



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re: Dissolution of DOEHLER DRY :
INGREDIENT SOLUTIONS, LLC, a : C.A. No. 2022-0354-LWW
liability company : PUBLIC VERSION
Filed: April 26, 2022

VERIFIED PETITION FOR DISSOLUTION OF A LIMITED LIABILITY COMPANY PURSUANT TO 6 DEL. C. § 18-802 AND FOR PERMISSION TO WIND-UP AFFAIRS PURSUANT TO 6 DEL. C. § 18-803

Petitioner, Russell Davis, through his controlled entity Crosskeys Associates Limited (“Davis” or “Petitioner”), hereby respectfully petitions this Court to dissolve Doehler Dry Ingredient Solutions, LLC, a Delaware liability company (“DDIS” or the “LLC”) pursuant to 6 *Del. C.* § 18-802, and for a declaration that, based on good cause shown, Petitioner may wind up the affairs of the LLC pursuant to 6 *Del. C.* § 18-803. The grounds for this petition are as follows:

SUMMARY OF ACTION

1. DDIS was formed in October 2017, as a Delaware limited liability company. The LLC was intended as a vehicle for the members of the LLC to engage in the dry food ingredients business in North America. Due to various factors, such as another member competing against the LLC,¹ it is no longer reasonably

¹ Curiously enough, hours before this petition was filed, a complaint was filed in the U.S. District Court for the District of Delaware claiming that allegedly Davis is competing against the LLC contrary to the terms of a prior agreement that was superseded by the integration clause in paragraph 15(c) of the parties’ Operating Agreement. Nonetheless, that almost contemporaneously filed lawsuit proves the

practicable to carry on the business of the LLC in conformity with its limited liability company agreement.

2. Irreconcilable differences among the members and managers of the LLC are evidenced by the following actions taken by the Respondents: (i) the members and managers inequitably freezing-out Davis as a manager and a member; (ii) managers breaching their fiduciary duties to Davis and the LLC; (iii) members violating many sections of the Operating Agreement of the LLC (a copy of which is attached as Exhibit A); (iv) hacking by a manager of the email inbox of Davis; and (v) managers, members and others conspiring to commit malfeasance.

3. Notably, Section 5(f) of the parties' Operating Agreement requires the LLC to reimburse Davis for the expenses he incurs in connection with dissolution.

4. Moreover, Section 8(c) of the Operating Agreement provides Davis with mandatory advancement rights.

5. Petitioner seeks judicial dissolution of the LLC pursuant to 6 *Del. C.* § 18-802 and requests permission due to good cause shown to wind-up the affairs of the LLC pursuant to 6 *Del. C.* § 18-803.

point made in this petition: it is not reasonably practicable to carry on the business of the LLC pursuant to the Operating Agreement because, for example, the members are now accusing each other of competing against the LLC--and the members cannot agree on whether the Operating Agreement is the controlling document or if there are other "side agreements" that control the relationship of the parties.

BASIS FOR JURISDICTION

6. The Court of Chancery has equitable jurisdiction over this matter because: (i) equitable relief is sought; and (ii) pursuant to the Delaware LLC Act (the “Act”), the Court of Chancery has jurisdiction over dissolution of an LLC.

7. This Court has personal jurisdiction over DDIS because DDIS is a Delaware limited liability company.

8. This Court has personal jurisdiction over Garry Beckett and Stuart McCarroll as current or former managers of the LLC, pursuant to the Act.

9. This Court has personal jurisdiction over Andreas Klein based on the civil conspiracy theory of personal jurisdiction in light of Klein’s status as a co-conspirator with managers of the LLC, over which this Court has statutory jurisdiction.²

² A civil conspiracy between Klein and Beckett to breach the fiduciary duty of Beckett, as a manager of the LLC, existed based on the evidence, for example as shown in email exchanges attached as Exhibit C hereto, that: (i) Beckett and Klein were conspiring and collaborating to hack into the email inbox of Davis in a manner not in the best interests of Davis or the LLC; (ii) both Klein and Beckett participated in the conspiracy; (iii) as a manager of the LLC, Beckett’s actions can be considered to have occurred in Delaware or subject to Delaware jurisdiction, and Beckett’s hacking into Davis’ email inbox is a substantial act in furtherance of the conspiracy; (iv) Klein, as an experienced international businessman, had reason to know that his collaboration with the manager of a Delaware LLC would have an impact on the Delaware LLC; and (v) the effect on the Delaware LLC was a direct and foreseeable result of the hacking they collaborated on in furtherance of the conspiracy.

FACTUAL BACKGROUND

The Parties

10. Davis [REDACTED]

[REDACTED] through his controlled entity Crosskeys Associates Limited (CKAL).

11. Respondent DDIS is a Delaware limited liability company with a principal place of business in Indiana.

12. Respondent Garry Beckett [REDACTED]

[REDACTED]. See Exhibit B (Written Consent dated March 2022, purporting to list the current managers of the LLC as of that date).

13. Respondent Doehler North America, Inc. (DNA), a Delaware corporation, [REDACTED].

14. Respondent Stuart McCarroll [REDACTED]

[REDACTED].

15. Respondent Andreas Klein is the chairman of the parent company of DNA and conspired with Beckett to breach fiduciary duties owed to DDIS.

Irreconcilable Differences

16. The Written Consent of Members in Lieu of a Meeting dated as of March 2022, a copy of which is attached as Exhibit B (“Written Consent”), purported to remove Davis as a manager and also purported to prevent him from seeking compensation for services that the Operating Agreement ostensibly requires him to perform.

17. Section 15(c) of the Operating Agreement is an integration clause that describes the Operating Agreement as superseding all prior agreements regarding the “transactions contemplated hereby.” Yet, contrary to this provision, at least one member argues that a prior agreement’s terms control over the Operating Agreement. This fundamental disagreement also supports dissolution.

18. Notwithstanding the purported prohibition under the Written Consent barring Davis from seeking compensation for services he performs on behalf of the LLC, the Operating Agreement was not amended to the extent that it still provides for the following untenable and impracticable conditions of the LLC: (i) paragraph 11(a) still provides that Davis is purportedly expected to commit his full-time services to the LLC and support its “day-to-day operations; (ii) pursuant to Sections 14(a)(i) and 14(b) of the Operating Agreement he is also expected to continue to provide services to the LLC as the Tax Matters Member.

19. But the existing managers and a majority of the members are prohibiting him from being paid for the foregoing services.

20. Another example of the irreconcilable differences that make it no longer reasonably practicable to carry on the business of the LLC pursuant to the Operating Agreement is that Respondent Garry Beckett has: (i) hacked into the emails of Davis and shared non-public information with Klein; and (b) Beckett formed one or more of his own companies to compete with DDIS, using resources of DDIS.

21. Klein has condoned, cooperated with, and benefited from the hacking by Beckett of the emails of Davis.

22. Klein has also made statements to confirm that he endorses, benefits from, and participated in the hacking by Beckett of the emails of Davis.

23. Other examples of why it no longer remains reasonably practicable to carry on the business of the LLC pursuant to the terms of the parties' Operating Agreement include the following: (a) The members and managers of the LLC have violated the Operating Agreement by incurring more than \$25,000 of debt without the unanimous agreement of all members; and (b) DNA has violated Section 9 of the Operating Agreement by failing to follow the timetable and other requirements of

the Operating Agreement in connection with a purported effort to purchase the interests of Davis in the LLC.

24. Respondent Stuart McCarroll, a former manager of the LLC appointed by DNA--as a representative of Klein, the chairman of the parent company of DNA, conspired with Klein to act in the best interests of DNA and the parent company of DNA--controlled by Klein--as opposed to fulfilling his fiduciary duty as a manager to act in the best interest of the LLC and its members.

COUNT I

DISSOLUTION OF THE LLC

25. Section 18-802 of the Act provides for judicial dissolution of a limited liability company when “it is not reasonably practicable to carry on the business in conformity with a Limited Liability Company Agreement.” The members of the LLC are unable to agree on carrying on the LLC’s business pursuant to the terms of the Operating Agreement, for example, on those matters requiring the unanimous consent of all members, such as borrowing money in an amount exceeding \$25,000.

26. Based on the fact that: (i) the managers of the LLC refuse to pay Davis for services that the Operating Agreement ostensibly directs him to perform; and (ii) at least one of the managers is competing against the LLC with resources of the LLC; the evidence establishes that it is demonstrably not reasonably practicable to carry

on the business of the LLC within the meaning of Section 18-802. Accordingly, the LLC should be judicially dissolved.

COUNT II

PETITION TO WIND UP AFFAIRS

27. Section 18-803(a) of the Act provides that “the Court of Chancery, upon cause shown, may wind up the limited liability company’s affairs upon application of any member . . . and in connection therewith, may appoint a liquidating trustee.”

28. The foregoing factual and legal basis satisfies the test for “cause shown” in light of the impracticability of carrying on the LLC’s business for the reasons described above.

29. Davis also seeks a declaration pursuant to Section 18-803 that a liquidating trustee should be appointed to wind up the affairs of the LLC.

WHEREFORE, Petitioner respectfully requests that this court enter an Order:

- (i) dissolving the LLC;
- (ii) declaring that a liquidating trustee appointed by the court may wind up the LLC’s affairs;

- (iii) requiring reimbursement of Petitioner’s attorneys’ fees and other expenses incurred by Davis regarding the dissolution, including this litigation pursuant to Section 5(f) of the Operating Agreement;
- (iv) awarding such other relief as may be just and appropriate.

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