

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-036159

06/10/2013

HON. JOHN REA

CLERK OF THE COURT
L. Bee
Deputy

IN RE THE MATTER OF

P TERRY STEINMETZ, et al.

WILLIAM H DOUGLAS

PAUL E STEEN

RULIING

Subsequent to the bench trial in this matter the parties submitted proposed findings of fact and conclusions of law. The court has considered the evidence and the parties' written arguments and now makes the following findings and rulings:

Findings of fact

This case arises from a business venture entered into by three doctors. In August 2001, Doctors Steinmetz, Roberts, and Hooper signed a "Letter of agreement" in which they stated their intent to establish a business to operate a sleep center to perform testing for sleep disorders and other related tests. The "Letter of agreement" provided that one of general partners would be selected as managing partner and that doctor would be responsible for the daily operation of the sleep center.

Six days later the three doctors signed "Vision Statement – Scottsdale Sleep Center." This very general statement provided that the testing performed at Scottsdale Sleep Center would "meet the standards of the sleep society in accordance with the guidelines for accreditation."

The parties never executed an Operating Agreement. They did file Articles that created a professional limited liability company, Scottsdale Sleep Center PLC. Because Dr. Hooper was the only member of the group who was accredited in sleep medicine, he became the managing member and director of the sleep center.

It was not long before disputes arose. On October 29, 2002, the members entered into an agreement that was memorialized in a document entitled "Meeting Notes. Compensation for SSC Medical Director and Managing Partner." The partners agreed to compensate Dr. Hooper \$1,500

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per month for the position of Medical Director and \$1,000 per month for the position of Managing Partner, retroactive to the date of opening, April 2002.

The agreement went on to state that the payments to Dr. Hooper for his duties would be “as cash allows’ after operating expenses (which include lease payments and non-owner loan payments).” Then the payments would be 25% for Medical Director/Managing Partner compensation and 75% to the three partners “for payment of owner loans.”

Each member originally contributed \$156,000 for startup and initial operating expenses. By agreement, these contributions were considered loans and carried on the books of the PLC as loans.

The members intended to realize income from the profits of the operation of the sleep center, and they did for several years. In addition, the members anticipated receiving individual income outside the profit of the sleep center from synergistic benefits, such as fees for reading and writing reports on sleep studies and the expansive of their personal practices by absorbing the patients of the sleep center after the sleep study was completed.

In the years after 2002, Doctors Steinmetz and Roberts referred fewer patients to the sleep center and earned less synergistic income because they read fewer sleep studies.

In 2007, SSC failed to make a profit, losing \$7,321. In 2008, SSC lost \$44,388, although if Dr. Hooper’s MD/MP fees were included the loss would have been \$59,388. In the first three months of 2009, the loss was \$23,786.

The lease on SSC’s facilities was due to expire at the end of February 2009. In August 2008, Dr. Hooper began to negotiate with the lessor to renew the lease, despite declining revenue and increasing losses. A few months after commencing negotiations to renew the lease, Dr. Hooper laid off some employees and put others on part time to reduce expenses. Dr. Hooper did not inform Steinmetz and Roberts of his attempt to commit SSC to a lease renewal. He testified that he presumed they knew about it because both of them were members of the LLC, Phaedras, that was the lessor.

At the end of 2008, Dr. Hooper personally put \$10,000 into the business to cover a shortfall. He did not inform the other members of this.

In February 2009, Dr. Hooper wrote to his partners to say that the business was failing and could not survive unless the members made additional cash contributions, the business took out a line of credit, or additional members were brought in. Doctors Steinmetz and Robert

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responded, declining to make additional cash contributions and expressing their desire to terminate the business if it was not sold to Dr. Hooper or a third party buyer.

When Dr. Hooper did not respond, Steinmetz and Roberts called a members meeting April 17, 2009. The two members voted to terminate Dr. Hooper as manager and dissolve the company. Dr. Hooper did not vote. He took, and still argues, the position that he had veto power over the dissolution vote because he was owed more than one-half the assets of the company.

Dr. Hooper ignored the vote of his two partners and continued to operate SSC just as before. After six months of that, Drs. Steinmetz and Roberts filed this action seeking a judgment ordering the dissolution of SSC.

Shortly after the April 17, 2009, members meeting, Dr. Hooper hired Brendan Kennedy, a CPA and business analyst, to perform a valuation analysis of SSC as of March 31, 2009. Because the members were in conflict and SSC had been operating at a loss, the LLC had no market value. Mr. Kennedy determined that SSC's assets totaled \$111,176. This figure is based on \$30,428 cash on hand, \$30,555 accounts receivable, \$63,500 furnishings and equipment (based on the Vasicek appraisal), and \$13,307 owed to employees.

At the same time, the members' capital account totaled \$111,490. With three members, this means each member was still owed \$37,163. Dr. Hooper's unpaid Medical Director/Managing Partner fees were \$72,000.

Dr. Hooper continued to operate SSC until May 2010, when the landlord terminated the month to month tenancy and SSC's banks froze its accounts. He then quickly put all of SSC's assets up for auction. There were no bidders at the auction and Dr. Hooper bought all the assets of SSC for \$2,000.

At the time the bank accounts were frozen, SSC had approximately \$19,000 in a Chase account and approximately \$2,100 in a Wells Fargo account. There were obligations owed to employees of SSC at the time of its termination for pension contributions and unpaid vacation time of approximately \$18,000. During 2010, Dr. Hooper paid himself \$15,000 for MD/MP fees, leaving \$15,000 unpaid.

Conclusions of law

SSC was formed as a PLC pursuant to ARS § 29-841 *et seq.* As a professional limited liability company, the provisions of the Arizona Limited Liability Company Act apply. § 29-843; 29-601 *et seq.*

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Neither the Letter of Agreement nor the Vision Statement is sufficiently specific to create binding contractual duties, although the documents are indicative of the parties' intent. The Meeting Notes of October 29, 2002, contains specific, enforceable agreements.

The critical issue in the case is whether the April 2009 meeting and the vote of Drs. Steinmetz and Roberts was sufficient to constitute a dissolution of SSC under § 29-781(2). Dr. Hooper argues that his \$72,000 in unpaid Medical Director/Manager fees plus his right to repayment of the \$10,000 loan he made to SSC in December 2008 give him the right to more than one-half the assets of SSC on dissolution. Section 29-781(2) thus required his written consent to dissolution and he did not give his consent to dissolution.

The court rejects Dr. Hooper's analysis. The Meeting Notes of October 2002 clearly intend to give Dr. Hooper a right to payment of MD/MP fees only after payment of operating expenses and then only to the extent of 25% on income after operating expenses. Given his right to one-third of the 75% after operating expenses allocated to repayment of Member loans, the parties' agreement gives Dr. Hooper no more than one-half of SSC's income after operating expenses at any time, no matter what the total amount of unpaid fees might be.

The \$10,000 "loan" at the end of 2008 cannot change the parties' equal one-third relationship. Dr. Hooper's authority as Manager covers the daily operation of SSC and activities that fall within the scope of the Business Judgment Rule. This authority as Manager does not allow Dr. Hooper to approve a loan between SSC and himself that fundamentally changes the agreed upon equal relationship among the three members. This conclusion does not mean that Dr. Hooper cannot be a creditor of SSC, it simply means that Dr. Hooper cannot, unknown to the other members and without their consent, unilaterally give himself veto power over a dissolution vote by two of three equal members.

Dr. Hooper also attempted to unilaterally change the status of the members' capital contribution from loans to equity. The three members all voted to consider their initial capital contributions of \$156,000 per member as loans. Dr. Hooper's authority as Manager does give him the ability to change the nature of this obligation from SSC to the members without a vote of the members.

Dr. Hooper argues that the value of SSC's assets should be established by a forced sale standard, pointing out that he had very little time to accomplish an auction after the eviction by the landlord and freezing of the account by the bank in 2010. These events, however, were long after the April 2009 vote to dissolve the LLC. Dr. Hooper choose to ignore the vote of a majority of the members. The court finds it equitable to value the assets of SSC under a controlled liquidation standard, according to the Vasicek appraisal.

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The court finds that the April 2009 vote of Drs. Steinmetz and Roberts was valid and effective to declare the dissolution of SSC, LLC. The income and expenses of SSC subsequent to the April 2009 constitute the separate income and obligations of Dr. Hooper. Thus, the money in the frozen accounts and amounts owed to the employees are matters between Dr. Hooper and the employees and are not part of this ruling resolving the issues among the three members.

The court finds that net assets of SSC, LLC, as of the date of dissolution, April 17, 2009, to be \$111,176. Dr. Hooper is entitled to be repaid the \$10,000 he advanced for operating expenses at the end of 2008. That leaves \$101,176 to be distributed according to the parties' Meeting Notes Agreement. Dr. Hooper shall receive 25% for unpaid MD/MP fees and the remaining 75% shall be divided equally among the three members. The court rejects Dr. Hooper's contention that the Meeting Notes percentages does not apply to dissolution. There was no evidence that the agreement was so limited.

More specifically, at the time of dissolution, Dr. Hooper was entitled to \$60,588 and Drs. Steinmetz and Roberts were entitled to \$25,294 each. By not conducting an orderly liquidation pursuant to the vote of the majority of members in April 2009, Dr. Hooper violated his duties as Managing Member and owes Dr. Steinmetz \$25,294 and owes Dr. Roberts \$25,294.

IT IS ORDERED Applicants shall submit a form of Judgment consistent with these findings and conclusions.

FILED: Exhibit Worksheet

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.