NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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April 4, 2019

Alexander Laufer
Eisenhower & Laufer, P.C.
10560 Main Street, Suite 218
Fairfax, VA 22030

Jeffery A. Vogelman
Vogelman, Turner & Wright
124 South Royal Street
Alexandrai, VA 22314

Re: *James Bruce Furr* v. *Signal Hill Supply & Service, Inc.*, CL 2018-6897

Dear Mr. Laufer and Mr. Vogelman:

This matter is before the court on Plaintiff's motion for reconsideration of the court's order of March 20, 2019 granting Defendant's motion to dismiss for lack of standing. For the reasons that follow, the motion is denied.

Background

At the conclusion of all the evidence, Defendant made a motion to strike on the ground that Plaintiff did not have standing to bring this action as the contract at issue was entered into by Plaintiff's single member limited liability company, Signal Hill Supply, LLC, not Plaintiff individually. The evidence showed that, in or around 2016, subsequent to the entry into the contract, Signal Hill Supply, LLC had been cancelled by the State Corporation Commission at the request of Plaintiff as the single member of the LLC.

Plaintiff first argues that the cause of action "first arose in or around the spring of 2018" (Plaintiff's Memorandum 2) and that, as a result, "it would be hard to argue that the defunct LLC is the ideal party to assert a chose which arose after its existence had been terminated . . . ." Plaintiff's Memorandum 3. Second, Plaintiff argues that Code § 8.01-13 allows Plaintiff to have brought the instant case in his own name.

OPINION LETTER

Analysis

1) Plaintiff cites no authority for his argument that Plaintiff would be a more "ideal party" to bring an action for breach of contract because the default on the contract happened after the LLC had been cancelled. The only authority on the subject is Code § 13.1-1020 and Code § 13.1-1050(B), which undercut his argument. Code § 13.1-1020 provides:

> A member of a limited liability company, solely by reason of being a member, is not a proper party to a proceeding by . . . a limited liability company, except where (i) the object is to enforce a member's right against or liability to the limited liability company or (ii) as provided in Article 8 (§ 13.1-1042 et seq.) of this chapter.[1]

Moreover, Code § 13.1-1050(B) provides:

> If the Commission finds that the articles of cancellation comply with the requirements of law and that all required fees have been paid, it shall by order issue a certificate of cancellation, canceling the limited liability company's existence. Upon the effective date of such certificate, the existence of the limited liability company shall cease, *except for the purpose of suits*, other proceedings, and appropriate actions by members as provided in this chapter. (Emphasis added).

Thus, the legislature not only expressly forbade members of an LLC from bringing suit, it expressly preserved a cancelled LLC's authority to bring suits; that makes the cancelled LLC the "ideal party," not Plaintiff.

2) Code § 8.01-13 provides in pertinent part:

> The assignee or beneficial owner of any bond, note, writing or other chose in action, not negotiable may maintain thereon in his own name any action which the original obligee, payee, or contracting party might have brought . . . .

Plaintiff does not point to any authority showing that, as a member of a cancelled LLC which has a cause of action for breach of contract, he is "beneficial owner" of a "chose in action". In fact, Code § 13.1-1038 suggests to the contrary because it provides that a "membership interest in a limited liability company is *personal property.*" (Emphasis added). The court concludes that Plaintiff is not a "beneficial owner" of a "chose in action."

Moreover, as discussed above, Code § 13.1-1020 and Code § 13.1-1050(B) expressly bar members of an LLC from bringing suit and expressly preserve a cancelled LLC's authority to bring suits. Because LLCs are entirely creatures of statute, the role of members is whatever is prescribed by the General Assembly, nothing more, nothing less. A statute like Code § 8.01-13, which does not speak to members of an LLC, has no bearing on the role of a member with respect to a cancelled LLC.

Finally, it is firmly established that "a specific statute cannot be

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[1] Neither exception is applicable to the case at bar.

controlled or nullified by a statute of general application unless the legislature clearly intended such a result." *Commonwealth v. Brown,* 259 Va. 697, 706 (2000). In the case at bar, because the provisions of Chapter 12 of Title 13.1 (the Virginia Limited Liability Company Act) are the provisions dealing specifically with the role of a member with respect to a cancelled LLC, they prevail over Code § 8.01-13 and, as a result, Code § 8.01-13 does not authorize Plaintiff to bring the instant action.

Plaintiff's motion to reconsider is DENIED.

An appropriate order will enter.

Sincerely yours,

[redacted]

Richard E. Gardiner
Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

JAMES BRUCE FURR	)	
	)	
Plaintiff	)	
	)	
v.	)	CL 2018-6897
	)	
SIGNAL HILL SUPPLY & SERVICE, INC.	)	
	)	
Defendant	)	

ORDER

THIS MATTER came before the court on Plaintiffs' motion to reconsider the court's order of March 20, 2019 grating Defendant's motion to dismiss for lack of standing.

THE COURT, for the reasons set forth in the court's letter opinion of today's date, hereby DENIES Plaintiff's motion to reconsider.

ENTERED this 4th day of April, 2019.

[redacted]

Richard E. Gardiner
Judge

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA

Copies to:

Alexander Laufer
Counsel for Plaintiff

Jeffrey A. Vogelman
Counsel for Defendant