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The Long Arm of Delaware's LLC Act May Impact Your Illinois LLC's Dissolution



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You find yourself in a situation where you want (or need) to dissolve your limited liability company. You are in Illinois. The limited liability company is a Delaware entity. How can you effectuate the dissolution and where can you do so?

Limited liability company operating agreements often provide specific circumstances under which a limited liability company can be voluntarily dissolved, such as the unanimous consent of the members; however, if you are in a contentious situation and judicial intervention is necessary, you also have the option of pursuing an involuntary judicial dissolution. This is when the “where” becomes important. Because limited liability companies are formed under the laws of specific states, courts sitting in states other than the formation state often decline jurisdiction to dissolve the foreign entities.

This is especially true for Delaware limited liability companies. Delaware limited liability companies are formed pursuant to the Delaware Limited Liability Company Act. With regards to judicial dissolution, the Delaware LLC Act dictates that “[o]n application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonable practicable to carry on the business in conformity with a limited liability company agreement.”^[i]

State courts have held that the Delaware LLC Act grants only Delaware's Court of Chancery subject matter jurisdiction over the judicial dissolution of Delaware limited liability companies.^[ii] Thus, courts frequently decline to exercise jurisdiction over judicial dissolution claims involving Delaware limited liability companies in deference to Delaware courts.^[iii] Federal courts are also unlikely to entertain judicial dissolution matters in order “to avoid needless disruption of state efforts to establish coherent policy in an area of comprehensive state regulation.”^[iv]

Numerous older Illinois cases follow this methodology and, at least one Illinois court has recently followed suit. In *Susan E. Ellis v. LED Business Solutions, LLC et al.*, Circuit Court of Cook County Judge Neil Cohen granted the Delaware limited liability company's motion to dismiss plaintiff's claims relating to judicial dissolution and winding up the affairs of the company. In doing so, the court held that “[b]ecause the Delaware LLC Act requires application to the Court of Chancery, this court has no subject matter jurisdiction over the judicial dissolution or winding up of LED.”^[v]

What does this mean for you? Ultimately, even if your limited liability company operates in Illinois and all its members are in Illinois, there is a chance that you will have to go to Delaware to seek a judicial dissolution.

[i] 6 Del. C. §18-802 (emphasis added).

[ii] See, e.g., *Casella Waste Systems, Inc., FCR, LLC v. GR Tech, Inc.*, 2009 WL 6551408, at *3 (Vt. Super. Ct. Feb. 2009) (“Section 18-802 does not grant subject matter jurisdiction to any other court. It does not identify any other court by name, and it does not use permissive or generic terms suggesting that subject matter jurisdiction would be appropriate in any court where personal jurisdiction can be maintained Therefore, a plain reading of the statute suggests that the default rules governing dissolution grant subject

matter jurisdiction only to the Delaware Court of Chancery, and not to any other court.”).

[iii] See *Rimawi v. Atkins*, 42 A.D. 3d 799, 801 (N.Y. App. Div. 2007) (“Finally, we conclude that plaintiffs’ cause of action seeking dissolution of Quik-Flight must also be dismissed. A limited liability company is a hybrid entity and is, in all respects pertinent here, most like a corporation. Thus, unlike the derivative claim involving the internal affairs of a foreign corporation, plaintiffs’ claim for dissolution and an ancillary accounting is one over which the New York courts lack subject matter jurisdiction.” (internal citations omitted); *In re Interstate Gen. Media Holdings, LLC*, CIV A. 9221-VCP, 2014 WL 1697030, at * 6 (Del. Ch. Apr. 25, 2014) (noting that Philadelphia court declined to exercise jurisdiction over dissolution petition in favor of dissolution proceedings in Delaware’s Court of Chancery).

[iv] See *Friedman v. Revenue Management of New York, Inc.*, 38 F.3d 668, 671 (2d Cir. 1994).

[v] *Susan E. Ellis v. LED Business Solutions, LLC et al.*, No. 2017-CH-01985, at *3 (Ill. Cir. Ct. Dec. 22, 2017).