

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL DIV. : PART 16

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 In the Matter of the Application of :
 RAHARNEY CAPITAL, LLC, as a Member and :
 Manager of Daily Funder, LLC, :
 :
 Petitioner, :
 :
 For an Order and Judgment Dissolving :
 Daily Funder, LLC, :
 :
 - against - : Index No.
 : 160175/14
 CAPITAL STACK, LLC, a New York Limited :
 Liability Company, or CAPITAL STACK, :
 LLC, a Nevada Limited Liability Company, :
 :
 Respondent. :
 -----X MOTION

60 Centre Street
New York, New York
November 24, 2014

B E F O R E :

HON. ALICE SCHLESINGER,
Justice

A P P E A R A N C E S :

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ROBERT PORTAS, R.P.R., C.R.R.
SENIOR COURT REPORTER

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1 THE COURT: What is before this Court right now is
2 a petition in order to dissolve a LLC which, significantly,
3 was incorporated in the State of Delaware. It should be
4 noted that the two entities that form this LLC, which is
5 called Daily Funder, F-U-N-D-E-R, that's the LLC, the two
6 companies that formed it are New York companies, the people
7 live here in New York, there's nothing to suggest that
8 New York doesn't have some connection with the parties and
9 some interest, arguably, in the controversy between them.
10 But, very, very importantly, it is an LLC which was
11 incorporated in the State of Delaware. And there are
12 incorporation papers attached as one of the exhibits, so
13 that's not even an issue here. That's without any dispute.
14 And each member owns 50 percent of the interest and each
15 pretty much need the consent of the other party in order to
16 do anything. And, at least according to the petition, or
17 the petitioner, there seems to be a real impasse in how
18 this Daily Funder is being run.

19 So -- so the petitioner wants to dissolve. The
20 respondent, Capital Stack, does not want to dissolve.
21 But, more significantly, as far as this Court is
22 concerned, is the first argument made in the cross motion
23 to dismiss, and that argument is a jurisdictional
24 argument. It's the respondent's position that this Court
25 lacks subject matter jurisdiction over this dispute and

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1 because of that I -- I have no other choice but to, in
2 fact, dismiss the petition. I like to decide cases on
3 applicable law, if there is applicable law. This is not
4 really an issue, in my opinion, of equity or even an
5 issue of forum non-convenience where the Court has a
6 certain amount of discretion to balance the ties that the
7 parties have to New York as opposed to other states.
8 That's not this situation, at least not in this Court's
9 opinion.

10 Here we have two cases, one from the Second
11 Department and one from the Third Department, very recent
12 cases that make it absolutely clear that in a dissolution
13 action involving a foreign LLC New York has no
14 jurisdiction. And the first of those cases, at least the
15 first that I'm going to cite, is Rimawi, R-I-M-A-W-I, and
16 others against Chandler Atkins and others, A-T-K-I-N-S,
17 42 Appellate Division 3d 799, it's a 2007 case and it
18 involved Quik-Flight, Q-U-I-K dash "flight," a Delaware
19 limited liability company, as this one is, and it was a
20 judicial dissolution that they were seeking. And the
21 Court made it absolutely clear that -- and I'm now
22 quoting from that, this is the Court: "We conclude that
23 plaintiff's cause of action seeking dissolution of
24 Quik-Flight must also be dismissed." And then they go on
25 to say, "A limited liability company is a hybrid entity

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1 and is in all respects pertinent here most like a
2 corporation. Thus, unlike the derivative claim involving
3 the internal affairs of a foreign corporation,
4 plaintiff's claim for dissolution and an ancillary
5 accounting is one over which the New York courts lack
6 subject matter jurisdiction." In this Court's opinion
7 nothing could be clearer than that as not only the
8 holding but the rationale.

9 And then in even a more recent case, 2009, which
10 cites that first case, which is, Matter of MHS Venture
11 Management Corporation against your Utilisave,
12 U-T-I-L-I-S-A-V-E, 63 Appellate Division 3d 840, again
13 2009 in the Second Department, very simply says, "A claim
14 for dissolution of a foreign limited liability company is
15 one over which the New York courts lack subject matter
16 jurisdiction."

17 So what do I have, if anything, against that? A
18 1994 First Department case -- and of course we are in the
19 First Department -- which is not terribly persuasive.
20 Not -- on the facts and on the law. The name of that
21 case is Matter of Hospital Diagnostic Equipment
22 Corporation, 205 Appellate Division 2d 459, June of 1994.

23 First of all, it seems to involve simply a
24 corporation, not an LLC. And it was incorporated, I
25 believe, in Delaware. There Supreme Court weighed the

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1 various factors and dismissed the case on forum
2 non-convenience grounds. In other words, that New York
3 did not have that many connections or ties so as to take
4 jurisdiction over the controversy. At the last sentence,
5 in a very, very short opinion, very short opinion, the
6 Appellate Division says, as -- and this is First
7 Department, quote: "We have considered the litigant's
8 remaining arguments, including the attorney general's,
9 that the courts of New York lack subject matter
10 jurisdiction to dissolve the foreign corporation and find
11 them to be without merit."

12 Now, first of all, that's dicta. Secondly,
13 they're talking there arguably about a foreign
14 corporation, not a foreign LLC. And there are
15 distinctions to be made. As we discussed in oral
16 argument, when you're dealing with a corporation,
17 particularly a public corporation, there are interests
18 involving stockholders, for example, and in certain cases
19 involving stockholders' derivative actions, many of those
20 people are in New York and they didn't decide to
21 incorporate in Delaware. But here you have two equal
22 partners or joint venturers or whatever who decided for
23 whatever reasons that they were going to form their
24 corporation in Delaware. Nobody else is involved. This
25 is a purely private matter. And because of that I

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1 believe that I must follow the dictates, the very, very
2 clear dictates of the Second and Third Department.

3 So I am going to grant the cross motion to
4 dismiss this petition for the grounds stated.

5 Now, there's one other matter: Also pending was
6 the respondent's kind of emergency petition to seal
7 certain exhibits in the -- in the petition, attached to
8 the petition as exhibits. We had some discussion on
9 them. It's a peculiar thing to grant some kind of
10 ancillary request when I've dismissed the case, but it
11 seems to me that with what -- with regard to two of those
12 exhibits, and that's Documents Number 3 and 4 which were
13 labeled B and C in the petition, but they're 3 and 4, I
14 see no reason why those should be made public, in other
15 words, not sealed. And the reason I say that is because
16 they really have nothing to do with the dispute between
17 these two parties, rather they involve the internal
18 workings of the respondent corporation, Capital Stack.
19 And so I think they should be sealed.

20 So I am going to continue their sealing until,
21 if that ever happens, this controversy goes before
22 another Court, either in this jurisdiction or another
23 jurisdiction, and then, of course, it will be without
24 prejudice for the judge in that other proceeding, if
25 there is one, to reconsider my decision.

Robert Portas, RPR, CRR

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With regard to the other exhibit asked to be sealed, that's Exhibit L, I think it's sufficient to redact the name and perhaps address of the company mentioned there. And so I will direct the respondent who wants this relief to submit a redacted copy of Exhibit L, which is 13 -- a/k/a 13, to the Court and we will substitute that.

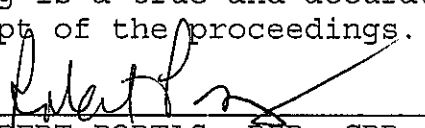
And these decisions constitute the decisions and judgments of this Court.

Okay, folks. Done.

(Whereupon, the above-captioned proceedings were concluded.)

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(It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

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(ROBERT PORTAS, RPR, CRR
(Senior Court Reporter

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