of a dissociated member. In light of that clarification, it was unnecessary for the court to have determined a value for plaintiffs' shares, although we

[2] Co-plaintiff Paulpillai has not participated in the appeal, nor has co-defendant Silberie.

discern no error in the expert-based valuation that the trial judge adopted.

I.

The extensive trial record contains the following pertinent facts and circumstances. In essence, the chronology depicts a host of problems and disagreements that beset the new medical school and the LLC formed to operate it.

The Formation of the Medical School in Aruba

Yusuf holds a doctorate degree in science. He was a student and faculty member teaching biochemistry at St. James School of Medicine in the Dutch Antilles, where he met Paulpillai, an admissions administrator there. The two men resolved, with their collective experience, to establish another medical school in the Caribbean. To pursue that objective, Yusuf suspended his medical education. At the time, he was twenty months away from obtaining his medical degree.

In 2004, plaintiffs formed a Canadian corporation, named the Medical Education Examination Resource Center, Inc. ("MEERC"), for the purpose of starting a medical school in the Caribbean. They used MEERC to obtain a charter for such a school from the government of Aruba. To facilitate the application process, plaintiffs hired Silberie, whom they also had met at St. James, to establish a link with the Aruba

government. In exchange for contributing his services, Silberie received an ownership stake in MEERC, although the record does not indicate what percentage.

On November 10, 2004, the Aruba government granted MEERC's application for a charter to establish All Saints University of Medicine ("All Saints"). On the same date, the principals of All Saints entered into an agreement with the government. In that agreement, the government agreed to issue residency permits to the students and faculty at All Saints. The government also agreed to issue no more than two charters for a medical school in the country. The second charter was issued to Xavier University School of Medicine ("Xavier").

After obtaining the charter, the three founders of All Saints (Yusuf, Paulpillai, and Silberie) began preparing the school for classroom instruction. Yusuf initially served as the school's Chief Academic Officer. In that capacity, he hired the faculty and designed a four-year curriculum for the M.D. degree program. Meanwhile, Paulpillai, as Chief Administrative Officer, created the admissions criteria and recruited students. Lastly, Silberie assisted students with the immigration process, as the school's Director of Internal Affairs. Yusuf and Paulpillai bought equipment, supplies, and furnishings. They

also opened an account at the Caribbean Mercantile Bank in Aruba (the "CMB account") on behalf of All Saints.

In January 2005, All Saints became operational, with an initial class of seventeen students. At the outset, MEERC received the tuition from these students, which was deposited into an account in Canada (the "MEERC account"), and then wired to the CMB account in Aruba. Yusuf and Paulpillai were authorized to sign checks on both accounts. Silberie was an authorized signatory only on the CMB account. Paulpillai did not ordinarily sign checks on the CMB account, from which All Saints initially paid its operating expenses.

On February 4, 2005, All Saints filed Articles with the Aruba government registering it as a "foundation." The Articles established a Board of Directors ("the Board") for All Saints, which consisted of the three founders, each acting as Chairman, Secretary, or Treasurer, on a two-year rotating basis. Initially, Yusuf was the school's Secretary, Paulpillai the Treasurer, and Silberie the Chairman. The Articles required the Treasurer to "conduct[]" the "financial management" of All Saints.

Pursuant to the Articles, the decisions of the Board of All Saints required unanimous action by all three founders. When a unanimous vote could not be reached, an arbitrator was to be

appointed, whom the Board had to approve unanimously. The Board also had the express authority to "grant others one or more of its powers, provided this is clearly described."

In September or October 2005, the enforcement branch of the Aruba immigration department entered All Saints with armed officials and detained several of its students. In response, All Saints collaborated with a member of the Aruba parliament, at the direction of the Prime Minister, to establish protocols that would allow its students to remain in Aruba while the government processed their permit applications. The immigration problems evidently persisted, but some protocols were apparently in place as of the time of the trial in the fall of 2009.

The Recruitment of Chilana and the Formation of the LLC

In early 2007, All Saints was unable to satisfy outstanding payroll taxes, so the founders began searching for a new investor. The Dean of All Saints, Lakhinder Kanwar, referred Yusuf to Chilana, an obstetrician and gynecologist licensed in New Jersey and practicing in Paterson. Chilana agreed to purchase 250 shares of All Saints, representing a twenty-five percent stake, for $500,000. The four parties (Yusuf, Paulpillai, Silberie, and Chilana) also agreed to form a New Jersey LLC, ASUMA, to assume many of the functions of MEERC.

On May 3, 2007, the four parties executed an Operating Agreement for ASUMA.[3] As contemplated, Chilana received 250 shares in All Saints, which represented a twenty-five percent minority interest, in exchange for his $500,000 contribution. Meanwhile, Yusuf and Paulpillai each owned 265 shares, together controlling fifty-three percent of All Saints. Finally, Silberie owned 220 shares, a twenty-two percent interest. Among other things, the parties stated in the Operating Agreement that they "shall not at anytime [sic] be compelled to give up or sell their shares for any reason," and that their "decision to sell shares must be voluntary."

The Operating Agreement further provided that half of Chilana's $500,000 purchase price would be applied to cover the school's $60,000 outstanding payroll taxes, and other operating expenses. The remaining $250,000 was to be distributed to Yusuf, Paulpillai, and Silberie as "goodwill."

In addition, the Operating Agreement appointed Chilana to the Board of All Saints, and he was given the title of Chief Clinical Officer. Yusuf testified that Chilana's position on the Board did not give him the same authority as the three

[3] At trial, the parties disputed whether the agreement was an LLC "operating agreement" under N.J.S.A. 42:2B-2. However, on appeal, the parties do not challenge the trial court's finding that the agreement qualified as such under that statute.

founding members. For example, the Treasurer had the authority to manage All Saints's finances. Chilana could not become Treasurer because, pursuant to the Articles, that title rotated only among the founding members every two years.

The Operating Agreement gave Chilana authority to co-sign checks on the CMB account. Two signatories were needed to authorize checks on the CMB account, which could be Silberie and "at least one other director or Dean," including Chilana. The Operating Agreement further provided that a second bank account would be established in the United States.

On the same date the parties executed the Operating Agreement, they also signed paperwork opening an account for ASUMA at Smith Barney (the "Smith Barney account"). The Operating Agreement provided that the authorized signatories on the Smith Barney account could include Chilana, plus either Yusuf or Paulpillai, but not Silberie.

Under the Operating Agreement, signatures from three persons were required to write a check over $10,000 on each account, but each party had rights to view the accounts. These terms were contained in Paragraph 7F of the Operating Agreement.

The Operating Agreement did not expressly designate a managing member who was responsible for making day-to-day operational decisions for the LLC. The Operating Agreement did,

however, make clear that Board decisions required a unanimous vote of the directors. The Operating Agreement also contained a provision that the expenses of the administrative offices "must be approved by the directors and taken care of by the University." The Operating Agreement similarly had a "[b]udgeting" provision, in which the parties had agreed that:

> [a] budget for the operation of the University must be prepared every semester by the USA administrative office and must be approved in writing by all the directors / shareholders before it can be implemented. Budget must be prepared at least six weeks prior to commencement of a new semester. All operational expenses must be approved by at least three of the shareholders / directors.
>
> [Emphasis added.]

Meanwhile, in the paperwork submitted to Smith Barney, Chilana and Yusuf were designated as ASUMA's "managing members."

On May 5, 2007, Chilana filed a Certificate of Formation in New Jersey, organizing ASUMA LLC. Paragraph 3 of the Operating Agreement provided that the "shareholders of [All Saints] are also . . . shareholders of ASUMA LLC[.]" As a result, the parties had the same percentage interests in ASUMA as they did in All Saints. Specifically, Yusuf and Paulpillai each had 265 shares, and thus, had a combined controlling stake in the LLC; Chilana had 250 shares, and Silberie, 220 shares.

Chilana established ASUMA's office in the basement of the building of his New Jersey medical practice. To begin paying ASUMA's expenses, Chilana sent fifty blank checks on the Smith Barney account to Yusuf and Paulpillai, which they respectively signed and returned to him. Chilana also gave Paulpillai, Silberie, and Yusuf a password to view the Smith Barney account online.

Problems Emerging With the Business and the Parties' Relationships

At a directors' meeting held at ASUMA's office in New Jersey on June 27, 2007, which lasted ten hours, the parties' relationship began to deteriorate. Among other things, Paulpillai and Yusuf objected to ASUMA's offices being located in a building owned by Chilana. Silberie, meanwhile, complained that some students from All Saints had transferred to a Dominican medical school, known as "All Saints University of Medicine, Dominica," in which Paulpillai and Yusuf owned a combined eighty-percent interest. Silberie perceived that the students were being improperly siphoned to Dominica. He also complained that he was unable to get All Saints's financial statements for 2005 and 2006 from Yusuf and Paulpillai.

The June 2007 directors' meeting ended with persisting conflict between Silberie, on the one hand, and Yusuf and

Paulpillai, on the other. Chilana, meanwhile, straddled a middle position at that time, siding with neither camp.

The next day, after Yusuf and Paulpillai had left the office, Chilana asked Silberie to co-sign checks on the Smith Barney account and Silberie agreed. Having gained Silberie's willingness to provide his signature, Chilana thereafter ceased sending checks to Yusuf and Paulpillai to co-sign. According to Chilana's trial testimony, he had "forgotten" about Paragraph 7F in the Operating Agreement, requiring that either Yusuf or Paulpillai co-sign checks with him. Chilana also thought that the Operating Agreement's provision, which appeared to prohibit him from co-signing the Smith Barney checks with Silberie, "did not make sense[.]"

At some point in July or August 2007, Chilana opened a deposit account (the "Citibank account") for the LLC, which Chilana believed was with Yusuf's consent. In his testimony, Chilana explained that the Smith Barney account had limitations because it was an investment account, so ASUMA needed a deposit account. According to Chilana, deposits into the Citibank account transferred automatically to the Smith Barney account, and vice versa.

Chilana began to pay All Saints's expenses from the Citibank account. He also changed the online method for

students to pay their semester tuition to All Saints from PayPal to Google, because the Google system was substantially cheaper. The tuition payments transferred electronically into the Citibank account through Google's payment service. Chilana was the only authorized signatory on the Citibank account. Yusuf testified that he was not given the password to access the new Google account, and thus he could not monitor it.

In July 2007, Yusuf learned that Chilana and Silberie were co-signing the Smith Barney checks. The following month, Yusuf complained to Chilana by phone that he was violating Paragraph 7F of the Operating Agreement in co-signing checks with Silberie. Yusuf memorialized that conversation in an e-mail to Chilana. Chilana responded by e-mail, accusing plaintiffs of also signing checks in breach of Paragraph 7F. Paulpillai and Yusuf threatened to advise Smith Barney that checks signed by Silberie "were NOT authorized by the board of ASUMA," which they understood would have "serious implications."

Despite their ongoing conflict over check-signing authority on the Smith Barney account, on August 14, 2007, the parties agreed to a new arrangement for the authorized signatures as to the CMB account, which could be any two principals, including the combination of Chilana and Silberie. In effect, this modified agreement resulted in Silberie being no longer needed

to co-sign withdrawals from the CMB account, as the Operating Agreement had required.

The parties continued to dispute, however, the authorized signatories for the Smith Barney account. In February 2008, plaintiffs sent a letter to Smith Barney on All Saints letterhead and, relying on their combined majority interest in ASUMA, directed Smith Barney not to honor checks signed only by Chilana and Silberie. Alternatively, they instructed the bank to honor only the checks signed by these four combinations of ASUMA members: (1) Chilana and Yusuf; (2) Chilana and Paulpillai; (3) Silberie and Paulpillai; and (4) Silberie and Yusuf.

Yusuf testified that he was attempting to compromise by permitting Silberie to sign checks, but prevent him from signing with Chilana. Yusuf explained that he did not want Chilana and Silberie co-signing checks together because he feared they would not tell Paulpillai and him the reasons for withdrawing funds.

The Operating Agreement required that "[a]ll expenses of [ASUMA]" be "approved by the directors," and that All Saints's "operational expenses must be approved by at least three . . . shareholders / directors." However, at trial Yusuf specifically contested only the issuance of two identified checks: one to Chilana's lawyer, Lazerowitz (which was evidently payment for

Lazerowitz's services rendered in forming ASUMA); and another check to "Volpo" (which Yusuf discovered was a designation for the payment for student clinical rotations).

On February 6, 2008, Smith Barney responded to plaintiffs' letter by suspending activity on the account. It advised that "going forward we will require the signatures of all four partners to effect transactions[.]" (Emphasis added).

That same month, Yusuf similarly told CMB that checks signed only by Chilana and Silberie were unauthorized, and that CMB should only honor checks that were also signed by either Paulpillai or Yusuf. In response, CMB froze its account on February 7, 2008.

As a result of these accounts being frozen, the parties had difficulty paying teacher salaries, rent, and taxes. Some checks that had already been issued on the accounts bounced.

On February 14, 2008, by e-mail to the parties, Chilana proposed that they use their personal funds to pay the school's urgent expenses of $50,000. Chilana again urged the others to adopt this solution by an e-mail sent the following day. Plaintiffs did not agree. In fact, in a reply e-mail, Paulpillai told Chilana that he "will NOT be allowed to take any money out of the University accounts in the [United States] or Canada unless it is authorized by ALL the four of us." In

another e-mail, this one directed to Silberie but also received by Chilana, Paulpillai told Silberie that if he "refuse[d] to agree" with him and Yusuf regarding the authorized signatories, and "checks and withdrawals are not honored by our bank in the U.S.A. and Aruba before [the] end of February 2008, you and you alone will be totally responsible for whatever devastating consequences this might bring[.]" That e-mail apparently was copied to some of the teachers at All Saints.

Chilana's Infusion of Funds and The Enterprises' Continued Problems

Faced with these operational difficulties and plaintiffs' resistance, Chilana used his own personal funds to pay expenses and teacher and staff salaries to keep the school afloat.[4] Because February 2008 salaries had been paid late to the teachers and staff, they sent an e-mail on March 25, 2008, threatening to "walk out" and to report All Saints to the Aruba labor department if the March 2008 salaries were also paid late. In addition, the school's immigration problems were persisting, apparently because All Saints either did not pay or had been late in paying its taxes.[5]

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[4] Chilana testified that, as of the time of trial, he had not been reimbursed for his emergency cash infusion.

[5] The tax problem apparently was tied to the school's ability to obtain student and teacher visas from the Aruba government.

On March 11, 2008, the Smith Barney account was modified to provide that the only authorized signatories for it were Paulpillai and Chilana. An authorization to that effect was signed by all the parties except Silberie. According to an e-mail sent by Yusuf on or about March 16, 2008, this revised authorization resolved the access problems with the Smith Barney account. However, that perception was apparently inaccurate. To the contrary, Chilana testified that Smith Barney never agreed to accept less than all four parties' unanimous approval of transactions. Chilana further testified that both the CMB and Smith Barney accounts had not "opened up" prior to this litigation.

Sometime in March 2008, Chilana and Silberie applied to the Aruba government for a charter to operate another medical school. In spite of the government's earlier commitment that no more than two such charters would be issued, it granted defendants' request and issued them the third charter in October 2008.

Chilana and Silberie established the Aruba University of Medicine Foundation. They listed the foundation with the Aruba Chamber of Commerce, as a precondition for the charter to be issued. According to Chilana, he acquired the charter with no intention to start a medical school unless All Saints failed, in

which case the students and faculty would need a new medical school. He did not recruit faculty, staff, or students for the third school. He also did not buy or rent property or medical equipment.[6]

The Order to Show Cause and the Chancery Litigation

On April 22, 2008, Yusuf and Paulpillai, as plaintiffs, filed a verified complaint in the Chancery Division, alleging breach of fiduciary duty, breach of contract, and misappropriation against defendants, Chilana and Silberie, stemming from their alleged violations of the Operating Agreement. At time of the verified complaint's filing, the LLC's bank accounts were still frozen.

Chilana counterclaimed for fraud, misappropriation of funds and corporate opportunity, breach of fiduciary duty, misconduct, and negligent misrepresentation. He requested injunctive relief, seeking to have the court authorize him "to act solely on behalf of [All Saints]."

On April 30, 2008, the trial court entered an order to show cause with temporary restraints. The court appointed Richard H. Weiner, an attorney, as Special Fiscal Agent for the LLC.

[6] Meanwhile, Chilana infused at least $250,000 in funds to All Saints since obtaining the other charter.

Weiner, in turn, appointed Theodore Glueck, an executive, as the interim chief operating officer of All Saints and the LLC.

By consent order on June 10, 2008, the trial court vacated the temporary restraints and imposed new preliminary restraints delineating the rights and obligations of the parties to manage ASUMA and All Saints, pending trial. On September 11, 2008, the court entered another consent order expanding Glueck's authority as interim chief operating officer, which specifically outlined his responsibilities. This expansion was suggested by Weiner, who was "extremely concerned [about the] financial viability" of All Saints. Default judgment was subsequently entered against Silberie, who did not file any responsive pleadings to the lawsuit.

On November 20, 2008, Chilana filed an emergent application requesting the trial court to declare plaintiffs judicially dissociated from ASUMA, pursuant to N.J.S.A. 42:2B-24(b)(3) of the New Jersey Limited Liability Company Act ("LLCA"), N.J.S.A. 42:2B-1 to -70. Chilana sought such emergent relief because All Saints required immediate capital to continue operating into the next semester. By certification dated November 24, 2008, Glueck confirmed that All Saints was in poor financial condition. Chilana intended to inject the capital necessary to sustain the school only if plaintiffs were dissociated.

On December 3, 2008, oral argument was held on Chilana's emergent application. The parties attempted that day to reach agreement on a method to save All Saints, pending trial. Plaintiffs insisted, however, that they were "not in a position" to make any capital contributions. Chilana, on the other hand, argued that All Saints was essentially a "pyramid scheme," because students' prepaid tuition payments had been used to pay All Saints's expenses. Hence, if the students' tuition payments were not so applied, additional equity from the members would be needed to cover the expenses. Chilana offered to contribute that needed equity if the court ousted Yusuf and Paulpillai from operating All Saints and ASUMA.

On December 15, 2008, the trial court entered an order amending its prior order of June 10, 2008 imposing preliminary restraints. This order provided that Chilana "shall loan . . . $350,000 to ASUMA to be used by the COO to pay the obligations" of ASUMA and All Saints. The order also enjoined plaintiffs, pending trial, from participating in the day-to-day affairs of ASUMA and All Saints. On the same date, Weiner verified that Chilana had transferred $250,000 into a trust account to pay All Saints's obligations, of which $100,000 had already been used to pay past-due bills. The court specified that students' tuition

for the next semester could not be used to pay the business's current expenses.

On March 13, 2009, the trial court entered an order sanctioning plaintiffs for failure to comply with a prior order as to certain discovery issues. In particular, plaintiffs had not provided ASUMA's accountant, Dean Symeonides,[7] with adequate bank records establishing that students had paid tuition to plaintiffs prior to the formation of ASUMA, and showing in which bank plaintiffs had deposited the tuition payments.

Because plaintiffs persisted in their non-compliance with the court's discovery order, Chilana moved for an adverse inference on May 12, 2009. On June 12, 2009, the court granted that request. In its oral opinion, the court described plaintiffs' failure to provide the tuition-related records as "outrageous," "a farce," "contemptuous," and "evasive." Specifically, the court ruled that:

> [T]here will be an inference that [Yusuf and Paulpillai] have converted the money for the entity for their own purposes. That's the finding. So I'm not going to sanction. I'm not going to order moneys to be paid. But the determination is that based on this record they've converted these moneys to their own purposes, and they have done so in [derogation] of the entity that should have received the moneys. They've had plenty of

[7] Symeonides had been retained by Weiner.

> opportunities to show otherwise. They haven't.

Shortly before trial, on September 4, 2009, Silberie agreed to sell his interest in ASUMA to Chilana for the nominal consideration of one dollar. That agreement was contingent on Chilana successfully dissociating plaintiffs from ASUMA.[8]

The Trial and the Court's Findings

The trial took place over six intermittent days in September 2009. At trial, Weiner (the fiscal agent) and Glueck (the chief operating officer) each testified about the host of management and financial problems persisting at All Saints. Weiner testified that All Saints could not continue as a viable entity, or it would be "extremely difficult" to do so, if plaintiffs and defendants continued to operate ASUMA and All Saints collectively, given the parties' divisive conduct. Glueck, meanwhile, testified that the financial condition of All Saints was "tenuous," and that its operations were "extremely difficult."

As further illustration of the venture's problems, Weiner testified about two students who had claimed that All Saints had

[8] The enforceability of this agreement is unclear. Although the Operating Agreement bars "shareholder(s)" from "buy[ing] out other shareholder(s)," that provision is contained in the paragraph allocating shares to the parties in All Saints, but not in ASUMA.

wrongfully failed to issue their medical degrees, despite their completion of the required medical courses and accumulation of sufficient credits. Plaintiffs supplied the academic records of one of those students to Weiner, but those records were incomplete. Glueck hired an expert to determine whether the student was entitled to a degree, and the expert confirmed that he was. Weiner believed that the problem with this student predated Chilana's involvement in All Saints. As for the second student, she obtained a default judgment in Canada against All Saints, after serving her complaint on plaintiffs. Weiner was able to resolve this student's lawsuit. He did not know whether her problem had predated Chilana's involvement in All Saints. Weiner contended that the problems with these two particular students was reflective of a more general failure by All Saints to keep accurate student records.

Following the trial, the court issued a written decision on December 23, 2009. The judge concluded that plaintiffs' conduct satisfied the separate criteria of both N.J.S.A. 42:2B-24(b)(3)(a) and N.J.S.A. 42:2B-24(b)(3)(c) for dissociation. In particular, the court concluded, as to subsection 3(a), that plaintiffs had engaged in wrongful conduct that adversely and materially affected the LLC's business. As to subsection 3(c), the court was persuaded that plaintiffs had engaged in conduct

which "makes it not reasonably practicable to carry on the business of the LLC with them as members."

Having dissociated plaintiffs from the LLC pursuant to the statute, the trial court then attempted to fix an amount representing the fair value of their interests in the LLC. However, plaintiffs did not offer competing expert testimony to refute the opinion of defendant's valuation expert that the LLC had no positive value. Hence, the court valued plaintiffs' interest in the LLC at zero, consistent with the only expert testimony that it heard on the subject. The value was determined as of June 31, 2008, because the parties had stipulated to that date.

On January 6, 2010, the court entered a corresponding final judgment dissociating plaintiffs from ASUMA and dismissing plaintiffs' complaint.

Post-Trial Developments

On January 14, 2010, Chilana petitioned the Court of First Instance in Aruba to remove Yusuf and Paulpillai from the Board, relying on the Chancery judge's decision in this case. Meanwhile, in February 2010, Paulpillai entered into an agreement conveying his interest in ASUMA to Yusuf for the sum of $10.

Yusuf subsequently appealed the final judgment to this court. Paulpillai did not appeal the judgment, and defendants have not cross-appealed on any issues.

On May 27, 2010, the Aruba Court of First Instance issued a decision on Chilana'a petition. That tribunal credited the Chancery judge's findings, and held that those findings established under Aruba law that plaintiffs had engaged in the "(financial) mismanagement" of All Saints, which justified their removal from the Board. The Aruba court noted, however, that Yusuf's appeal of the January 6, 2010 final judgment was pending with this court, and therefore it merely suspended him from the Board until this court's merits decision. Since Paulpillai did not appeal the Chancery judge's findings, the Aruba court deemed the findings to be final against him, and thus removed him individually from the Board.

As of the time the parties' filed their appellate briefs, Chilana was still operating ASUMA and All Saints. The School has been renamed the Aureus University of Medicine. Evidently, Silberie remains on the school's Board, but he is not a member of ASUMA.

II.

On appeal, Yusuf fundamentally contests the trial court's denial of relief to him and Paulpillai and its grant of relief

instead to defendants. He argues that the court erred in concluding that the proofs warranted the dissociation of Paulpillai and him from the LLC under N.J.S.A. 42:2B-24(b)(3)(a) and (c). Yusuf further argues that the harsh statutory remedy of dissociation is not automatic, nor is it appropriate here because, in his view, the judge essentially and improperly "rewrote" the terms of the LLC's Operating Agreement.

Yusuf maintains that several of the court's factual findings lack support in the record, specifically including findings that plaintiffs (1) improperly withheld financial documents relating to the operations of the LLC and MEERC; (2) failed to provide documentation of student grades, courses, and credits; (3) caused a deadlock over the handling of the Smith Barney and CMB bank accounts, resulting in those accounts being frozen; (4) permitted immigration problems to fester; (5) failed to make adequate funding available to the school and misused current student funds to meet past defaulted obligations; and (6) engaged in conduct that brought the school to the brink of collapse and threatened its future viability.

In addition, Yusuf argues that the trial court should not have excused defendants for signing checks in violation of the Operating Agreement and for obtaining a charter for a third medical school in Aruba. He argues that it was inequitable for

the court to deny plaintiffs relief for these alleged breaches of fiduciary duty. He also challenges the court's conclusion that defendant's actions caused no harm to the LLC or to All Saints. He contends that he has a right to affirmative relief, even in the absence of a showing of any monetary harm to the LLC or All Saints flowing from defendants' alleged misdeeds.

Lastly, Yusuf argues that the court erred in accepting the defense expert's opinion that plaintiffs' shares in the LLC had no value. He asserts that the valuation comprised an improper net opinion. He further argues that the expert improperly relied upon hearsay projections of enrollment and other information that Symeonides had received from Glueck and Chilana.

A.

"Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review[.]" Seidman v. Clifton Sav. Bank, 205 N.J. 150, 169 (2011). "'[W]e do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]'" In re Trust Created By Agreement Dated December 20, 1961, 194 N.J. 276, 284 (2008)

(quoting Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974)). The court's findings of fact are "binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); see also Brunson v. Affinity Fed. Credit Union, 199 N.J. 381, 397 (2009).

To the extent that the Chancery judge's rulings in this case implicate equitable principles, we also bear in mind that appellate courts are generally reluctant to interfere with the exercise of judgment by a court of equity. We accord considerable deference to the discretion of the judges who make such equitable rulings. See, e.g., Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993); see also Marioni v. 94 Broadway, Inc., 374 N.J. Super. 588, 600-01 (App. Div. 2005) (noting the Chancery court's discretion in deciding whether to grant the equitable remedy of specific performance). "[A] judge sitting in a court of equity has a broad range of discretion to fashion the appropriate remedy in order to vindicate a wrong consistent with principles of fairness, justice and the law." Graziano v. Grant, 326 N.J. Super. 328, 342 (App. Div. 1999).

By comparison, we review the trial court's determinations on legal issues de novo. A trial judge's "interpretation of the law and the legal consequences that flow from established facts

are not entitled to any special deference." Manalapan Realty v. Twp. Comm., 140 N.J. 366, 378 (1995).

Applying these well-established standards of review here, we discern no basis to set aside the trial court's final judgment, for the many reasons that we now delineate.

B.

The issues litigated in this case require our application of the LLCA, the operative statute that was in force at the time of the parties' actions and the trial court's rulings, and which remains in force as of the time of this appeal.[9] Section 2B-24 of the LLCA provides that "[a] member shall be dissociated from

[9] The Legislature very recently passed comprehensive new legislation concerning New Jersey's LLCs, L. 2012, c. 50. The new "Revised Uniform Limited Liability Company Act" ("RULLCA"), which is based upon the uniform law developed by the National Conference of Commissioners on Uniform State Laws, was enacted on September 19, 2012. The RULLCA will not take effect until 180 days beyond that enactment date, which is March 18, 2013. At that future time, the new statute will apply to all LLCs formed after its effective date and to any LLC that changes its operating agreement to implement the RULLCA's provisions. L. 2012, c. 50, §§ 91, 95, and 96. On March 1, 2014 (the first day of the eighteenth month following the enactment), the current LLC law (L. 1993, c. 210, and its 1997 and 2003 amendments) will be repealed, and the RULLCA will then be effective as to all LLCs. Ibid. Given this delayed effective date, the change in the statutory scheme has no effect on the issues in the present appeal. We note that the new statute uses similar, but not identical, provisions as the LLCA concerning dissociation by judicial order. Id. at § 46(e)(1)-(3). It also contains a more detailed section regarding the effect of a person's dissociation as a member. Id. at § 47.

a limited liability company upon the occurrence of any of the following events," as enumerated in subsections (a) and (b) of the provision and the various subparts of those subsections. N.J.S.A. 42:2B-24 (emphasis added).

Our focus here is upon N.J.S.A. 42:2B-24(b)(3), which provides that a member of an LLC is to be dissociated from the company, upon judicial expulsion, for one of three reasons:

> (a) the member engaged in wrongful conduct that adversely and materially affected the limited liability company's business;
>
> (b) the member willfully or persistently committed a material breach of the operating agreement; or
>
> (c) the member engaged in conduct relating to the limited liability company business which makes it not reasonably practicable to carry on the business with the member as a member of the limited liability company[.]
>
> [N.J.S.A. 42:2B-24(b)(3) (emphasis added).]

Yusuf first contends that the trial judge misapplied this statute, as a matter of law, by failing to enforce the Operating Agreement's restrictions upon the forced sale of a member's stock in the LLC. We disagree.

We recognize that the LLCA does afford members of an LLC wide discretion to define their relationship, by allowing members to establish the LLC's structure, and to contract for their rights and obligations through the express terms of an

operating agreement. See Kuhn v. Tumminelli, 366 N.J. Super. 431, 440 (App. Div.) (noting that the LLCA applies to an LLC "unless the members agree otherwise in an operating agreement"), certif. denied, 180 N.J. 354 (2004). As N.J.S.A. 42:2B-66(a) instructs, the LLCA "is to be liberally construed to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

Even so, in the absence of an operating agreement that speaks to the issues, the rights and obligations of members in an LLC must be controlled by the provisions of the LLCA. Kuhn, supra, 366 N.J. at 440. By extension of the principle of freedom of contract articulated in the LLCA and in Kuhn, involuntary dissociation is a concept that LLC members may define for themselves, but only if they make their intentions to depart from the LLCA sufficiently clear.

Here, the parties failed to include an alternative procedure in the Operating Agreement to govern the involuntary dissociation of the LLC's members. The portion of the Operating Agreement that Yusuf argues that the trial court should have enforced in lieu of N.J.S.A. 42:2B-24(b) does not use the term "dissociation." That provision simply states in relevant part: "Shareholder(s) cannot or shall not at anytime [sic] be compelled to give up or sell their shares for any reason. The

decision to sell shares must be voluntary. No shareholder(s) can buy out other shareholder(s)."

A member's dissociation from an LLC pursuant to the statute does not cause that member to "sell" or "give up" economic rights involuntarily in the LLC. Rather, the member suffers through dissociation the loss of his or her management rights, but is entitled to retain an interest in the LLC as an "assignee," preserving the right under N.J.S.A. 42:2B-39 to resign as a member of the LLC and to receive within a reasonable time "the fair value of his [LLC] interests as of the date of resignation[.]" See N.J.S.A. 42:2B-24.1 (noting that the dissociated member has, subject to N.J.S.A. 42:2B-39, "rights of an assignee of a member's limited liability interest"). Such assignees are entitled to receive distributions and "allocation of income, gain, loss, deduction, or credit[.]" N.J.S.A. 42:2B-44.

Hence, the Operating Agreement's provision stating that the LLC members cannot be "compelled to give up or sell their shares for any reason" does not suffice to function as an election against the application of the involuntary dissociation provisions under the LLCA. Because a dissociated member retains economic rights, judicial dissociation ordered under N.J.S.A. 42:2B-24 does not cause Yusuf to "give up or sell" his economic

interest in ASUMA. Yusuf does, however, retain the right to do so if he resigns pursuant to N.J.S.A. 42:2B-39.

Although the record is murky on the point, it does not appear that the parties stipulated to a voluntary sale of shares in the event of judicial dissociation. Rather, the parties and trial judge seem to have proceeded under the assumption that dissociation automatically constitutes a loss of economic rights in addition to a loss of managerial rights. However, as we have already noted, the LLCA does not mandate a forced sale of shares in the event of dissociation. Moreover, pursuant to the Operating Agreement's terms, no shareholder can be "compelled to give up or sell [his] shares for any reason."

For these reasons, to the extent that the trial court's final order might be construed to imply that a sale of Yusuf's shares is compelled, we do not adopt such a construction. To the contrary, Yusuf may continue to hold his shares (and those assigned to him by Paulpillai) but as a dissociated member he is enjoined from participating in the management of the LLC. We recognize that Yusuf is not likely to want to sell his shares, since the court adopted the opinion of defendant's expert that the shares had zero value on the stipulated date of valuation. Even so, a decision to tender his shares remains up to Yusuf.

Indeed, there is no provision in the final judgment ordering such a tender.

The trial court correctly observed that the Operating Agreement was silent about whether a member could petition for dissociation of another member under N.J.S.A. 42:2B-24(b)(3). Because of that silence, the LLCA applied to the parties by default. See Kuhn, supra, 366 N.J. Super. at 440; Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 152 (App. Div. 2007) (absent an LLC operating agreement, the LLCA controls). Cf. Man Choi Chiu v. Chiu, 896 N.Y.S.2d 131, 132 (App. Div. 2010) (in a situation where the operating agreement did not include a provision for expelling members from the LLC formed under New York law, the court dismissed the dissociation petition since the New York LLC statute, unlike New Jersey's LLCA, does not provide for judicial dissociation).

Nor do principles of waiver support Yusuf's legal position. The waiver of a legal right must be effective. "An effective waiver requires a party to have full knowledge of his [or her] legal rights and intent to surrender those rights." Knorr v. Smeal, 178 N.J. 169, 177 (2003). Furthermore, a waiver of a known right must be clear, unequivocal, and decisive. Ibid.

Here, the Operating Agreement contains no language that clearly indicates that the members of the LLC, by agreeing to

its terms, knowingly waived the applicability of judicial dissociation under N.J.S.A. 42:2B-24(b)(3). The provision in the Operating Agreement cited by Yusuf in support of his waiver theory was included in a paragraph allocating the parties' shares in All Saints, whereas the paragraph allocating the parties' shares in ASUMA (the LLC) does not contain a similar restriction. Yusuf has not established that any alleged waiver of the LLCA's dissociation provisions was clear and unequivocal.

We therefore agree with the trial judge's legal ruling that the Operating Agreement did not provide for an effective waiver of Chilana's right to petition the court under N.J.S.A. 42:2B-24(b)(3) for judicial dissociation of plaintiffs from the LLC. The judge rightly concluded that judicial dissociation under N.J.S.A. 42:2B-24(b)(3) remained a remedy available to Chilana.

C.

Having confirmed that the LLCA's dissociation provisions do indeed apply to the parties' LLC, we now turn to the substance of the trial court's decision. As we have already noted, the court found two alternative grounds for dissociating plaintiffs from ASUMA: first, N.J.S.A. 42:2B-24(b)(3)(a), which pertains where a member engaged in "wrongful conduct that adversely and materially affected the [LLC's] business;" and second, N.J.S.A.

42:2B-24(b)(3)(c), which pertains where a member engaged in "conduct relating to the [LLC's] business which makes it not reasonably practicable to carry on the business . . . as a member of the [LLC]." (Emphasis added).

The wording of the statute clearly reflects that the triggering conduct that authorizes dissociation under subsection 3(c) is less stringent than that required under subsection 3(a). Subsection 3(a) has a normative component, requiring that the member's behavior be "wrongful."[10] Ibid. Subsection 3(c) lacks such a wrongfulness element, merely requiring "conduct" by the member that makes it "not reasonably practicable to carry on the business" with the member's participation. Ibid. (emphasis added).

Subsection 3(a) also requires actual harm to the enterprise, demanding proof that the member has committed wrongs that already have "adversely and materially affected" the LLC's business. Ibid. By comparison, subsection 3(c) has a prospective orientation, examining whether, looking forward, the member's conduct "makes it not reasonably practicable to carry on the business" with that member. Ibid. These textual differences, on the whole, make it easier to justify

[10] We note the adjective "wrongful" is not defined in the statute.

dissociation under subsection 3(c) than 3(a). However, proof of either standard suffices because the statute uses the disjunctive term "or" in listing the alternative grounds for dissociation. Ibid.

Given these significant differences in the applicable statutory tests, we elect to confine our analysis to the trial court's determination under subsection 3(c) — the less stringent provision — rather than subsection (a). We recognize that Yusuf strenuously maintains that his conduct, and that of his co-plaintiff, Paulpillai, was not "wrongful," and that the duo acted in the best interests of the LLC and attempted to prevent defendants from taking unauthorized control of the business and its finances. See generally Muellenberg v. Bikon Corp., 143 N.J. 168, 181 (1996) (noting, in the context of a closely-held corporation, that controlling shareholders have a legitimate interest "to rein in [the] management and control the affairs of the corporation"). Although the trial judge was unpersuaded by that contention, we need not decide ourselves whether plaintiffs' actions and inactions met the wrongfulness test of subsection 3(a). Instead, we shall confine our attention to the separate — but equally dispositive — question of whether plaintiffs' conduct was of a nature that makes it "not reasonably practicable to carry on the business" of ASUMA with

them remaining in the LLC as members. N.J.S.A. 42:2B-24(b)(3)(c).[11]

By restricting our inquiry to the sufficiency of the proofs under subsection 3(c),[12] several of Yusuf's assorted criticisms of the trial court's factual findings about the wrongfulness of plaintiffs' conduct become inconsequential. For example, Yusuf challenges the court's findings that plaintiffs wrongfully failed to produce financial documents and student records, complaining that the judge did not identify the items that they failed to supply. Although we conceivably could remand these findings to the trial court for a more specific statement of reasons pursuant to Rule 1:7-4, such a remand is unnecessary because those findings of plaintiff's inadequate document production are not essential to the subsection 3(c) analysis.

Yusuf further argues that the trial court erroneously blamed plaintiffs for allowing immigration problems at All Saints to "fester," even though the March 2007 incident with armed Aruba immigration authorities preceded the LLC's formation

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[11] We note that defendants' appellate brief similarly focuses upon the application of subsection 3(c), with little discussion of the proofs or legal analysis relating to subsection 3(a).

[12] We offer no comment about the impact, if any, that our exclusive reliance upon subsection 3(c) may have on the Aruba court's May 22, 2010 decision relying upon the Chancery judge's findings of wrongful conduct by plaintiff.

by more than a year and student enrollment continued thereafter. Although the record is suggestive that the immigration problems did indeed continue, this factual finding likewise is not critical to the statutory assessment under subsection 3(c) about whether it was "reasonably practicable to carry on" the LLC with plaintiffs.

Yusuf also takes issue with the trial court's finding that he and Paulpillai caused a deadlock that led Smith Barney and CMB to freeze the LLC's accounts. We recognize that the parties hotly dispute the wrongfulness of plaintiffs' actions as to the bank accounts. Yusuf maintains that he and Paulpillai were justified in trying to prevent Chilana from co-signing checks solely with Silberie, which appeared to be in violation of the Operating Agreement. But, regardless of whether that justification applies, the reality is that plaintiffs' objections did lead to the accounts being frozen, at a time when the school's operations vitally needed access to these accounts. The perilous situation required Chilana to make an emergency loan to pay the school's expenses, including the salaries of teachers and staff who had threatened to walk out and to report the situation to the Aruba labor authorities. Meanwhile, plaintiffs contributed no funds, and Paulpillai advised teachers, by copying them on an e-mail, that defendants were

solely to blame for the financial crises. Whether or not plaintiffs' conduct concerning the bank accounts was "wrongful" under subsection 3(a), the trial court clearly had a reasonable basis under subsection 3(c) to consider those confrontational actions as indicia that it would not be "reasonably practicable" for the company to "carry on" with plaintiffs continuing as members, in the wake of the school's financial crisis.

Moreover, the trial court's discrete factual finding that plaintiffs failed to provide adequate funding to the company is highly relevant to the subsection 3(c) analysis, and is amply supported by the record. In this regard, Sebring Associates v. Coyle, 347 N.J. Super. 414 (App. Div.), certif. denied, 172 N.J. 355 (2002), is instructive. Sebring involved the dissolution of a partnership and dissociation of one of its partners under another statute, N.J.S.A. 42:1-32(1)(d), which has been repealed, but nevertheless bore some similarities to the LLCA. N.J.S.A. 42:1-32(1)(d) provided that the judicial dissolution of a partnership is justified when a partner "so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business partnership with him[.]" N.J.S.A. 42:1-32(1)(d) (emphasis added).

Sebring held that a partner's failure to make capital contributions to a partnership in breach of the partnership

agreement warrants dissolution of the partnership and the consequent expulsion of that partner. Id. at 428-32; see N.J.S.A. 42:1A-40(b) (noting that after a partner is expelled, the surviving partners may waive dissolution and resume carrying on the partnership as if the dissolution had not occurred). In reaching this holding, we indicated in Sebring that, even absent a proven breach of the partnership agreement, the failure by a partner to contribute capital may satisfy the "not reasonably practicable" standard expressed in N.J.S.A. 42:1-32(a)(d). Sebring, supra, 247 N.J. Super. at 430. In doing so, we acknowledged that the expulsion of a partner is a "harsh remedy," but nevertheless one that may be appropriate in certain circumstances. Id. at 431-32.

One of the authorities we relied upon in Sebring was Cobin v. Rice, 823 F. Supp. 1419, 1426 (N.D. Ind. 1993), a case in which the United States District Court indicated that, had the partnership agreement not been breached, a partner's failure to contribute necessary capital made it "not reasonably practicable" for other partners to continue the partnership business with the defaulting partner. Sebring, supra, 847 N.J. Super. at 430. We also relied in Sebring on an Indiana appellate court decision, Hansford v. Maplewood Station Business Park, 621 N.E.2d 347, 351 (Ind. App. 1993), in which the Indiana

court found that a partner's failure to contribute expenses and to participate in restructuring the partnership debts rendered it "impracticable" for other partners to continue the partnership business with that partner. Sebring, supra, 347 N.J. Super. at 431.

We acknowledge that the failure by an LLC member to contribute needed capital to the LLC's business may not always provide sufficient grounds to conclude that the business is "not reasonably practicable" to carry on with that member.[13] The present case bespeaks, however, an instance where such refusal warrants judicial intervention. The record strongly reflects that plaintiffs' refusal to inject capital into All Saints could have resulted in its collapse, had Chilana not singularly assumed that burden. According to defendants' proofs, All Saints was so undercapitalized that to pay operating expenses, plaintiffs had been withdrawing funds from the students' pre-paid tuition payments, which the trial court found to be an unsustainable approach. Plaintiffs' refusal to infuse vitally-needed funds, to address an emergency that they themselves

[13] For example, we do not reach here the question of whether a passive investor in an LLC could be ousted solely because he or she declines to invest more funds into the entity when asked to do so, having done nothing to precipitate the company's financial or operational distress. Our holding is limited to the facts of this rather unusual case.

sparked in their contacts with the banks, reasonably satisfies the "not reasonably practicable" standard for dissociation set forth in N.J.S.A. 42:2B-24(b)(3)(c).

The Delaware Court of Chancery, interpreting the standard of "not reasonably practicable" within the Delaware LLC statute, has reached a comparable conclusion. Unlike New Jersey, Delaware does not provide for judicial dissociation of an LLC member. Dissolution is the only remedy that a Delaware court may grant if carrying on the LLC business according to the operating agreement becomes "not reasonably practicable." Del. Code Ann. tit. 6, § 18-802 (2011). In this respect, the Delaware statute reads:

> On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement.
>
> [Ibid.]

In Fisk Ventures, LLC v. Segal, 2009 Del. Ch. LEXIS 7 (Del. Ch. 2009), aff'd o.b., 984 A.2d 124 (Del. 2009), the court dissolved an LLC applying this provision under Del. Code Ann. tit. 6, § 18-802 because it had "no office, no operating revenue, and no prospects of equity or debt infusion." Id. at *20. The LLC in Fisk was in "dire financial condition," "with

no reasonably practical means to operate its business," and had a deadlocked board of directors. Id. at *16, *20.

Here, after the bank accounts were suspended, neither Yusuf nor Paulpillai complied with Chilina's urgent plea that they help him provide the necessary capital to pay All Saints's monthly expenses. As the trial court reasonably found, Yusuf and Paulpillai perpetuated a deadlock with Chilana and Silberie by not contributing such capital to pay All Saints's expenses, such as salaries, despite severe consequences if such expenses were not paid. While the deadlock persisted, the teachers and staff nearly quit, after threatening to expose the parties to potential liability under Aruba labor laws. Despite the gravity of this problem, Yusuf and Paulpillai essentially pointed fingers at Chilana, and sought to position themselves as blameless in the eyes of the teachers. In Paulpillai's e-mail to Silberie and Chilana, which was copied to the teachers, he blamed Silberie if All Saints failed, and demonstrated an unwillingness to consider solutions to the financial crisis. To avert disaster, Chilana eventually assumed plaintiffs' obligations by infusing his own additional personal funds into the business.

Without Chilana's capital infusion, including his loan that was not yet repaid by the time of trial, the record suggests

that All Saints may well have failed. Given that situation, the trial court did not err by concluding that it would "not be reasonably practicable" to continue the business of ASUMA, i.e., operating All Saints, with plaintiffs continuing as members of ASUMA. N.J.S.A. 42:2B-24(b)(3)(c). As the trial judge aptly phrased it in his oral comments from the bench:

> if there's any finding of fact that I think is completely unavoidable in this case, it is that these individuals [meaning Plaintiff and Mr. Paulpillai] and this individual [meaning Dr. Chilana] cannot work together to advance the interests of the LLC or the university.

Yusuf points out that under the New Jersey statutes governing corporations, it is improper for a court to order majority shareholders to sell their interests to the minority shareholders except in egregious circumstances. He argues that this same principle should apply here to the LLC, citing Musto v. Vidas, 281 N.J. Super. 548, 560 (App. Div. 1995), certif. denied, 143 N.J. 328 (1996). However, Musto was interpreting N.J.S.A. 14A:12-7, governing the involuntary dissolution of corporations, a statute that does not contain the "not reasonably practicable" language used in the LLCA. Thus, the analogy urged by Yusuf is inapt.

Moreover, we noted in Musto that, in the corporate context, an appropriate remedy in the event of an "irretrievable

breakdown" in the relationship among owners is for the majority shareholders to buy out the minority shareholders. Id. at 560-61. However, such a potential solution was not an alternative here, because the Operating Agreement forbids such a forced sale.

As an alternative argument, Yusuf asserts that even if the factual record is deemed adequate to meet the criteria of dissociation under N.J.S.A. 42:2B-24(b)(3)(c), such dissociation is not a mandatory remedy. He further contends that the trial judge abused his discretion here in ordering dissociation. We reject these contentions for several reasons.

First, we note that N.J.S.A. 42:2B-24 uses the key term "shall," in providing that "[a] member shall be dissociated from [an LLC] upon the occurrence of any of the following [specified] events[.]" (Emphasis added). Although the term "shall" usually conveys a mandatory sense, we recognize that it sometimes is meant to have a non-mandatory meaning. Cf. Natural Med., Inc. v. N.J. Dep't of Health & Senior Servs., ___ N.J. Super. ___, ___ (App. Div. 2012) (slip op. at 12). We need not resolve here the question of statutory interpretation of what exactly the Legislature intended the term "shall" to mean within N.J.S.A. 42:2B-24(b). Even if, for the sake of discussion, N.J.S.A. 42:2B-24(b) is read to afford judges the discretion to withhold

dissociation as a remedy even where the necessary criteria are met, the trial judge here did not abuse such presumed discretion.

The trial judge had sound reasons for imposing the remedy of dissociation here, given the turmoil that led to the LLC and the medical school being pushed to the brink of failure. The judge reasonably declined to continue the status quo, given the precarious financial condition of All Saints, the fractured relationship of the LLC's members, Yusuf's denial of the school's financial problems, and his unwillingness to infuse more funds into the business. In addition, Chilana, who had already provided emergency funds to save the school, understandably would not inject more capital if plaintiffs were allowed to manage the venture going forward.

Yusuf rightly points out that the ongoing costs of the court-appointed fiscal agent, Weiner, and the interim chief operating officer, Glueck, were significant expenses that added to the financial strain on the school and the LLC. Even so, the record of disharmony among the members, and the serious

challenges to the school's continued viability, amply justified the appointment of those neutral experts.[14]

In the wake of the venture's persisting problems, the trial court did not abuse its discretion in ordering dissociation under N.J.S.A. 42:2B-24. That is particularly true in light of its amply-supported finding under subsection 3(c) of the statute that it was "not reasonably practicable to carry on the business" without implementing such a measure. N.J.S.A. 42:2B-24(b)(3)(c). We also must accord substantial deference to the chancery judge's "feel for the case," given the months of pretrial oversight he repeatedly devoted to the matter and his first-hand sense of the trial testimony. See Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 291-92 (1999) (in affirming a trial judge's decision in a non-jury case, the Court noted that "[t]hrough years of managing this litigation, including evaluating evidence and hearing witnesses, the trial court developed a 'feel' for the case that ought not be lightly disturbed"); see also Twp. of W. Windsor v. Nierenberg, 150 N.J. 111, 132-33 (1997); Caldwell v. Haynes, 136 N.J. 422, 432 (1994).

[14] We have no occasion here to review the reasonableness of the fees charged by Weiner and Glueck, and no orders establishing or approving their terms of compensation have been appealed.

D.

Apart from challenging the dissociation remedy ordered against him and Paulpillai, Yusuf further argues that the trial court erred in reciprocally denying plaintiffs any relief as to their own affirmative contentions against defendants. In particular, Yusuf argues that defendants breached their fiduciary duties in several respects. Those alleged breaches included the co-signing of checks by Chilana and Silberie in contravention of the Operating Agreement, as well as their actions in obtaining a charter authorizing a third medical school in Aruba. Yusuf further contends that the court erred, as a matter of law, in declining to impose a remedy for such alleged breaches because they did not cause harm to the business.

We decline to second-guess the trial judge's disposition of these issues relating to defendants' own conduct. The judge fairly concluded from the evidence that plaintiffs' claims of breach of duty, breach of contract, and misappropriation against defendants had not been sufficiently proven.

Moreover, the judge explained in detail his rationale for denying relief to plaintiffs. The judge first addressed defendants' formation of the charter for the third medical school:

> Plaintiffs have failed to prove a breach of fiduciary duty by Chilana. The allegation with respect to Chilana's role in obtaining a third charter is the most serious allegation, but it provides no basis for relief to plaintiffs. The charter could, in theory, be used to start a new medical school in Aruba, in contravention of the All Saints Aruba charter, which limits the number of medical schools on the island to two. But no steps have been taken to make that theoretical possibility a reality. It has not diminished the value or interests of All Saints in any way, and it has not injured the interests of ASUMA, or the Foundation, or the medical school, or the fellow shareholders/members. It was taken out as a precaution so that a second medical school could exist on the island if All Saints Aruba ceased to exist as a result of the parties[′] deadlock, or this litigation.
>
> [Emphasis added.]

The judge similarly detailed his reasons for rejecting plaintiffs' contentions of breach of fiduciary duty concerning the check-signings:

> The secondary allegation against Chilana is that he breached his fiduciary duty by signing checks in violation of an agreement he had with the foundation, by opening additional bank accounts, paying unauthorized expenses and changing the on-line payment system. Each of these steps was undertaken by Chilana for the purpose of maintaining the functioning and viability of the LLC and the medical school, as well as protecting his substantial financial investment. Chilana was not enriched personally by any of the conduct complained of, and none of the conduct complained of harmed or damaged the LLC, the medical school, the Foundation, or the

> shareholder/members. Accordingly, the claim of breach of fiduciary duty falls. To the extent the financial practices implemented by Chilana deviated from the parties' Agreement, they caused no damages or harm whatsoever, and thus provide no basis for relief under a breach of contract cause of action. Finally, the claims that Chilana misappropriated corporate funds or things of value must be dismissed for lack of any credible facts in the record to support the allegations.
>
> [Emphasis added.]

The judge amplified his analysis of these particular issues later in his opinion, explaining why he had not dissociated defendants from the business instead of plaintiffs:[15]

> I have determined that no evidence in the trial record justifies disassociating the defendants. The defendants — Chilana and Silberie — have not been shown to have engaged in any material misconduct which has adversely and materially affected the business of the LLC. Silberie has not appeared in this action, but Chilana has, and he has demonstrated that he has acted since his initial investment, his subsequent reinvestment, and up to the present, with fidelity to the LLC, the Foundation and to his fellow members, acting to preserve the medical school and help to be sustainable into the future. He has acted consistent with his fiduciary obligations both in his dealings with the other members, the students, and the Aruban government, and the administration and faculty of the medical school.

[15] Although plaintiffs initially had sought dissociation of defendants from the LLC, Yusuf has not sought such a remedy on appeal.

> It is true that [Chilana] participated in securing a third charter, as aforesaid, which could, in theory, be used to start a new medical school in Aruba, in contravention of the All Saints Aruba charter, which limits the [number] of medical schools on the island to two. But no steps have been taken to make that possibility a reality. It has not diminished the value of interests of All Saints in any discernible way. It has not injured the interests of ASUMA, or the Foundation, or the medical school, or the fellow shareholder/members in any way whatsoever. It was taken out as a precaution so that a medical school could exist if All Saints Aruba ceased to exist as a result of the parties' deadlock, and this litigation. <u>It was not a breach of fiduciary duty, thus viewed, and constitutes no basis for a claim of unclean hands nor any other impediment to the disassociation of the plaintiffs</u>.
>
> [(Emphasis added) (footnote omitted).]

We sustain the trial judge's analysis of these points. The judge articulated sound reasons, amply grounded in the record, for regarding defendants' actions as essentially benign, and in the ultimate interests of the continued viability of All Saints and the LLC.

Although defendants should have been attentive to the check-signing restrictions in the Operating Agreement, the judge had a reasonable basis to conclude that their inattentiveness to those restrictions was not injurious to the venture and did not occur for personal gain. The judge also reasonably regarded

defendants' procurement of the charter for another medical school as justifiable protective action in the event that All Saints collapsed. Had, of course, defendants acted on that third charter and opened up a competing medical school[16] while All Saints was still in operation, such competitive action would surely have had different legal implications. But such competition did not occur here. See also Bartfield v. RMTS Assocs., LLC, 783 N.Y.S.2d 560, 561 (App. Div. 2004) (dismissing claims of breach of fiduciary duty brought against members of a New York LLC, who had taken steps to create a competitor company, because there was no proof that they had actually made improper use of the LLC's time or facilities, disseminated confidential information, or usurped the LLC's business opportunities, in favor of the new entity).

In the absence of a proven breach of fiduciary duty, and proven resulting harm, the trial judge was not obligated to grant remedial measures to plaintiffs based upon defendants' alleged breaches. See Fitzgerald v. Linnus, 336 N.J. Super. 458, 467 (App. Div. 2001) (noting, by analogy, that proof of the proximate causation of damages is an element of a malpractice cause of action alleging breach of fiduciary duty by an

[16] We also do not lose sight of the fact that plaintiffs themselves have an eighty percent interest in another medical school in Dominica.

attorney). Courts are not obligated to impose a remedy when no damage has resulted from a party's allegedly wrongful acts. See, e.g., Paternoster v. Shuster, 296 N.J. Super. 544, 559 (App. Div. 1997); see also Beseman v. Pa. R.R. Co., 50 N.J.L. 235, 237-38 (Sup. Ct. 1888), aff'd, 52 N.J.L. 221 (E. & A. 1889). We therefore sustain the trial judge's denial of relief to plaintiffs on their affirmative claims.

III.

The final issue raised by Yusuf concerns the trial court's determination that his ownership interest in the LLC had no positive value as of the stipulated date of valuation, July 31, 2008. In particular, Yusuf contends that the court should have rejected the opinion of Leslie M. Solomon, defendants' valuation expert. He contends that Solomon's testimony represented improper net opinion, based on inaccurate facts and hearsay supplied by Symeonides, the accountant.

As we have previously noted in Part II(B), supra, of this opinion, dissociation pursuant to N.J.S.A. 42:2B-24(b) does not mandate a forced sale of a dissociated member's shares. Nor does the parties' Operating Agreement in this case allow for such a forced sale. Hence, no valuation of plaintiffs' shares in the LLC was necessary unless plaintiffs, once dissociated, elected to have their shares valued and to tender them to

defendants. See N.J.S.A. 42:2B-39. Alternatively, plaintiffs could have retained their economic interests in the LLC as passive assignees. See N.J.S.A. 42:2B-44.

We are mindful that the parties, apparently based upon off-the-record discussions that are not fully explained in the trial transcripts, stipulated to a July 31, 2008 valuation date for plaintiff's shares. Given the murky genesis of that stipulation, it is possible that the parties may have entered into it with a mistaken assumption that dissociation under the statute would compel the dissociated members to tender their shares to the remaining members, regardless of whether they wanted to do so. If the parties were indeed mistaken as to this, then it may be unfair, in hindsight, to enforce the stipulation and to now require Yusuf to tender his shares in the LLC for zero value.

Consequently, we shall permit Yusuf to file a motion with the trial court within thirty days of this opinion if he, in fact, wishes to have the court consider whether he can withdraw from the previous stipulation and, in light of the statutory clarification we have now provided in this opinion, continue to retain the economic benefit of his shares as assignee under N.J.S.A. 42:2B-44 while being dissociated from the entity's management and operations. We do not decide here whether such

an application by Yusuf to withdraw from the stipulation would be justified, as there may need to be a record developed that bears upon the equities involved.

Given this open question about whether or not a sale of plaintiffs' shares will be effectuated, it may be unnecessary for us to review the trial court's determination that plaintiffs' shares had no value as of July 31, 2008. Nevertheless, we offer the following discussion for sake of completeness.

The "net opinion" rule generally bars an expert from testifying about his or her bare conclusions, where they are unsupported by factual evidence or other data. Pomerantz Paper Co. v. New Cmty. Corp., 207 N.J. 344, 372-73 (2011); Buckelew v. Grossbard, 87 N.J. 512, 524 (1981). An expert must give the "why and wherefore" of his or her opinion, rather than a mere conclusion. Pomerantz, supra, 207 N.J. at 372. The trial judge concluded that Solomon's valuation opinion was not such an improper net opinion. We agree.

Among other things, Solomon testified that he employed the "income approach" to determining the fair value of the LLC. He concluded that the LLC had no positive value as of July 31, 2008, the stipulated date of valuation. To determine value Solomon relied on data and income projections supplied by

Symeonides, as well as student enrollment trends. Solomon analyzed those projections, and deduced that ASUMA would operate at a loss until 2013, assuming, however, that the parties would continue to make equity contributions. In particular, Solomon opined that the parties would need to provide additional equity contributions of $556,000, or the school would fail. Therefore, as of July 31, 2008, Solomon concluded that ASUMA and All Saints had zero net equity.[17]

Solomon explicitly rejected other potential approaches to determining value. He did not use an "asset approach" because, although All Saints owned $230,000 in assets, "the value here is as a going concern," not liquidation, and All Saints "was losing money." Solomon also rejected a "market value approach," which considers transactions that are similar, because he could not find sufficiently similar transactions. Solomon declined to consider Chilana's 2007 purchase of his shares in All Saints as such a similar transaction, because that $500,000 purchase price did not derive from a financial valuation conducted prior to the sale, but rather had resulted from the parties' negotiations.

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[17] For purposes of Solomon's valuation, he treated All Saints and ASUMA as a single entity because, evidently, his understanding was that All Saints was ASUMA's business. None of the parties objected to this characterization of All Saints for purposes of the valuation.

On cross-examination, Solomon acknowledged that his income projections did not include all of the students from All Saints who may have been "in limbo," that is, those who "hadn't come back yet for their clinical rotation[.]" However, no evidence was presented about the number of students who were in such limbo, whether they intended to return, or if they did, when they would return.

Plaintiffs' counsel elicited testimony from Glueck on cross-examination regarding the income projections prepared by Symeonides. He questioned Glueck about whether, if fifty-five students and twenty clinical students paid tuition, and the litigation fees, such as Weiner's fee and his fee, were subtracted from the cost of operation, the school's annual profit hypothetically would be $580,220. Although Glueck agreed with that arithmetic, he disagreed with plaintiffs' inclusion of revenue from fifteen students who were scheduled to graduate soon.

Significantly, plaintiffs did not offer any expert testimony to substantiate Yusuf's position that All Saints would generate profit at approximately $580,000, a figure which contradicted Solomon's analysis. Plaintiffs also did not address on cross-examination of Solomon, nor did they present an expert to rebut, Solomon's conclusion that $556,000 in

additional equity would be required to sustain All Saints before it could realize a profit. As Solomon explained:

> [DEFENDANT'S ATTORNEY]: And your reason for determining that as of July 31, '08, the value was zero? In a nutshell --
>
> A: The reason being, although the school did have [$]230,000 of net assets at that time, it was going to need an infusion of about $550,000 over the next four or five years to sustain itself until it reached profitable levels.

In light of these proofs, we reject Yusuf's claim that Solomon's testimony on valuation comprised improper net opinion. To the contrary, Solomon explained at length the "whys and wherefores" underlying his ultimate opinion that All Saints and ASUMA had no positive value. The trial judge was entitled to consider that opinion as competent proof.

Although Solomon relied on income projections prepared by Symeonides, we reject Yusuf's assertion that Solomon could not rely on the same information that a willing buyer or seller would presumably rely on to make such assessments of value. See N.J.R.E. 703 (authorizing expert witnesses to rely on facts and data reasonably relied upon by others in the expert's field, even if such facts and data are not admitted as evidence).[18]

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[18] We reject Yusuf's misplaced reliance on Agha v. Feiner, 198 N.J. 50, 63-64 (2009), in which the Supreme Court held that a medical expert cannot testify about a disputed MRI finding made

Footnote continued on next page.

Symeonides was ASUMA's company accountant, appointed by the Special Fiscal Agent, and thus a logical source for financial information. Solomon did acknowledge that he took Symeonides's general ledger at face value due to Symeonides's reputation, but he did not do the same with Symeonides' income projections. At one point, Solomon asked Symeonides to revise the projections, and he also inquired into the basis of the calculations for the large items, such as rent, salaries and advertising. Solomon testified that Symeonides provided him with "adequate backup" for the numbers used. He also had discussions with Glueck, Chilana, and Symeonides about All Saints. Solomon also apparently requested to speak with plaintiffs, but he was unable to do so.

The trial court was not obligated to reject Solomon's opinion on valuation. Valuation is an art, not a science. There is no inflexible test for determining fair value in business valuation disputes, which "frequently become battles between experts." Balsamides v. Protameen Chems., Inc., 160

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by a non-testifying radiologist if the expert has no skill or competency to interpret such MRI films himself or herself. The context here, involving a financial valuation expert relying upon the input of a company accountant and the company's principals, is fundamentally different. Indeed, by analogy, Solomon's consultations with Symeonides and defendants are comparable to a medical expert properly considering information from a patient about his or her own symptoms and condition.

N.J. 352, 368 (1999); see also Lawson Mardon Wheaton, Inc. v. Smith, 160 N.J. 383, 397 (1999) (observing that "[t]here is no inflexible test for determining fair value").

Here, plaintiffs offered no competing expert to take part in the proverbial battle of experts. If Solomon's opinion was deficient in some respects, such as in failing to use a different approach to calculating value, or in not considering intangibles like All Saints's reputation, plaintiffs could have provided their own valuation expert, which they elected not to do. The trial judge was free, in his discretion, to rely on Solomon's unrebutted expert opinion. See Angel v. Rand Express Lines, Inc., 66 N.J. Super. 77, 85-86 (App. Div. 1961) (noting the trial judge's prerogative to accept or reject an expert's opinion); see also Peer v. Newark, 71 N.J. Super. 12, 31 (App. Div. 1961) (same), certif. denied, 36 N.J. 300 (1962).

In determining the fair value of Yusuf's ownership interest, the trial court appropriately considered the facts, including the "undercapitalization of the school," from which it independently concluded that ASUMA "has no proven value." This finding is supported by the lack of any credible evidence that the LLC had positive value as of the valuation date of July 31,

2008.[19] Indeed, following trial, Paulpillai sold his interest in ASUMA to Yusuf for a mere $10.

IV.

We have duly considered all of the other contentions raised by Yusuf and conclude they lack sufficient merit to warrant discussion in this written opinion. R. 2:11-3(e)(1)(E).

The order of final judgment is affirmed, subject to the caveat concerning the sale of plaintiffs' shares discussed in Part III of this opinion.

[19] As for the valuation date used, the court in Denike v. Cupo, 394 N.J. Super. 357, 381 (App. Div. 2007), rev'd on other grounds, 196 N.J. 502 (2008), held that the appropriate valuation date in the event of dissociation is the date of the dissociation itself. Here, that presumptive date would have been the date of the final order of January 6, 2010. However, the court noted in its opinion that the parties had stipulated to July 31, 2008, as the applicable valuation date.