Circuit Court for Calvert County
Case No. 04-C-16-000358

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2347

September Term, 2018

V. CHARLES DONNELLY, ET AL.

v.

CHRISTINE McNELIS, ET AL.

Berger,
Leahy,
Shaw-Geter,
JJ.

Opinion by Berger, J.

Filed: April 9, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from the entry of a declaratory judgment by the Circuit Court for Calvert County in connection with a dispute between the members of Solomons II, LLC ("Solomons II"). Solomons II was formed by V. Charles Donnelly ("Donnelly") and Deborah Steffen ("Steffen"), Appellants/Cross-Appellees, and Christine McNelis ("McNelis") and Catherine Erickson-File, ("Erickson-File"), Appellees/Cross-Appellants for the purpose of purchasing and developing property located at 14554 Solomons Island Road, Solomons, Maryland 20688 ("the Property"). Solomons II acquired a commercial loan from Branch Banking and Trust ("BB&T"), which was subsequently sold and assigned to LSCG Fund 11, LLC ("LSCG"), Appellee.

Donnelly discovered potential commercial pier rights associated with the Property and subsequently assigned those rights from Solomons II to himself. McNelis and Erickson-File filed a derivative action against Donnelly and Steffen, seeking to have the assignment of the pier rights declared void, and have the court declare that Donnelly and Steffen had involuntarily withdrawn from Solomons II and lost their right to vote. LSCG filed a cross-claim against Donnelly and Steffen to declare the assignment void. Following a bench trial in the Circuit Court for Calvert County, the trial court declared the assignment of pier rights *void ab initio*, but denied the request to declare Donnelly and Steffen had lost their membership right to vote.

On appeal, Donnelly and Steffen present three questions for our review, which we rephrase slightly:

I. Whether the trial court erred when it denied Donnelly's motion to dismiss the derivative action because Appellees failed to comply with the requirements of such an action.

II. Whether the trial court erred when it denied Donnelly's motion to dismiss the derivative action because Appellees failed to sue Donnelly in his capacity as a trustee.

III. Whether the trial court's findings on certain key material facts were erroneous.

Additionally, McNelis and Erickson-File present the following issue for review:

> Whether the trial court erred when it found that Appellant's involuntarily withdrew from the LLC but did not lose their membership rights.

For the reasons stated herein, we shall affirm with respect to the issues presented by Donnelly and Steffen, but vacate and remand the case on the limited issue of the status of Donnelly and Steffen's membership rights in the LLC.

FACTS AND PROCEDURAL HISTORY

The Articles of Organization for Solomons II, LLC were filed on August 4, 2005 with the State Department of Assessments and Taxation. On May 1, 2006, an Amended Operating Agreement was executed on behalf of the LLC. The Amended Operating Agreement, which was drafted by Donnelly, listed the membership interests as follows: Donnelly (1%); Steffen (49%); McNelis and Erickson-File jointly (50%).[1]

[1] The members of Solomons II have a sordid history. Although not at issue in this appeal, we note that Donnelly, Steffen, McNelis, and Erickson-File were members of another LLC, Solomons I, along with another couple. Solomons I was also the subject of

Solomons II purchased the Property in 2006. Solomons II has a 90% interest in the property and Donnelly, in his individual capacity, has a 10% interest. In order to purchase the Property, Solomons II took out a commercial loan with BB&T for $696,000. BB&T and Solomons II executed a Promissory Note ("the Note") as part of the financing agreement and each member executed individual Guarantee Agreements. Solomons II executed a Deed of Trust with BB&T, securing the Note with 90% interest.[2] Several modifications were made to the Note, including one on January 5, 2010, which extended the maturity date and decreased the principal amount of the loan. It provided that the borrowers, without prior written consent of the bank, shall not "sell, lease, or otherwise dispose of any assets or properties except in the ordinary and usual course of business." In August of 2012, BB&T declared the Deed of Trust in default. In November of 2012, BB&T sold and assigned all rights and interest in the Note, Loan Agreement, Guaranty Agreements, and other documents evidencing the loan to LSCG. The Note matured in May of 2012 and all obligations owed became due and payable.[3]

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litigation regarding the assignment of pier rights as well as an Attorney Grievance matter against Donnelly. See *Attorney Grievance Comm'n of Maryland v. Donnelly*, 458 Md. 237 (2018).

[2] In February 2012, BB&T required Donnelly to execute a "Deed of Trust and Security Agreement" which included Donnelly's 10% interest.

[3] This Court has previously issued a decision relating to the Note. *See Donnelly v. McNelis*, No 2029, Sept. Term 2015 (Filed March 15, 2018).

The parties testified that the real estate market declined in 2008. In addition, the relationships between the members of Solomons II also declined. Shortly thereafter, although McNelis and Erickson-File continued to make payments on the BB&T loan, Donnelly and Steffen ceased making their contributions. Around the same time, Donnelly began an investigation into possible commercial pier rights associated with the Property. Not wanting to incur additional costs to pursue the rights, McNelis and File testified that they expressed their disinterest to Donnelly in pursuing the pier rights.

On August 21, 2012, Donnelly and Steffen executed an Attorney-Client Agreement ("the Agreement") on behalf of Solomons II to retain Donnelly as legal counsel for Solomons in connection with the investigation and legal representation for the pier rights. Neither McNelis nor Erickson-File signed the Agreement. At the time the Agreement was executed, McNelis and Erickson-File were represented by Daniel Guenther, Esq. On August 10, 2012 Guenther sent Donnelly a letter inquiring what action he was taking on behalf of the pier rights. On August 13, 2012, Donnelly wrote back to Guenther informing him that nothing was being done because McNelis and Erickson-File stated they did not want to pursue the commercial pier rights for fear of jeopardizing their property investments. On August 23, 2012 Donnelly wrote to Guenther again, to inform him that he had included Solomons II in a Complaint filed with the Circuit Court for Calvert County, against the State of Maryland.[4]

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[4] This Court has issued two decisions regarding Donnelly's dispute with the Board of County Commissioners for Calvert County and the Maryland Department of the

On September 5, 2012 Donnelly and Steffen executed the Assignment of Pier Rights ("the Assignment"). Donnelly and Steffen were listed as the Assignors on behalf of Solomons II and Donnelly, individually, was listed as the Assignee. The Assignment provides that the "Assignor desires to satisfy a debt owed to the Assignee." It grants Donnelly "all of the Assignor's contract rights," for consideration in the amount of $10.00. The Assignment further provides that the Assignee agrees to hold the pier rights in trust for the members of Solomons II individually and to divide the net proceeds from any recovery, less expenses, to each member in equal shares. The expenses refer to costs and attorney's fees, which Donnelly would receive. Although executed in 2012, the Assignment was not filed with the land records until February 4, 2013. In May, 2013, Erickson-File, who works as a broker, was looking through the land records and discovered the Assignment. Donnelly did not previously inform McNelis or Erickson-File of the Assignment. At the time of the Assignment, the LLC had no other assets of value besides property.

Donnelly filed two lawsuits against Solomons II. On May 27, 2012, Donnelly filed a Petition for Partition or Sale against Solomons II and on July 12, 2013, Donnelly and Steffen filed a Petition for Dissolution, Accounting, and Appointment of Receiver against Solomons II, McNelis, and Erickson-File. On April 5, 2016, McNelis and Erickson-File filed a Complaint in the Circuit Court for Calvert County seeking declaratory relief.

Environment. *See Donnelly v. State*, No. 2151, Sept. Term 2016, No. 1187, Sept. Term 2018 (filed Nov. 14, 2019); *State of Maryland v. Donnelly*, No. 1446, Sept. Term 2013 (filed Apr. 20, 2015).

McNelis, Erickson-File and LSCG requested that the court declare the Assignment void, declare that it resulted in a fraudulent conveyance, and that the court impose a constructive trust on the pier rights. McNelis and Erickson-File additionally requested that the court declare that Donnelly and Steffen had involuntarily withdrawn from Solomons II and lost their voting rights. Following a two-day bench trial in August 2018, the circuit court declared the Assignment *void ab initio*, but denied McNelis and Erickson-File's request for the court to declare that Donnelly and Steffen had lost their voting rights in Solomons II. Additionally, the circuit court declared that the claims for a fraudulent conveyance and constructive trust were moot.[5]

DISCUSSION

I. The trial court correctly denied Donnelly's motion to dismiss.

Donnelly first challenges the trial court's denial of his motion to dismiss on the basis that McNelis and Erickson-File did not comply with Md. Code (1975, 2014 Repl. Vol.), §§ 4A-801-803 of the Corporations & Associations Article ("CA"). "When reviewing the grant of a motion to dismiss, the appropriate standard of review 'is whether the trial court was legally correct.'" *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019) (quoting *Blackstone v. Sharma*, 461 Md. 87, 110 (2018)). We, therefore, review the denial of a motion to dismiss *de novo*. *Id.* Moreover, "[w]e will affirm the circuit court's judgment

[5] Subsequent to declaring the Assignment *void ab initio*, the circuit court determined that it need not grant additional relief requested by McNelis, Erickson-File and LSCG. It, therefore, declared the claims of fraudulent conveyance as moot. While the court correctly determined that it need not grant additional relief, it incorrectly characterized those claims as moot.

'on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 174 (2015) (quoting *Monarc Constr., Inc. v. Aris Corp.,* 188 Md. App. 377, 385 (2009)).

CA § 4A-801 governs the scope and conditions of derivative actions for an LLC as follows:

> Enforcement
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> (a) A person described in § 4A-802 of this subtitle may bring a derivative action to enforce a right of a limited liability company to recover a judgment in its favor to the same extent that a stockholder may bring an action for a derivative suit under the corporation law of Maryland.
>
> Refusal
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> (b) An action under this subtitle may be brought if members with authority to bring the action have refused to bring the action or if an effort to cause those members to bring the action is not likely to succeed.
> Adequate representation
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> Adequate Representation
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> (c) If it appears that the plaintiff does not fairly and adequately represent the interests of the members in enforcing the right of the limited liability company, the derivative action may not be maintained.

Section 4A-802 requires that a plaintiff be a member at the time the action is brought, have been a member at the time complained of, or "[h]ad membership status devolve upon the plaintiff by operation of law from a person who was a member at the time of the transaction."

We first discuss whether the language in 4A-801(b) is akin to the "futility" exception in a derivative action against a corporation. "[C]ommon law developed a requirement that the derivative plaintiff, at the outset, seek a corporate decision on whether to maintain a lawsuit, a prerequisite known as the "demand requirement." *Boland v. Boland*, 423 Md. 296, 330 (2011). Maryland, however, recognizes a limited exception to the demand requirement if the demand would be futile. *Id.* at 331 n.25. Demand is excused when either "(1) a demand, or a delay in awaiting a response to a demand, would cause irreparable harm to the corporation" or "(2) a majority of the directors are so personally and directly conflicted or committed to the decision in dispute that they cannot reasonably be expected to respond to a demand in good faith and within the ambit of the business judgment rule." *Oliveira v. Sugarman*, 451 Md. 208, 229 (2017). This Court has held that "it is clear that the legislature intended the phrase 'not likely to succeed' to equate with 'futility.'" *George Wasserman & Janice Wasserman Goldsten Family LLC v. Kay*, 197 Md. App. 586, 628 (2011).

Although we recognize that the exception extends to limited circumstances in Maryland, it is clearly applicable to the circumstances of this case. Notably, in a letter dated October 24, 2013, counsel for McNelis and Erickson-File made a request on behalf of her clients, that Donnelly "immediately withdraw the recordation of the pier rights assignment." Donnelly, however, did not comply with this request. Donnelly and Steffen's personal interests in the economic benefits of the pier rights are significant. Aside from the economic value of the pier rights, Donnelly had another significant interest in the

Assignment, as it provided for attorney's fees, which Donnelly himself would receive. Moreover, there was significant testimony before the trial court, as well as several letters and emails between the parties and their attorneys reflecting the deterioration of their relationship between Donnelly and Steffen and McNelis and Erickson-File.

We are further unpersuaded by Donnelly's argument that McNelis and File are "impermissible plaintiffs." Donnelly contends that neither Appellee met the requirements of § 4A-801(c) because neither could "fairly and adequately represent the interests of the members in enforcing the right of the limited liability company." We disagree. Indeed, McNelis and Erickson-File acted in order to protect an asset of the LLC, which Donnelly assigned to himself. Moreover, Donnelly cites to no law in support of this argument.

Last, Donnelly avers that the trial court further erred by not granting his motion to dismiss because Appellees' did not sue him in his capacity as trustee. This argument is without merit. McNelis and Erickson-File brought suit against Donnelly because he, in his individual capacity, assigned the pier rights from Solomons II to himself. Further, the only law Donnelly cites in support of his argument is Md. Code (1973, 2013 Repl. Vol.), § 3-405(a) of the Courts & Judicial Proceedings Article ("CJP"). CJP § 3-405(a) requires that when "declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party which requires that a person who has or claims any interest which would be affected by the declaration, shall be made a party." There is, however, an exception to this requirement when "[p]ersons who are directly interested in a suit, and have knowledge of its pendency, and refuse or neglect to appear

and avail themselves of their rights, are concluded by the proceedings as effectually as if they were named in the record." *Rounds v. Maryland-Nat. Capital Park and Planning Com'n.*, 441 Md. 621, 648 (2015) (quoting *City of Bowie v. Mie Properties, Inc.*, 398 Md. 657, 703 (2007)). Donnelly, an active participant in these legal proceedings, clearly had knowledge of the lawsuit and neglected to intervene in his capacity as trustee. We, therefore, affirm the circuit court's decision to deny Donnelly's motion to dismiss.

II. The trial court's individual findings were premised upon correct statements of law and were not clearly erroneous.

Donnelly challenges several preliminary findings that were made by the trial court. Although Donnelly characterizes each finding as a finding of material fact, we disagree that his characterization is somehow dispositive. Critically, Donnelly appeals the circuit court's grant of declaratory relief following a bench trial, and, therefore, Maryland Rule 8-131 controls our standard of review.

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Md. Rule 8-131. "'If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.'" *Figgins v. Cochrane*, 403 Md. 392, 409 (2008) (quoting *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 33 (2007)). "When reviewing mixed questions of law and fact, we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law." *Fischbach v.*

Fischbach, 187 Md. App. 61, 88 (2009) (citations and internal quotation marks omitted). "The clearly erroneous standard does not apply to the circuit court's legal conclusions, however, to which we accord no deference and which we review to determine whether they are legally correct." *Turner v. Bouchard*, 202 Md. App. 428, 442 (2011) (quoting Cattail Assocs. v. Sass, 170 Md. App. 474, 486 (2006)) (quotations omitted).

A. Collateral Estoppel

Donnelly asserts that the trial court erred by finding that Appellants' claims were not collaterally estopped based on the decision of the Court of Appeals in *Attorney Grievance Comm'n of Maryland v. Donnelly*, 458 Md. 237 (2018). "The doctrine of collateral estoppel precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action." *Shader v. Hampton Imp. Ass'n, Inc.*, 217 Md. App. 581, 605 (2014), *aff'd*, 443 Md. 148, 115 A.3d 185 (2015). Generally, "collateral estoppel may be invoked when 'in a second suit *between the same parties,* even if the cause of action is different, any determination of fact that was actually litigated and was essential to a valid and final judgment is conclusive.'" *Shader v. Hampton Imp. Ass'n, Inc.*, 443 Md. 148, 161-62 (2015) (quoting *Rourke v. Amchem Products, Inc.*, 384 Md. 329, 341 (2004)). The elements of collateral estoppel are well-established: (1) the issue decided in the prior adjudication must be identical with the one presented in the action in question; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted is a party or in privity with a party to the prior adjudication; and (4) the

party against whom the plea is asserted was given a fair opportunity to be heard on the issue. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 369 (2016).

We agree with the trial court that Appellants' claims were not barred by collateral estoppel. The discipline proceeding against Donnelly involved the violation of certain Rules of Professional Conduct related to Donnelly's involvement in Solomons I and an assignment of pier rights related to a Solomons I property. The case involved a different LLC, Solomons I, a different property with associated pier rights, and a different assignment. The issues, therefore, were not identical to the ones before the trial court. Further, an Attorney Grievance action determines whether an attorney violated the Rules of Professional Conduct.[6] The issues presented here were not actually litigated and there was not a final judgment on the merits. Moreover, neither Erickson-File, McNelis or LSCG were a party to the Attorney Grievance action. We, therefore, agree with the trial court that Appellees' claims were not barred by collateral estoppel.

B. Attorney-Client Agreement

The trial court found that the Attorney-Client Agreement at issue was not agreed-upon by a majority of the Members of Solomons II, and therefore, neither Donnelly or Steffen were authorized to enter into it.[7] Donnelly contends that the trial court erred

[6] We also join in the trial court's concern as to why Donnelly would request that the Attorney Grievance Commission opinion be applied here, as that case favors the claims of Appellants and concluded that Donnelly acted improperly.

[7] Pursuant to Section 5.1 of the Operating Agreement, management decisions must be approved by a majority vote of the members.

because McNelis and Erickson-File were represented by independent counsel at the time, and "[p]resumably, Guenther, as their attorney, explained the facts and actions to his clients." Donnelly further asserts that McNelis and Erickson-File consented to the Agreement by their silence.

After weighing the testimony of each witness, the trial court determined that Donnelly and Steffen were not authorized to enter into the Agreement. The court concluded that while McNelis and Erickson-File were aware that Donnelly was pursuing the complaint against the State of Maryland, they did not receive any billing statements, nor were they apprised of the fees and costs incurred to pursue the pier rights, other than motions filed on behalf of the LLC. The court found that although Donnelly may be entitled to reasonable attorney's fees and costs for services rendered, it could not determine that McNelis and Erickson-File's silence to the Attorney-Client Agreement amounted to consent.

There was more than enough evidence presented to support the trial court's findings with respect to the Agreement. Notably, it is undisputed that neither McNelis nor Erickson-File signed or orally consented to the Agreement. McNelis and Erickson-File testified to their disinterest in pursuing litigation regarding the pier rights due to the pending default status of the Note. McNelis and Erickson-File also testified that they never received the

billing statements from Donnelly. In sum, the trial court did not err in concluding that the Attorney-Client Agreement was not authorized.[8]

C. Fraudulent conveyance

The circuit court concluded that the Assignment resulted in a fraudulent conveyance under Md. Code (1975, 2013 Repl. Vol.), § 15-209 of the Commercial Law Article ("CL"). Donnelly challenges this finding on the basis that the trial court ignored the nature of the assigned pier right as a contract right that does not run with the land. He further contends that the court erred in concluding that the Assignment was for the purpose of separating any potential income derived from the exercise of the pier rights from the underlying purchase of the Property and, in essence, repayment of the Note.

First, Donnelly's argument that the nature of the assigned right is critical to the finding that the Assignment resulted in a fraudulent conveyance, is without merit. Moreover, this Court recently held that the pier rights are riparian in nature and not contractual. *See Donnelly v. State*, No. 2151, Sept. Term 2016, No. 1187, Sept. Term 2018 (filed Nov. 14, 2019).[9]

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[8] We further question Donnelly's role as counsel for Solomons II, while simultaneously maintaining two lawsuits against the company. Nevertheless, this apparent conflict of interest does not affect our analysis.

[9] Under Maryland Rule 1-104, this Court may cite an unreported opinion when relevant to the doctrine of the law of the case. Under that doctrine, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Reier v. State Dep't of Assessments & Taxation*, 397 Md. 2, 21 (2007).

Second, the trial court's finding that the Assignment was for the purpose of separating any potential income derived from the exercise of the pier rights from the underlying purchase of the property, and, in essence, repayment of the Note, was not clearly erroneous. At the time of the Assignment, the Note had matured and Erickson-File testified that Solomons II was insolvent. Moreover, Donnelly himself testified several times that it was his intention to shield the pier rights from creditors.

While the trial court came to the correct conclusion, its analysis of the applicable statutes was incorrect. CL § 15-208 provides the following with respect to a fraudulent conveyance involving an LLC:

> (b) Every conveyance of limited liability company property and every limited liability company obligation incurred when the limited liability company is or will be rendered insolvent by it, is fraudulent as to creditors of the limited liability company, if the conveyance is made or the obligation is incurred to:
>
> > (1) A member, whether with or without a promise by him to pay the limited liability company's debts, unless the conveyance or obligation represents fair and reasonable compensation for services provided or to be provided by the member to the limited liability company and the services are provided or will be provided within 120 days before or after the date the conveyance is made or the obligation is incurred; or
> >
> > (2) A person not a member, without fair consideration to the limited liability company as distinguished from consideration to the individual members.

If a conveyance is fraudulent under as to a creditor, it may obtain relief pursuant to CL § 15-209:

> (a) If a conveyance or obligation is fraudulent as to a creditor whose claim has matured, the creditor, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase or one who has derived title immediately or immediately from such a purchaser, may:
>
> > (1) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy the claim; or
> >
> > (2) Levy on or garnish the property conveyed as if the conveyance were not made.
>
> (b) In an action to have a conveyance set aside or an obligation annulled, it is not necessary as a condition to the granting of relief that the creditor first obtain judgment on the claim.
>
> (c) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.

The trial court found that the Assignment resulted in a fraudulent conveyance under the provisions of CL § 15-209. While CL §15-209 provides for the relief a creditor may obtain, it is CL §15-208 which governs whether or not the Assignment constitutes a fraudulent conveyance. We agree that the evidence presented supports the trial court's finding that this was a fraudulent conveyance. Nevertheless, in our view, CL §15-208 -- not §15-209 -- controls our analysis. At the time the Assignment was executed, the Note had matured, Erickson-File testified that Solomons II was insolvent, and the Assignment was made to Donnelly, a member of the LLC.

D. The Assignment was *void ab initio*.

Donnelly argues that the trial court incorrectly determined that the Assignment was *void ab initio* because it was executed without authorization, pursuant to the Solomons II

Operating Agreement. Donnelly avers that the Assignment only transferred any economic benefit recovered for the pier rights, which is assignable pursuant to Section 4.5(B) of the II Operating Agreement.

We find no merit in Donnelly's argument that the Assignment merely transferred an economic interest. Section 1.1 of the Assignment explicitly provides that the "Assignee hereby accepts and assumes from the Assignor, all of the Assignor's contract rights…" We, therefore, agree with the trial court that authorization of the Assignment was controlled by § 6.1 of the Operating Agreement, which governs the restrictions on members of the LLC.

The trial court readily observed that pursuant to § 6.1 of the Solomons II Operating Agreement, no member, "without the prior written consent of the majority of all Members, shall. . . . sell, assign, transfer, mortgage, or pledge the Member's interest in the company." Additionally, a member is prohibited from transferring his or her interest without prior written consent of all other members. The trial court found that at least three members of Solomons II were required to authorize the Assignment. Nevertheless, there was no dispute that only Donnelly and Steffen authorized it. The court, therefore, determined that the Assignment was unauthorized.

In our view, the language of the Operating Agreement is clear and unambiguous. Moreover, it is undisputed that Donnelly and Steffen executed the Assignment without the consent of McNelis or Steffen. We, therefore, agree with the trial court that the Assignment was unauthorized.

III. Donnelly and Steffen's remaining rights in Solomon's II

Appellees McNelis and Erickson-File assert a cross-appeal against Donnelly and Steffen, arguing that the trial court erred when it found that Donnelly and Steffen involuntarily withdrew from the LLC, but did not lose their voting rights. We agree with the trial court's conclusion that Donnelly and Steffen involuntarily withdrew from Solomons II. We, however, disagree that they did not lose their voting rights.

Section 1 of the Operating Agreement defines "Involuntary Withdrawal" to include the occurrence of the filing of a petition seeking dissolution or seeking the appointment of a receiver. Donnelly and Steffen filed for both, and therefore, had clearly involuntarily withdrawn from Solomons II.[10]

Section 8.1 provides for the resulting consequences of the withdrawal of a member of the LLC. Nevertheless, the Operating Agreement does not provide what happens to the withdrawn member's interest. It provides that the company shall dissolve upon the withdrawal of a member, unless a majority of all remaining members, within 90 days, unanimously elect to continue the business of the company. The company, however, shall not dissolve merely because of the Member's involuntary withdraw, unless the company has no members for a period of 90 consecutive days. When Donnelly and Steffen

[10] The trial court concluded that Donnelly and Steffen had involuntarily withdrawn, however, referred the parties to §§ 7-8 of the Operating Agreement "[a]s to whether Solomons II remains in existence or dissolves." The trial court then, without further explanation, denied the relief requested.

involuntarily withdrew, Solomons II had two remaining members, McNelis and Erickson-File.

The remaining question is the status of Donnelly and Steffen's rights in Solomons II. The Operating Agreement is silent regarding this issue, and therefore, we look to CA §§ 4A-606-606.1 for guidance on this issue. Pursuant to CA § 4A-606, a person ceases to be a member of a limited liability company if removed as a member in accordance with the operating agreement, "[f]iles a petition or answer seeking for that person any reorganization, arrangement, composition, readjustment, liquidation, dissolution," or "[s]eeks, consents to, or acquiesces in the appointment of a trustee for, receiver for, or liquidation of the member or of all or any substantial part of the person's properties." Donnelly and Steffen ceased to be members when they involuntarily withdrew from Solomons II. When an individual ceases to be a member, and the LLC is not dissolved, the following governs the interest of the former member:

> [W]ithin a reasonable time after the person ceased to be a member, the limited liability company may elect to pay the person or the person's successor in interest, in complete liquidation of the person's membership interest, the fair value of the person's economic interest in the limited liability company as of the date the person ceased to be a member, based upon the person's right to share in distributions from the limited liability company.

CA § 4A-606.1(a). If the LLC chooses not to liquidate the individual's membership interest, " that person will be deemed to be an assignee of the unredeemed economic interest under §§ 4A-603 and 4A-604 of this subtitle." CA § 4A-606.1(b). Donnelly and Steffen have ceased to be members of Solomons II and, therefore, only have a remaining

economic interest in the LLC. The circuit court, therefore erred in denying McNelis and Erickson-File's request for it to declare that Donnelly and Steffen had lost their voting rights by involuntarily withdrawing from Solomons II.

In sum, we affirm the circuit court with respect to the issues raised by Donnelly and Steffen in their appeal. We, however, vacate the judgment denying McNelis and Erickson-File's request for the court to declare that Donnelly and Steffen lost their voting rights in Solomons II. We, therefore, remand to the Circuit Court for Calvert County on this limited issue associated with the loss of Donnelly and Steffen's voting rights in Solomons II.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR CALVERT COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.