

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of : Index No. _____
: RJI No. _____
LAWRENCE A. CLINE, as a Member of Private ::
Capital Management, LLC, and PCM INTEREST :
HOLDING, LLC as a Beneficial Holder of Part of :
the Economic Interest in Private Capital :
Management, LLC, : **VERIFIED PETITION**
: :
: :
Petitioners, :
: :
for an order and judgment dissolving the limited :
liability company, Private Capital Management, :
LLC, pursuant to New York Limited Liability :
Company Law Section 702, :
: :
-against- :
: :
THOMAS B. DONOVAN, :
: :
Respondent. :
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Petitioners Lawrence A. Cline, as a Member of Private Capital Management, LLC, and PCM Interest Holding, LLC, as beneficial holder of Cline's economic interest in Private Capital Management, LLC (collectively, "Petitioners") allege upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters, through their respective undersigned attorneys, as follows:

INTRODUCTION

1. This is a special proceeding brought, in accordance with Article 4 of New York's CPLR, by Lawrence A. Cline and PCM Interest Holding, LLC, pursuant to New York Limited Liability Law §702, for judicial dissolution of Private Capital Management, LLC, a limited liability company organized under the laws of the State of New York with its principal place of business in New York.

2. Private Capital Management, LLC's ("PCM") two members are adversaries in a wide array of various legal actions concerning, *inter alia*, PCM and the propriety of actions taken by PCM or on its behalf. As a result, the beneficial owners and members of PCM are hopelessly deadlocked; PCM can no longer function as intended. For that reason, judicial dissolution is warranted.

THE FACTS

I. RELEVANT PARTIES

3. Ficus Investments, Inc. ("Ficus") is a company organized under the laws of the State of Florida with its principal place of business in Florida.

4. Private Capital Group, LLC (the "Company") is a limited liability company organized under the laws of the State of Florida with places of business in New York and Florida. Ficus is the sole Managing Member and 80% owner of the Company.

5. Lawrence A. Cline ("Cline") is a resident of New Jersey and is a managing member of PCM. Cline also served as President of the Company.

6. Thomas B. Donovan ("Donovan") is a resident of New York and purports to be a managing member of PCM. Donovan also served as CEO of the Company until he voluntarily resigned in April 2007.

7. PCM was formed as a New York limited liability company by Cline and Donovan, as equal members, to hold their shared 20% minority interest in the Company.

II. FACTUAL BACKGROUND

A. Introduction

8. PCM was formed as a New York limited liability company on November 16, 2005, by Cline and Donovan, as equal members, solely to hold their shared 20% minority interest in

the Company. PCM was created in anticipation of a reorganization of the Company and a new Company Operating Agreement.

9. Ficus and PCM entered into the Private Capital Group, LLC Limited Liability Company Operating Agreement, effective as of December 1, 2005 (the "Operating Agreement") to create the Company; Donovan and Cline signed the Operating Agreement as the members of PCM. *See Meister Aff. at Exhibit A.* While PCM holds 20% of the interest in the Company for Cline and Donovan, Ficus is the Manager of the Company and holds the remaining 80% of the membership interest.

10. Other than the foregoing, PCM never had any purpose nor any business of its own. Indeed, PCM was never meant to conduct any business (and, in fact, has not) as it was created simply to hold Cline and Donovan's 20% interest in the Company. At all times, Cline and Donovan were the sole members of PCM.

11. As such, PCM is in fact just the alter ego of Cline and Donovan. Such an initial arrangement was useful while and until such time as Cline and Donovan's interests became adverse. This time came shortly after Ficus and the Company commenced a lawsuit on March 21, 2007 in the state of New York against Cline, Donovan, and PCM entitled, *Private Capital Group, LLC, et al. v. Private Capital Management, LLC, et al.*, 600926/2007 (the "Fried Action"). At the time the Fried Action was initially commenced, PCM was owned and controlled solely by Donovan and Cline.

12. Upon information and belief, at the time the Fried Action was initially commenced, PCM did not observe corporate formalities, was dominated and controlled by Donovan and Cline, and was an alter ego of Donovan and Cline.

B. The Cline Settlement in the Fried Action

13. In or about May 2007, Donovan and Cline concluded that their individual goals as to the Fried Action were incompatible, and that each would seek out new and separate legal representation.

14. In July 2007, Cline reached a comprehensive settlement in the Fried Action with Ficus and the Company. As part of this settlement, Cline conveyed to PCM Interest Holding, LLC, an entity wholly owned by Ficus, his economic interest in PCM through a conveyance document and associated irrevocable proxy agreement concerning his membership, equity or beneficial interest. *See Meister Aff.* at Exhibit B.

C. Donovan Is Using PCM For Abusive Purposes in the Fried Action

15. Since July of 2007, Donovan—a 50% member/beneficial owner of PCM—on one hand, and Ficus—now beneficial holder of the economic interest in Cline’s 50% membership interest in PCM— and Cline, on the other, have been locked in an ever-expanding array of litigations. Through these litigations, Ficus alleges massive and pervasive wrongdoing by Donovan, including using PCM to misappropriate and launder millions of dollars in funds belonging to the Company. In that regard, Ficus has sued PCM for its role in Donovan’s wrongdoing, including, *inter alia*, allegations that PCM served as a conduit for approximately \$12 million in disputed “loans” Donovan caused PCM to take from the Company in 2006 and 2007. *See Meister Aff.* at Exhibit C.

16. As for Donovan (and others acting on his behalf), he has asserted counterclaims and third-party claims in the Fried Action as well as separate causes of action in other, related actions, against Ficus, its principals, other Ficus-related entities, and Cline, several of which claims purport to arise out of his interest in PCM and many of which are both directly and

tangentially related to PCM. *See Meister Aff.* at Exhibit D. Most of these actions are currently pending before Judge Fried.

17. As a result of Cline and Donovan becoming adverse due to these litigations, the direction and control of PCM is hopelessly deadlocked. In fact, at various times during the Fried Action, Cline has directed PCM not to take certain actions with respect to the litigation. In response, Donovan has used PCM to do the exact opposite. It is clear that Donovan is misusing PCM for his own tactical advantage in the litigation against both Cline and Ficus.

D. PCM No Longer Has a Functionable Purpose

18. As a result of the Fried Action, the ensuing settlements, the ever-expanding list of related actions and the resulting adverse interests of Donovan and Cline, PCM is stalemated with its sole members in direct conflict with one another. Consequently, PCM is no longer able to function in accordance with its intended purposes.

19. Donovan and Cline have now been in a stalemate for over a year and will be unable to reconcile in the future. Donovan and Cline no longer speak and Donovan, directly and indirectly, has sued Cline in eight separate actions since the time of Cline's settlement with Ficus and the Company.

20. As PCM was originally created for the purpose of holding the interests of Cline and Donovan in the Company, and as it is plain that Ficus, the Company, and PCM are engaged in an intractable dispute and are unable to restore the relationship among them, PCM no longer serves any legitimate purpose.

21. PCM has become nothing more than a vehicle for Donovan's interests in the Fried Action, as all parties holding an interest in PCM — Donovan, Cline, and the Company as the holders of Cline's economic interest in PCM via the Cline settlement — remain intensely engaged in extremely heated litigation.

E. PCM Should Be Dissolved

22. An LLC is a creature of statute and its formation and dissolution are governed by the New York LLC Act (the "Act"). Under the Act, an LLC may be judicially dissolved on application by or for a member whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. Where there is no operating agreement, courts look to both the articles of organization and the default provisions of the Act to determine whether or not it is no longer reasonably practicable to carry on the business under Section 702.

23. Given the foregoing facts, it is clear that Ficus, the Company, and Cline, on the one hand, and Donovan, on the other, will clearly be unable to reconcile so as to ever carry out any originally intended function of PCM in the future. Given the adversarial posture of the parties, it is clear that PCM is hopelessly deadlocked, and that the company cannot function as intended. Under the default provisions of the Act, inability to function via deadlock is adequate grounds for dissolution.

FIRST CAUSE OF ACTION
(By Petitioners Against Donovan)

24. New York's Limited Liability Company Law § 702 states that a court may order judicial dissolution of a limited liability company. The Supreme Court, New York County has construed this provision to mean that judicial dissolution will be ordered where the complaining member can show that the business sought to be dissolved is unable to function as intended. Under New York's Business Corporation Law an internal deadlock within the LLC may act as a basis for judicial dissolution.

25. The members and/or beneficial owners of PCM are deadlocked and it is no longer reasonably practicable for PCM to continue doing business. PCM was formed merely for the purpose of holding Cline and Donovan's interests in the Company. Cline and Donovan, the two members of PCM, have been at an utter stalemate since at least July 2007. It is clear at this point that there will be no reconciliation of the members of PCM and thus no subsequent revival of the LLC.

26. It is also clear that the relationship between Ficus, on the one hand, and Donovan and Cline, on the other – the very reason for the creation of PCM - will never be restored in light of the hostile and heated litigation currently underway.

27. Moreover, PCM indisputably has no ability or authority to act vis-a-vis the Company in light of Judge Fried's May 30, 2007 Preliminary Injunction in the Fried Action granting Ficus control over the day-to-day operations of the Company (*See Meister Aff.* at Exhibit E). As a result of this injunction, any managerial or business function allegedly carried out by PCM has been terminated and will plainly never resume in light of the wholly decimated relationship between Donovan and Ficus/the Company.

28. Cline's economic interest in PCM and the associated proxy vote were conveyed to Ficus during his settlement with Ficus and the Company in July 2007. Therefore, all parties with an interest in PCM are thus also parties to the Fried Action, which shows no signs of abating. It is an understatement to say that Ficus/the Company and Donovan are at irreversible odds and would be unable to work together to carry on PCM.

29. It is undeniable that PCM has been unable to function for over a year, and will be unable to do so in the future. Indeed, PCM has been reduced to nothing but an alter ego for Donovan to hide behind and abuse for his own litigation purposes.

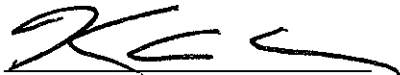
30. As a result of the foregoing, Petitioners seek an order from the Court granting dissolution of PCM in accordance with § 702 of New York's Limited Liability Company Rules.

CONCLUSION

31. Petitioners request a judgment ordering dissolution of PCM in accordance with § 702 of New York's Limited Liability Company Rules, and granting such other and further relief as this Court may deem just, proper, and equitable.

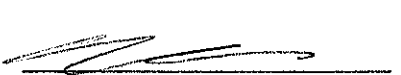
Dated: March 6, 2009
New York, New York

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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LAWRENCE A. CLINE, being duly sworn, states:

I have read the foregoing Petition Dated March 6, 2008. The allegations contained within this Petition are true to the best of my knowledge, information, and belief. I hereby reserve the right to amend this Petition if it appears at any time that omissions or errors may have been made therein.

By: Lawrence A. Cline
Lawrence A. Cline

Sworn to before me this
5 day of March, 2009

Richard B. Minor
Notary Public

RICHARD B. MINOR
Notary Public, State of New York
Reg. No. 04MI6147382
Qualified in New York County
Commission Expires June 15, 2010