

At a Special Term of the Supreme Court  
of the State of New York, held in the County  
of Chenango at the Court House in Norwich,  
New York

PRESENT: **HON. KEVIN M. DOWD**  
**JUSTICE PRESIDING**

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF OTSEGO

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In the Matter of the Application of

COOPERSTOWN CAPITAL, LLC,

Petitioner,

Index # 20100315

For the Dissolution Pursuant to Section 702 of the  
Limited Liability Company Law of Cooperstown  
All Star Village LLC and Abner Doubleday LLC

RJI # 2010-0101

-against-

MARTIN P. PATTON, BRENDA PATTON,  
COOPERSTOWN ALL STAR VILLAGE, LLC and  
ABNER DOUBLEDAY, LLC ,

Respondents.

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### MEMORANDUM DECISION AND ORDER

This case is one of six actions involving these parties. Cooperstown All Star Village, LLC ( hereinafter CASV) and Abner Doubleday, LLC (hereinafter Abner) were formed in 2004 in connection with the establishment of a youth baseball camp (hereinafter the Baseball Camp). The Baseball Camp is located in Oneonta, New York. The land on which the Baseball Camp is located is owned by Abner. CASV is the entity that operates the Baseball Camp. The Baseball Camp has been in operation since 2004. Youth players compete in week long tournaments from approximately mid-June until the end of August at the Baseball Camp. Hospitality services and facilities are also provided on site, including hotel accommodations, a restaurant, a bar, a general store, concession stand, laundry center and arcade center.

Abner and CASV are owned by the same members. While originally there were

five members, Respondents Martin and Brenda Patton (hereinafter the Pattons) have acquired the interests of two of the other members. Petitioner Cooperstown Capital, LLC (hereinafter CCLLC) has a 35% ownership interest in Abner and CASV. The Pattons have 65% ownership interest in the two limited liability companies. Starting in 2004, CASV has had a management agreement with Cooperstown Home Run Management, LLC (hereinafter HR Management). HR Management provides the necessary supervisory and management of the baseball related team activities, and of the other facilities and services provided at the Baseball Camp. HR Management is wholly owned by Respondent Martin Patton.

As previously stated, the parties are involved in multiple litigations pertaining to the formation and/or operation of the Baseball Camp. Action 1 (Index 12051) was commenced on May 10, 2005 by the Pattons against CCLLC and Joseph Ferrara, Sr., a principal of CCLLC, regarding a promissory note executed by Ferrara. Abner and CASV were named as third-party defendants in that action. Action 2 (Index 12117) was commenced approximately one month later by CCLLC against CASV and Abner, who later brought a third-party action against Ferrara. Action number 2 relates to construction services provided during the development of the camp. Action 3 (Index 20080294) was commenced on February 29, 2008 by CCLLC against CASV, Abner and other parties. That action pertains to a contribution notice issued to CCLLC. This Court issued a Decision and Order on May 28, 2008, granting CCLLC an injunction in Action 3. A Trial Note of Issue was filed on August 26, 2010. A motion to strike said Trial Note of Issue was subsequently made by CASV and Abner. That motion has been held in abeyance while the parties have continued with discovery in some of the actions, and attempted global negotiations. Action 4 (Index 20081255) was commenced on September 23, 2008 by CCLLC against the Pattons, HR Management and Marco Lionetti, who subsequently conveyed his interests in CASV and Abner to the Pattons. That action alleges financial wrongdoing by the defendants. There is currently a pending motion by CCLLC for the appointment of a temporary receiver in Action 4. Action 5 (Index 20100250) was commenced on March 8, 2010 by CCLLC against the same defendants as Action 4. That action relates to distributions and compensation increases. An Order was signed by this Court on March 28, 2011 authorizing CCLLC to have a forensic investigation and audit of the Baseball Camp. Action 6 is the present application for dissolution of Abner and CASV. The parties have had numerous issues regarding discovery in some, if not all, of these actions. The Court appointed a Judicial Hearing Officer to address discovery issues and motions on January 16, 2009.

While the present application was commenced on March 16, 2010 by Order to Show Cause, the parties did not seek an immediate judicial determination. Throughout much of 2011 the parties were awaiting and then reviewing the forensic investigation and audit referred to above. The Court held two conferences regarding the resulting report of Kroll Associates. When the parties were unable to reach any resolution, CCLLC moved in this action and Action 4 for the appointment of a temporary receiver. The motion and the underlying application are opposed by both the Pattons, and CASV and Abner.

After review of all of the submissions, the Court finds it most appropriate to first

address the application for dissolution. The operating agreement for CASV and the Amended and Restated Operating Agreement for Abner each have sections pertaining to dissolution and termination. Petitioner, a member of both limited liability companies, seeks dissolution pursuant to the fourth, listed triggering event, judicial dissolution. **Section 702 of the Limited Liability Company Law** provides that dissolution of a limited liability company may be decreed “whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.” As a result, it has been held that the limited liability’s operating agreement must be examined first. **In re 1545 Ocean Ave., LLC** 72 AD3d 121 (2<sup>nd</sup> Dept. 2010). It has further been explained, “Thus, the dissolution of a limited liability company under Limited Liability Company Law §702 is initially a contract-based analysis.” **Id.** 72 AD3d at 128. Further, the CPLR provides for a court to make a summary determination in a special proceeding to the extent there are no triable issues of fact raised. **CPLR 409(b); also see Horning v. Horning Construction, LLC, 12 Misc3d 402 (Monroe County 2006).** It is only when issues of fact exist that a trial would be appropriate. **CPLR 410; Horning, 12 Misc 3d at 411.**

Since Abner and CASV do not have identical operating agreements, each limited liability company must be examined separately. According to the Amended and Restated Operating Agreement, the business of Abner is to own and operate the specific piece of real property where the Baseball Camp is operated and such other properties as the members agree to acquire, manage and/or operate. The Amended and Restate Operating Agreement provides,

“Any Member may engage in business ventures and investments, other than in connection with the Company, of any nature whatsoever and whether or not competitive with the ownership of any of the Properties, including, but not limited to, the acquisition, ownership, management and sale of other real estate. Neither the Company nor any of the other Members shall, as a result of this Company, have any right to or interest in any such other business venture or investment, or to share in any income, profit or other benefit derived therefrom.”

While the Petition sets forth numerous allegations of violations of the operating agreements and management agreement by the Pattons, it appears the allegations predominantly pertain to CASV. There is no allegation that the business purpose of Abner is being thwarted. Abner continues to own and operate the subject real property. Based on the above quoted Competing Business Activities section of Abner’s Amended and Restated Operating Agreement, there can be no claim that there is prohibited competition taking place. The only remaining claim raised by Petitioner is that safety issues have been ignored and repairs have been improperly performed.

It is alleged that a roof repair was done incorrectly, but there appears to be no support for this claim, simply speculation by Petitioner. The handicap accessibility issues did exist and had to be addressed at the Baseball Camp. It is not clear to the Court how acknowledgment of these issues and actions to rectify them form the basis for dissolution

of the limited liability company. If the issues had been ignored that would have been a different situation. The Court is also mindful of the involvement of Petitioner or its representatives in the construction of the Baseball Camp. Nonetheless, there has been no showing that any past safety or repair issues have rendered it not reasonably practical to carry on the business of Abner in conformity with its operating agreement. Therefore, the Petition with respect to Abner must be denied.

The allegations and evidence regarding CASV are vastly different. The Petition alleges that the Pattons have disregarded the company's operating agreement, mismanaged the company and engaged in questionable financial practices that have resulted in financial gain only for the Pattons. Multiple affidavits and extensive exhibits have been submitted by Petitioner in support of these claims. Respondents have presented numerous exhibits through their attorneys. Many of the allegations raise triable issues of fact that cannot be resolved upon the submissions. **CPLR 409(a)**. The allegations regarding the Pattons' other businesses, however, appear to be different.

Section 11.1 on CASV's Operating Agreement states,

"Any Member may engage in business ventures and investments, other than in connection with the Company, of any nature whatsoever provided such venture or investment is not competitive with the Camp. Neither the Company nor any of the other Members shall, as a result of this Company, have any right to or interest in any such other business venture or investment, or to share in any income, profit or other benefit derived therefrom."

This provision is the opposite of the same section in the Abner operating agreement. The CASV operating agreement explicitly prohibits competition with the summer baseball camp. The business of CASV is "to operate the Camp, to provide necessary hospitality services in conjunction with such business, and to perform and carry out contracts or take action of any kind necessary to, in connection with, or incidental to the accomplishment of the foregoing purposes."

Petitioner claims, and Respondents have not disputed, that the Pattons own two other businesses in the Oneonta area, Christopher's Restaurant and Sabatini's Restaurant. Both restaurants also provide lodging. Petitioner argues that these restaurants not only compete with the restaurant at the Baseball Camp, but also compete with the hotel rooms rented at the Baseball Camp. Petitioner asserts that Martin Patton, as the sole owner of HR Management, actually steers customers away from the Baseball Camp to his competing businesses. Petitioner argues that these ongoing actions are prohibited by the operating agreement.

As set forth above, issues of fact would require a trial. **CPLR 410**. However, **CPLR 409(b)** states, "the court shall make a summary determination upon the pleadings, papers and admissions to the extent that no triable issues of fact are raised." The exhibits attached to the Petition reveal that the Pattons' other businesses are not only listed on the CASV's website, but in some instances are listed before the Baseball Camp's accommodations or restaurant. A flyer for CASV, regarding the All Star Tavern, contains

photographs of and directions to Sabatini's and Christopher's restaurants, along with the advisement, "Looking for something off site? Please visit our highly recommended "Team Friendly" restaurants." Another flyer, regarding the Baseball Camp's room descriptions and rates, also advises at the bottom,

"We are also booking room reservations at two local hotels which are only a five minute drive away. You can get a Deluxe Double room at Christopher's Country Lodge or Sabatini's Italian Villa for a weekly rate of \$850.00 plus tax."

The weekly rate for the Baseball Camp's Deluxe Double Room is \$1200.00. Petitioner asserts, and again Respondents have not denied nor presented any contrary proof, that neither the Baseball Camp's restaurant nor accommodations operate at full capacity.

Instead, Respondents argue that CASV is a viable company. They assert that the tournament camp is operational and has increased the number of teams participating. Additionally, Respondents point to the increase in CASV's ordinary business income since 2004. They argue that these facts, together with the holding of Matter of 1545 Ocean Ave, LLC, are sufficient to require dismissal of the Petition. Matter of 1545 Ocean Ave, LLC, 72 AD3d 121 (2<sup>nd</sup> Dept. 2010).

Matter of 1545 Ocean Ave, LLC is the most recent and most expansive appellate decision addressing the dissolution of a limited liability company. In that case, the Appellate Division, Second Department, acknowledged, "...the standard for dissolution under Limited Liability Company Law §702 remains unresolved in New York." Matter of 1545 Ocean Ave, LLC, 72 AD3d at 128. Further, the court noted that there is no definition of "not reasonably practicable" in the context of the dissolution of a limited liability company. Id. at 129. In Matter of 1545 Ocean Ave, LLC, it was argued by the petitioner that a "deadlock" between the members of the company required dissolution. Id. at 130. However, pursuant to the applicable operating agreement, unilateral action by a single manager was permitted. Id. Further, the court found that the purpose of the company was being met. Id. Thereafter, the Second Department held that for the dissolution of a limited liability company the petitioning member must establish, in the context of the operating agreement, that the management of the limited liability company is unable or unwilling to reasonably permit or promote the stated purpose of the company to be realized or achieved, or continuing the entity is financially unfeasible. Id. at 131.

The Court finds that Petitioner has made such a showing. As noted previously, dissolution of a limited liability company is a contract based analysis. Id. at 128. In the present case, there is an egregious breach of the contract into which the members of CASV entered. The Pattons are not only conspicuously competing with the services of CASV, they are utilizing CASV to engage in this competition. The Court has examined numerous reported cases regarding the dissolution of limited liability companies. None of them presented a situation where the terms of the operating agreement were so blatantly flaunted. The Pattons' controlling interest in CASV does not give them authority to disregard the operating agreement.

Fax  
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*Rerry:  
Am also sending  
via e-mail  
the entire decision  
as originally sent us*

The Court is mindful of the change in controlling interest that has taken place over the years with CASV. The fact that Petitioner has gone from having the largest individual percentage to being the minority member is not the issue. Complaints that are based solely on disagreements with the decisions made by the controlling members, the Pattons, are not sufficient to require dissolution. The unrefuted assertions, however, pertain to the contract that the parties entered into. A contract to which all of the members are bound.

To suggest that "it (Petitioner) can proceed with its other actions and claims against the Pattons for their alleged breaches of fiduciary duties" exemplifies Respondents misunderstanding of the fundamental breach that is being committed. Petitioner may have claims pursuant to Limited Liability Law §411. Those claims would pertain to the contracts with HR Management. Those claims are not Petitioner's only remedy nor can pursuit of those claims provide the relief Petitioner seeks. Petitioner is still entitled to have the contract, the operating agreement, the parties entered into enforced.

The submissions show that the breach of the operating agreement is an ongoing phenomenon. The Pattons' acquisition of majority control has left Petitioner with no other recourse other than dissolution. The Pattons can make any decision for the company they choose. They have chosen to eliminate the non-compete section from the management agreement. The Court cannot comprehend how it can "promote the stated purpose of the entity" to eliminate the provision that did not allow HR Management and Mr. Patton to "engage in or have a financial interest in any business similar to the Facilities or the Camp within 50 miles of the City of Oneonta, State of New York, which competes in any way with or becomes a competitor of the Facilities." The restaurant and hotel were included in the definition of "Facilities". The non-compete section of the management agreement also prohibited HR Management and Mr. Patton from divulging any information including any customer lists and telephone leads which related to the business of the Facilities and was not known from sources other than HR Management or Mr. Patton. The documentation demonstrates that is exactly what is happening. Without the non-compete restriction, perhaps HR Management and Mr. Patton believe they are authorized to engage in the activity referred to above. That is not the issue presently before the Court. The issue is the Pattons authorizing such behavior as members of CASV and whether such activity promotes the purpose of CASV. Clearly it does not.

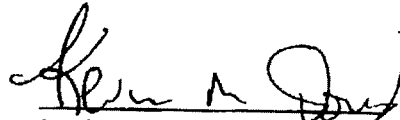
It is just as clear that the Pattons are "unwilling" to end the prohibited practices in which they are engaging. There is no incentive for them to do so. The Pattons have been able to increase the benefit they receive from the operation of CASV independent of how the restaurant and accommodations of CASV are doing. As the controlling members, the Pattons voted to increase Mr. Patton's management fee from \$90,00 to \$215,000, and approved a salary for Mrs. Patton, as an assistant manager, in the amount of \$93,000. Since Petitioner is not in a position to receive this kind of benefit from CASV, Petitioner is concerned with the failure of CASV's ordinary business income to increase in relation to the management fees. A further disincentive for the Pattons to discontinue competing with CASV is that increase in their other businesses does not have to be shared with

operating agreement of CASV.

The Court, therefore, finds that it is not reasonably practicable to carry on the business of Cooperstown All Star Village, LLC, in conformity with its operating agreement. CPLR 702. As a result, the Court will grant the Petition a decree the dissolution of Cooperstown All Star Village, LLC. The Court further finds that under these facts and circumstances a receiver shall be appointed to wind up the affairs of Cooperstown All Star Village, LLC. CPLR 703(a). The Court reserves its decision on whom to appointment as receiver to a **conference scheduled for May 31, 2012 at 1:30 pm at the Otsego County Court House, Main Street, Cooperstown, New York**. The attorneys shall come with the names and qualifications of any proposed receiver. Based upon the foregoing, Petitioner's motion for the appointment of a temporary receiver is moot and denied accordingly.

This Decision shall constitute the Order of the Court.

Dated: April 6, 2012  
Norwich, New York

  
Justice Supreme Court

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Christy Bass, Chief Clerk  
Supreme and County Court  
w/original Memorandum Decision and Order (dated April 6, 2012), Notice of Motion seeking the appointment of temporary receivers, Affidavit of Attorney Gabriele with attached exhibits, response and opposition of CASV and Abner with attached exhibits, Reply Affidavit of Richard Gabriele, Esq., with attached exhibits, Affidavit of Edward Gozigian, Esq., with attached exhibits, Law and Argument of Edward Gozigian, Esq., for Defendants Pattons and Affidavit of Service, Petition for dissolution with attached Affidavits and exhibits, Affidavit in further support of application for dissolution with attached Affidavit and exhibits, Letter Memo of Law from Attorney Gabriele dated September 9, 2011, Response and Opposition of CASV and Abner with attached exhibits, Affirmation in Response to letter Dated September 9, 2011 by attorney Maniscalco, Affidavit of Edward Gozigian, letter Memorandum of Law from attorney Gozigian dated September 15, 2011 and Affidavit of Services.

**THE ORIGINAL OF THIS MEMORANDUM AND DECISION AND ORDER  
HAS BEEN FILED WITH THE OTSEGO COUNTY CLERKS OFFICE.**

**THE SIGNING OF THIS MEMORANDUM DECISION AND ORDER SHALL  
NOT CONSTITUTE ENTRY OR FILING UNDER CPLR 2220. COUNSEL IS  
NOT RELIEVED FROM THE APPLICABLE PROVISIONS OF THAT SECTION  
RELATING TO FILING, ENTRY AND NOTICE OF ENTRY.**