

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JULIE A. BENNETT,	:	No. 21-1006
Plaintiff	:	
vs.	:	CIVIL ACTION - LAW
	:	
EILEEN G. FORKER, and	:	
OUR GENERATIONS' QUILT SHOP, LLC,	:	
Defendants	:	

OPINION AND ORDER

AND NOW, after argument held on December 21, 2021 on Defendants' Preliminary Objections to Plaintiff's Complaint, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiff commenced this action by filing a Complaint on October 1, 2021. The Complaint alleged that Plaintiff and Defendant Eileen G. Forker ("Forker") created Defendant Our Generations' Quilt Shop, LLC ("Quilt Shop") on November 5, 2018, and since that time have been the only members of Quilt Shop, holding equal ownership interests. The Complaint attached as an exhibit a written operating agreement (the "Operating Agreement"), effective December 28, 2018 and signed by both Plaintiff and Forker, which indicates that Quilt Shop was formed "for the purpose of operating a textile and quilting business, and all [other] lawful business...." The Complaint indicates that "[b]eginning on or about June 1, 2021, Plaintiff and Defendant Forker have experienced disagreement regarding the proper operation of [Quilt Shop]. Those disagreements between Plaintiff and Defendant Forker have increased, over time. Therefore, it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the

operating agreement.” Plaintiff alleges that “[t]he relationship between Plaintiff and Defendant Forker has deteriorated to the point where Plaintiff and Defendant Forker rarely speak,” and that they cannot agree what actions should be taken regarding the future of Quilt Shop. Plaintiff additionally contends that Forker has “excluded Plaintiff from all aspects of the operation” of Quilt Shop, and “has specifically taken actions with the intent to harm Plaintiff due to the discord between the parties....”

The Complaint ultimately requests that the Court dissolve Quilt Shop and appoint a receiver pursuant to 15 Pa. C.S. § 8871;¹ issue a “preliminary and final injunction against Defendant Forker restraining Defendant Forker from conducting any further business for [Quilt Shop] and designating Plaintiff to conduct all of [Quilt Shop’s] business until a receiver is appointed”; and order Forker to provide an accounting of her business dealings with Quilt Shop and to compensate Plaintiff “for all monies due to her.” The Complaint also requests any other relief the Court deems appropriate.

¹ 15 Pa. C.S. § 8871(a)(4) permits a court, upon application of a member, to dissolve a limited liability company upon a showing that:

- “(i) the conduct of all or substantially all the company’s activities and affairs is unlawful;
 - (ii) it is not reasonably practicable to carry on the company’s activities and affairs in conformity with the certificate of organization and the operating agreement; or
 - (iii) the managers or those members in control of the company:
 - (A) have acted, are acting, or will act in a manner that is illegal or fraudulent;
- or
- (B) have acted or are acting in a manner that is oppressive and was, is or will be directly harmful to the applicant.”

Although the Complaint does not explicitly cite to a particular subsection, it included language suggesting – and Plaintiff confirmed at argument – that she was primarily seeking the entry of an Order pursuant to § 8871(a)(4)(ii), contending that the parties’ inability to agree on even routine aspects of running Quilt Shop renders its continued operation impracticable.

On October 25, 2021, Defendants filed Preliminary Objections Raising the Issue of an Agreement to Arbitrate.² Defendants cite to Section 10.7 of the Operating Agreement, which states:

“Voting Deadlock Resolution. Notwithstanding any provision of this Operating Agreement to the contrary, the exclusive remedy for any voting deadlock among the Members lasting more than thirty (30) days shall be submission to arbitration. Each side of the voting deadlock shall select an arbitrator; and the two (2) arbitrators so named shall select a third arbitrator. The arbitrators’ resolution of the dispute shall be final and binding on the Members.”

Defendants contend that this agreement is a binding, enforceable agreement to arbitrate between the two parties, and that therefore this matter should be dismissed and submitted to arbitration, inasmuch as “it is clear that [Plaintiff’s] complaint raises issues arising out of and solely attributable to a voting deadlock....”

On November 4, 2021, Plaintiff filed an Answer disputing this final contention, arguing that “seek[ing] the dissolution of a limited liability company” is not “a voting deadlock with regard to the operation of” that company.

In their Brief and at argument, Defendants pointed out that “voting deadlock” is not defined in the Operating Agreement, and characterized the dispute as an inability of the two equal members of Quilt Shop to agree on even routine matters of the administration of the business. Defendants argue that this dispute falls within the ambit of Paragraph 10.7, because an inability of Plaintiff and Forker to agree on how the business should operate is exactly the type of dispute meant to be subjected to

² Pa. R.C.P. 1028(a)(6) permits a preliminary objection for “pendency of a prior action or agreement for alternative dispute resolution.” The official note to this subsection states “[a]n agreement to arbitrate may be asserted by preliminary objection or by petition to compel arbitration pursuant to the Uniform Arbitration Act... or the common law....”

arbitration under that agreement. Defendants stressed Pennsylvania’s strong public policy favoring arbitration, and argued that any doubts should be resolved in favor of ordering arbitration.

Plaintiff responded that the record in this case does not disclose any allegation of voting deadlock, and therefore Section 10.7 cannot apply to this dispute.

Furthermore, Plaintiff contends that – almost by definition – a request for Court Order under § 8871 does not fall under a “voting deadlock”; rather, such a request requires the Court to determine whether specific facts as laid out in the statute have been established. Finally, Plaintiff argues that arbitration would be futile in this case, as “[a]t best, an arbitrator could conduct a hearing on whether Quilt Shop is operating, consistent with the Operating Agreement. No such finding would be binding on this Court, since 15 Pa. C.S.A. § 8871 expressly requires that a written request for dissolution be resolved by order of Court.”

ANALYSIS

As a threshold matter, the Court must determine which specific laws govern the resolution of this case. For all arbitration agreements entered into prior to July 1, 2019, the agreement is governed by the principals of common law arbitration³ unless the parties provide (in the agreement or on the record) that either the Uniform Arbitration Act⁴ or the Revised Statutory Arbitration Act⁵ applies. Here, the Operating Agreement – and its arbitration clause – became effective on December 28, 2018,

³ As codified at Chapter 73, Subchapter B of the Judicial Code.

⁴ Chapter 73, Subchapter A of the Judicial Code.

⁵ Chapter 73, Subchapter A.1 of the Judicial Code.

and neither the Operating Agreement nor the record contain a provision applying one of the two statutory schemes. Therefore, the arbitration clause in this case is governed by common law arbitration.⁶

When the Court receives a “motion... showing an agreement to arbitrate and alleging another person’s refusal to arbitrate under the agreement,” the court “shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.”⁷ An agreement to arbitrate is presumptively “valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.”⁸ It is well-established at common law that “[w]hen one party to an agreement seeks to prevent another from proceeding to arbitration, judicial inquiry is limited to determining (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision.”⁹ Such a determination must be made according to contract principles, and is thus a question of law.¹⁰ In general, “the courts of this Commonwealth strongly favor the settlement of disputes by arbitration,” and “[w]hen parties agree to arbitration in a clear and unmistakable manner, the court will make every reasonable effort to favor such agreements.”¹¹

⁶ As noted above, common law arbitration is governed by Chapter 73, Subchapter B of the Judicial Code. Subchapter B contains only two sections – 42 Pa. C.S. § 7341 and 7342 – but the latter of these sections expressly incorporates eight provisions of Subchapter A.1 (§ 7321.6 *et sub.*).

⁷ 42 Pa. C.S. § 7321.8(a)(2) (as incorporated by 42 Pa. C.S. § 7342).

⁸ 42 Pa. C.S. § 7321.7(a) (as incorporated by 42 Pa. C.S. § 7342).

⁹ *Smith v. Cumberland Group, Ltd.*, 687 A.2d 1167, 1171 (Pa. Super. 1997).

¹⁰ *Id.*

¹¹ *Id.*

Here, the sole disagreement before the Court is whether the “dispute... is within the scope of the arbitration provision.” The arbitration provision applies to “any voting deadlock among the Members lasting more than thirty (30) days” but does not contemplate any other factual scenario. Therefore, the Court must interpret the meaning of the phrase “voting deadlock” to determine whether the factual scenario pleaded falls under that definition.

Under Pennsylvania contract law,

“In interpreting an agreement, the court must ascertain the intent of the parties. In cases of a written contract, the intent of the parties is the writing itself. If left undefined, the words of a contract are to be given their ordinary meaning. When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself.”¹²

We first look to the Operating Agreement for contextual clues. Article 2 of the Operating Agreement is titled “Meeting and Voting Procedure.” Sections 2.1 and 2.2 discuss “regular meetings” and “special meetings” of the Members,¹³ and Section 2.3 details the procedure for providing notice of meetings. The first appearance of the word “voting” in Article 2 is in Section 2.4, which provides that “[a]t any meeting of the Members, a majority of the voting interests of the Members... shall constitute a quorum....” Section 2.5 discusses the procedure for proxy voting, and Section 2.6 reads in its entirety: “*Action by Members*. Unless otherwise set forth in this Operating Agreement, the affirmative vote of both Members shall be required to act on behalf of

¹² *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004). To determine a term’s “ordinary meaning,” or whether a term’s meaning is ambiguous, a court may consult dictionaries or other outside sources for guidance. See *id.* at 1164-65.

¹³ The Operating Agreement defines “the Members” as “Julie A. Bennett and Eileen G. Forker” collectively.

the company.” Notably, the Operating Agreement does not define “voting” or explain exactly what “voting” looks like. Although Article 2 clearly contemplates that voting may occur at a regular or special meeting of Quilt Shop’s Members, it does not state that this is the only way for voting to occur. Because neither member is permitted to act on behalf of Quilt Shop in the absence of “the affirmative vote of both Members,” it is clear that any agreement of the Members for Quilt Shop to act – whether done formally at a meeting or informally through casual communication – constitutes “voting” for the purposes of the Operating Agreement.

The term “deadlock” is not used in the Operating Agreement outside of Section 10.7. Black’s Law Dictionary defines “deadlock” generally as “[a] state of inaction resulting from opposition, a lack of compromise or resolution, or a failure of an election” or “[t]he blocking of corporate action by one or more factions of shareholders or directors who disagree about a significant aspect of corporate policy.”¹⁴ These definitions quite aptly describe the state of the Members’ relationship.

The Court concludes that the instant dispute falls under the Operating Agreement’s arbitration provision. The Parties agree that Plaintiff and Forker – the only two Members of Quilt Shop – are unable to agree on such matters as how Quilt Shop should be run and what its future should be. Paragraph 2.6 of the Operating Agreement states that “the affirmative vote of both Members shall be required to act

¹⁴ *Black’s Law Dictionary* (11th ed. 2019), *deadlock*. The first of the given definitions directs to the entry for “tie vote,” which is defined as “[a]n equally divided vote. A tie vote is not a deadlock unless the assembly is obliged to act, for example when electing an officer to an office that will otherwise be vacant.”

on behalf of the company.” The Complaint and Preliminary Objections, as well as the parties at argument, paint a picture of two equal owners simply unable to agree as to the path forward that their company should take, stymying Quilt Shop’s ability to act as a company. Because any “act[ion] on behalf of the company” requires an “affirmative vote” of the two members, the inability for the members to agree on company action necessarily constitutes an inability to reach an “affirmative vote of both Members....” On one level, this fundamental deterioration of the relationship between the parties may be said to be broader than a “voting deadlock,” but the practical implication of the parties’ discord is that questions of corporate governance repeatedly arise where one, but not both, Members wish Quilt Shop to take a certain action. This falls under the ambit of Paragraph 10.7’s arbitration agreement.

Paragraph 10.7 provides a procedure for the selection of an arbitration panel, and the Court stresses that under Paragraph 10.7 the panel is tasked with “resol[ving]... the dispute....” This is broad enough for the panel to address Plaintiff’s requests for injunctive relief, an accounting of Forker’s activities, and remedies for the alleged actions taken by Forker “with the intent to harm Plaintiff....” Each of these issues raised arises out of the inability of the parties to agree on appropriate corporate actions and, allegedly, Forker’s decision to continue with those actions in contravention of Paragraph 2.6 of the Operating Agreement despite the inability of the members to reach voting agreement.

ORDER

For the foregoing reasons, Defendants Preliminary Objections Raising the Issue of an Agreement to Arbitrate are SUSTAINED. The Plaintiff and Forker shall follow the provisions of Paragraph 10.7 of the Operating Agreement to select a panel of arbitrators, and shall submit the instant dispute to the panel for binding arbitration.

IT IS SO ORDERED this 5th day of April 2022.

By the Court,

Eric R. Linhardt, Judge

ERL/jcr

cc: William P. Carlucci, Esq.
J. David Smith, Esq.
Gary Weber, Esq. (Lycoming Reporter)