IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

CHARLES AND MARGARET LEVIN FAMILY LIMITED PARTNERSHIP	:	
Plaintiff,	:	
	:	Case No. 404731-V
vs.	:	
GREENBERG FAMILY LIMITED PARTNERSHIP	:	
Defendant.	:	

MEMORANDUM AND ORDER

This case was tried before the court on November 28 and 29, 2016. After hearing closing arguments on November 30, 2016, the court took the case under advisement. For the reasons set out below, the plaintiff's request for the judicial dissolution of a Maryland limited liability company will be denied.

Findings of Fact

Beginning in the late 1980s and early 1990s, Leonard Greenberg and Charles Levin entered into a series of commercial real estate transactions. There were eight joint investments, made primarily through two family limited partnerships. One of the joint ventures is an office and retail building located at 4733 Elm Street, in Bethesda, Maryland. The property is owned by Elm Street Associates, LLC ("Elm Street"). There are two members of the limited liability company. One member is the Greenberg Family Limited Partnership ("Greenberg LP"). The other member is the Charles and Margaret Levin Family Limited Partnership ("Levin LP"). Greenberg LP and Levin LP each have a 50% interest.

Elm Street was formed originally as a general partnership in November 1986. As permitted under Maryland law, it was converted into a limited liability company in April 1999. Section 6.1 of Elm Street's Operating Agreement provides that Leonard Greenberg, on behalf of Weinrich Development Company ("Weinrich"), would serve as the initial managing member. Section 6.2 of the Operating Agreement provides that the managing member's initial term was five years, commencing May 5, 1999. Under that same section, the managing member "may serve one or more successive three-year terms if members unanimously Consent to each such successive term."[1] In May 2000, Weinrich assigned its interest to the Greenberg Family Limited Partnership ("Greenberg LP").[2]

Charles Levin died in 2002, and his son, Robert Levin, took the reins of the family business. The technical expiration of the managing member's initial term, five years from May 5, 1999, came and went. Although the members never cast a vote on this issue, Greenberg LP continued to serve as the managing member of Elm Street.

It was after Charles Levin died that the parties first began to discuss separating their interests. However, they could not reach an agreement before Robert Levin died in November 2013. Alan Levin, Robert Levin's brother, took over the management of Levin LP following his brother's death. Notably, there is no credible evidence

[1] The word "Consent" is a defined term and "means either the written consent of a Member or the affirmative vote of such Member" either telephonically or in person. Operating Agreement §1.1, at p. 4, Plaintiff's Trial Exhibit 3.

[2] Originally, Weinrich was a 50% owner of (1) the general partnership, and then (2) the limited liability company . As noted, Weinrich assigned its interest to Greenberg LP in May of 2000. At all relevant times, therefore, each family has owned a 50% interest in the Elm Street project.

introduced at trial that, before Robert's death, the parties were at odds over the identity of the managing member.

After Alan Levin took over the management of Levin LP he began to press in earnest for a separation of the parties' business interests. Negotiations, however, were ultimately unsuccessful. As a consequence, on June 24, 2014, counsel for Levin LP wrote to counsel for Greenberg LP noting that the parties were unable "to agree to separate their jointly owned real estate interests, because each family wants to retain ownership of the same particular properties."[3] Counsel for Levin LP continued: "Though we regret our inability to conclude a transaction that would separate the two families' real estate holdings, *please convey to Mr. Greenberg that Alan Levin is committed to many years of continued and mutually beneficial joint ownership of these properties*."[4] The letter concluded: "At the Levin Family's request, we have closed our files on these issues and do not intend to incur any additional time on them."[5] Levin LP's "commitment" to "many years of continued and mutually beneficial joint ownership" had a short shelf-life.

On September 12, 2014, counsel for Levin LP requested a special meeting of the members to vote to remove Greenberg LP as the managing member of Elm Street.[6] The

[3] Defendant's Trial Exhibit 26.

[4] *Id*. (Emphasis added).

[5] *Id.*

[6] Defendant's Trial Exhibit 28.

same attorney who wrote the June 2014 letter pledging "commitment," now wrote that Greenberg LP had "materially breached the Operating Agreement of the Company."[7]

In addition to requesting a meeting of the members, counsel's letter also described the areas of disquietude. The first concerned Greenberg LP's authorization of an increase in the management fee charged by Greenhill Realty Company ("Greenhill") without Levin LP's prior consent.[8] The second area of complaint was that Greenberg LP has exceeded its term as managing member without Levin LP's consent. In that regard, Levin LP asked that Greenberg LP be removed as managing member "for cause" if it did not step down voluntarily at the special meeting.

The members met on September 15, 2014, as Levin LP requested. At the meeting, Greenberg LP agreed not to increase the management fee paid to Greenhill without Levin LP's consent. However, the parties did not agree to make Levin LP the managing member. Under the Operating Agreement, the selection of a new managing member requires a unanimous vote. As a consequence, Levin LP was not elected to be the managing member of Elm Street. Further, Greenberg LP did not agree to step aside voluntarily as the managing member of Elm Street.

On October 16, 2014, Levin LP filed a demand for arbitration seeking to remove Greenberg LP as Elm Street's managing member. Greenberg LP opposed these efforts and, on November 20, 2014, filed a complaint in the circuit court for a declaratory judgment that the decision as to the identity of the managing member was not a matter that was subject to the arbitration clause in the Operating Agreement. Subsequently,

---

[7] *Id*.

[8] Levin LP was notified of the proposed increased in Greenhill's management fee by e-mail on August 29, 2014. Defendant's Trial Exhibit 27.

Levin LP withdrew its demand for arbitration and Greenberg LP withdrew its civil complaint, and the parties again attempted to resolve their differences. These efforts at a negotiated resolution proved to be unsuccessful, and Levin LP filed this lawsuit on May 7, 2015.

Plaintiff sought a declaration that Greenberg LP's term as the managing member of Elm Street had expired and, in addition, requested judicial dissolution of the limited liability company. According to Levin LP, Greenberg LP's term as the managing member of Elm Street had expired, and the term had not been extended by the unanimous consent of both members, as required by the Operating Agreement. Further, it alleged that Greenberg LP was wrongfully refusing to step aside as the managing member. For these reasons, judicial dissolution was requested in Levin LP's initial complaint.

On July 23, 2015, Greenberg LP filed an answer to the complaint and a counter-complaint. The answer generally denied Levin LP's allegations, and noted that the "lack of consent by the members to the Managing Member of the Company or the refusal to elect Levin LP as the Managing Member" are not events which are listed as events of dissolution in the Operating Agreement. The counter-complaint sought, in count one, a declaratory judgment that Greenberg LP could remain the managing member of Elm Street. In count two, Greenberg LP, asked the court to declare that judicial dissolution was not an appropriate remedy in connection with a dispute over the identity of the managing member of this limited liability company.

After a hearing on March 18, 2016, the court denied the parties' cross-motions for summary judgment. At the motions hearing, the court set the case for a bench trial, to begin on November 28, 2016.

On June 24, 2016, Levin LP filed an amended complaint and a motion for a preliminary injunction. In count one of the amended complaint, Levin LP sought a declaratory judgment that Greenberg LP's term as the managing member of Elm Street had expired and sought the removal of Greenberg LP from that office by way of a preliminary injunction. Count two sought the judicial dissolution of Elm Street on the grounds that the two members were deadlocked on who should be the managing member. Count three was pled as an alternative claim for oppression, and sought the less drastic remedy of the appointment of a special fiscal agent.

Greenberg LP filed an answer to the amended complaint on July 8, 2016, along with an opposition to the plaintiff's motion for a preliminary injunction. The court held a preliminary injunction hearing on August 19, 2016. After the hearing, the court granted the motion in part, ordering the removal of Greenberg LP as the managing member of Elm Street. The focus of the court's decision was that the parties had not given mutual consent to Greenberg LP continuing as managing member after the expiration of its term. However, the court denied Levin LP's request for the immediate judicial dissolution of Elm Street.

The court learned at the preliminary injunction hearing that in January 2001, years before the current dispute arose, the parties had signed a management agreement with Greenhill. Greenhill, albeit an affiliate of Greenberg LP, had run the day-to-day operations of Elm Street for over fifteen years without serious complaint. Levin LP's complaints about Greenhill, such as they were, surfaced only after the parties had unsuccessfully attempted to separate their business interests. Until that time, there were unaddressed disagreements between the members. As a consequence, the court

concluded that Elm Street could continue to operate its business, as usual, pending a trial on the merits. In other words, it appeared to the court at that time that, with the Greenhill agreement in place, Elm Street could continue to carry on its usual business in conformity with its Articles and Operating Agreement, despite the absence of a managing member. Up to that point, there had been no substantial challenge by Levin LP to the validity of the Greenhill management agreement or Greenhill's ability to run Elm Street's day-to-day operations.

On October 6, 2016, Greenberg LP again moved for summary judgment contending that the claim for relief in count one of the amended complaint was moot because the court removed Greenberg LP as the managing member, and that counts two and three should be dismissed because the two members, Levin LP and Greenberg LP, could carry on Elm Street's business without a managing member. Greenberg LP noted that Levin LP had received over $1 million in cash distributions from Elm Street since 2010 as a direct result of its successful management of the property. If there were operational or management disputes, they could be resolved, according to Greenberg LP, by Levin LP pursuing arbitration as permitted (but not required) under Section 6.5 of the Operating Agreement. The court denied the motion in favor of a full examination of the facts of the parties' relationship at trial,[9] and the need to consider matters such as the parties' motive and intent.[10]

[9] *Metro. Mortgage Fund, Inc. v. Basiliko*, 288 Md. 25, 28-29 (1980).

[10] *Okwa v. Harper*, 360 Md. 161, 178 (2000).

Conclusions of Law

Elm Street is a limited liability company. Under Maryland's Limited Liability Company Act (the "Act"), the State's policy "is to give the maximum effect to the principles of freedom of contract and to the enforceability of operating agreements."[11] As is true with most limited liability companies, the heart of the company (here, Elm Street) is the operating agreement. Under the Act, the "members may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability company or the relationship of its members . . . ."[12] Among these provisions, are those governing the "manner in which the business and affairs of the limited liability company shall be managed, controlled and operated . . . ."[13] Ordinarily, and absent circumstances not present in this case, the statute is used as a gap-filler only when there is no operating agreement, or the operating agreement is silent as to some particular question.[14] An operating agreement can be oral, unless the articles of organization require that it be written.[15]

Elm Street's Articles of Organization seem to contemplate that the company will have a managing member, and that it will not be run by the members themselves, acting as members. The plaintiff referred the court to the Articles of Organization during its case-in-chief. The Articles of Elm Street provide: "The authority of the Members to act

[11] MD. CODE ANN. CORPS & ASSN'S ART. § 4A-102(a).

[12] MD. CODE ANN. CORPS & ASSN'S ART. § 4A-402(a).

[13] MD. CODE ANN. CORPS & ASSN'S ART. § 4A-402(a)(1).

[14] *See Thomas v. Bozick*, 217 Md. App. 332, 343 (2014).

[15] MD. CODE ANN. CORPS & ASSN'S ART. § 4A-402(b)(2).

for the Company solely by virtue of their being Members is limited."[16] Standing alone, however, this provision of the Articles is not dispositive as it is largely a restatement, albeit much abbreviated, of the statute. And, in context, this statement in the Articles is properly viewed primarily as an element of the "corporate shield" aspect of the statute. That is, the provisions of the Act that, taken together, ordinarily shield a member from personal liability for the entity's actions.[17]

According to the plaintiff, Elm Street cannot run generally without a managing member and, particularly, cannot do so in conformity with its Operating Agreement. For that reason, Levin LP contends that Elm Street must be judicially dissolved. Greenberg LP disagrees, contending that the company has run quite well without a managing member ever since Greenberg LP resigned, following the court's grant of the preliminary injunction in August 2016. Greenberg LP points to the management agreement with Greenhill, which it says effectively runs the day-to-day operations of Elm Street.[18] This agreement, which was signed on January 8, 2001, remains in effect today.

In this regard, Levin LP has the more cogent argument, up to a point. The Operating Agreement is replete with references to the managing member, and the power of the managing member to run the business. Section 6.3(a) makes it clear that, subject to certain exceptions, "the Managing Member shall have full and exclusive right, power and authority to . . . operate the Property, and otherwise manage the daily affairs of the

[16] Plaintiff's Trial Exhibit 2.

[17] MD. CODE ANN. CORPS & ASSN'S ART. §4A-401 (a)(3)(i) ("No member of the limited liability company is an agent of the limited liability company solely by virtue of being a member, and no member has authority to act for the limited liability company solely by virtue of being a member.").

[18] Plaintiff's Trial Exhibit 5.

Company in the ordinary course of business."[19] Section 6.3(b) notes that except for those matters for which the consent of members is required, "the Managing Member shall have the sole and exclusive right to manage the business of the Company, and the power and authority to enter into contracts and agreements on behalf of and to bind the Company."[20] Further, Section 6.3(c) makes it plain that the members, solely in their status as members, cannot bind the limited liability company. That section states: "The Members hereby agree that only the Managing Member and specially authorized agents appointed by the Managing Member shall have the authority to bind the Company."[21] Section 6.3(c) goes on to declare: "No Member shall take any action as a Member to bind the Company . . . ."[22] Although there are a large number of business decisions which, under the Operating Agreement, require the unanimous consent of the members,[23] these are major business decisions that, in the corporate context, usually would require the approval of the board of directors of a corporation.[24]

The court concludes that the management agreement with Greenhill is not a sufficient substitute for a managing member.[25] The structure of the Operating Agreement does not contemplate that the members, in their capacity as members, will run the day-to-

[19] Plaintiff's Trial Exhibit 3 at p. 16.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] Plaintiff's Trial Exhibit 3, Section 6.4 at pp. 16-18.

[24] *See* MD. CODE ANN. CORPS & ASSN'S ART. §2-401(a); J. Hanks, MARYLAND CORPORATION LAW §6.1.

[25] Indeed, it was Greenberg LP, as the managing member of Elm Street, which entered into the agreement with Greenhill in 2001.

day operations of Elm Street. It effectively says just the opposite. Similar to the corporate form, stockholders do not run the day to day operations because this might vitiate the protections of the corporate shield. This same reasoning applies to members of a LLC.

However, this conclusion does not end the court's inquiry. Maryland law provides for the judicial dissolution of a limited liability company only when "it is not reasonably practicable to carry on the business *in conformity with* the articles of organization or *the operating agreement*."[26] The statute, however, does not define this phrase. Further, this statutory language has not been definitively construed by the Maryland appellate courts.

Some appellate courts in other states, construing substantially similar statutes, have crafted an elaborate set of factors for the trial court to consider.[27] Other courts focus more narrowly on whether the entity is meeting the economic purpose for which it was created.[28] Some courts focus more particularly on whether there is a deadlock between or among the members, and whether that deadlock has frustrated the business purposes of the limited liability company.[29] Other cases seem to focus on the fact of deadlock

[26] MD. CODE ANN. CORPS & ASSN'S ART. §4A-903 (2015) (Emphasis added).

[27] *See, e.g., IE Test, LLC v. Carroll*, 140 A.3d 1268 (N.J. 2016); *Gagne v. Gagne*, 338 P.3d 1152 (Colo. App. 2014).

[28] *See, e.g., Venture Sales LLC v. Perkins*, 86 So.3d 910 (Miss. 2012); *In the Matter of the Dissolution of 1545 Ocean Avenue*, 893 N.Y.S. 2d 590 (N.Y. App. Div. 2010).

[29] *See, e.g., Kirksey v. Grohmann*, 754 N.W.2d 825 (S.D. 2008); *Vila v. BVWebties LLC*, 2010 WL 3866098 (Del. Ch., Oct. 1, 2010); *Haley v. Talcott*, 864 A.2d 86 (Del. Ch. 2004).

between the members, although there usually are other factors in play, in addition to the deadlock.[30]

Although these cases, particularly those involving deadlock, are instructive, they do not fully resolve the question presented in this case. This is not a case in which, factually, the business purpose of the entity is not being fulfilled; the court finds that it is. This also is not a case in which the party in power has abused its authority, unfairly enriched itself, or harmed the economic interests of the other members. Greenberg LP, the court finds, has not done so in this case.

At trial, Levin LP advanced various claims at trial in this regard. The court does not, however, find the evidence Levin LP adduced at trial to be factually persuasive. In short, the court does not credit Levin LP's contentions of mismanagement by Greenberg LP, abuse of power, or breach of fiduciary duty. Although some mistakes were made over the course of Greenberg LP's control since inception in 1999, the court finds that they were not material and, in nearly every instance, promptly corrected.

A major claim advanced by Levin LP at trial was Greenhill's proposal in August 2014 to raise its management fee from 5.00% to 5.75%. This was the first proposed fee increase since 1999, and amounted to a total increase of less than $2,000.00 per year, out of total net operating income of over $448,000 per year. When Levin LP objected in September 2014, Greenberg LP agreed not to raise the management fee. The only other specific matter of any substance raised at trial by Levin LP, concerned a disputed lease commission taken in 2014 regarding a bankrupt tenant which had signed a lease in 2012. The amount at issue was $9,932.00 per member. In the context of the parties economic

[30] *See, e.g., Phillips v. Hove*, 2011 WL 4404034 at *25-26 (Del. Ch., Sept. 22, 2011); *Fisk Ventures, LLC v. Segal*, 2009 WL 73957 at *4-7 (Del. Ch., Jan. 13, 2009).

relationship, the court finds this claim, even if meritorious (which the court is not finding), to be wholly immaterial.

Although the existence of this type of deadlock might permit judicial dissolution, it is not required because the parties have themselves provided a dispute resolution mechanism within the Operating Agreement. Although not guaranteed to produce a lasting result, the parties agreed to an arbitration provision in the Operating Agreement which, the court concludes, is broad enough to encompass the type of deadlock that exits in this case.

Generally, the freedom of contract principles embedded in a limited liability statute allow the members of a limited liability company to opt-out of the judicial system, and to select both the forum and dispute resolution mechanism.[31] In this case, Section 6.5 of the Operating Agreement is that dispute resolution mechanism.[32]

Section 6.5 of the Elm Street Operating Agreement covers two types of disputes. Specifically, it covers any occasion on which the members "do not unanimously agree on any Major Decision." "Major Decisions" are twenty-five specifically designated types of issues listed in Section 6.4. Section 6.5 also provides, more broadly, that "in the event of a dispute between or among any Members, any Member (the 'Demanding Party') shall have the right to serve upon the other members . . . an 'Arbitration Notice' demanding that such dispute be arbitrated pursuant to this Section 6.5, in which event the

[31] *Elf Atochen North America, Inc. v. Jaffari*, 727 A.2d 286, 293-96 (Del. 1999); *Douzinas v. American Bureau of Shipping, Inc*., 888 A.2d 1146 (Del. Ch. 2006).

[32] Maryland's statute is nearly identical to the corresponding section of the Delaware limited liability company statute. 6 Del. § 18-1101(b). As a consequence, Delaware cases are persuasive authority in this context. *See Oliveira v. Sugarman*, 226 Md. App. 524, 538 n.10 (2016), *cert. granted*, 448 Md. 29 (2016).

determination in such arbitration shall be conclusive and binding upon the Demanding Party and all Notified Parties."

The court understands that Greenberg LP's interest in arbitration, particularly arbitration about the identity of the managing member, is charitably described as "late blooming." It did not surface until closing argument and unfolded, as follows.

During closing argument, Levin LP voluntarily withdrew count three of its June 2016 amended complaint, which generically sought, as an alternative to judicial dissolution, the appointment of a "special fiscal agent" to "report to the court relating to the continued operations of the Company" and "to manage the Company pursuant to the terms of the Operating Agreement."

This is not a minority oppression case since there is no minority, but only two 50% members. Further, the parties' Operating Agreement is quite detailed as to their rights and obligations, and this decidedly is not a case of unequal bargaining power. In any event, Levin LP withdrew count two before its closed it case. This withdrawal of a claim for relief made it unnecessary for this court to address the applicability of the judicially created equitable remedies discussed in *Bontempo v. Lare*.[33]

At closing argument, and sensing that it was now "all or nothing," Greenberg LP opposed judicial dissolution, but suggested the court should do "something less" if it was inclined to dissolve the LLC due to the absence of a managing member. Indeed, in arguably a complete reversal of its prior position, Greenberg LP argued in closing argument that the selection of, or the dispute over the identity of, a managing member

[33] 444 Md. 344 (2015), *aff'g* 217 Md. App. 81 (2014).

was a matter subject to arbitration under Section 6.4 of the Operating Agreement.[34] This is the opposite position that it took when it filed a complaint for a declaratory judgment in this court on November 20, 2014. In that complaint, Greenberg LP asked for a declaratory judgment that the arbitration demand that Levin LP had filed on October 16, 2014, requesting the appointment of a managing member other than Greenberg LP, was not a proper subject of arbitration.

However, Levin LP did not argue to this court that Greenberg LP was judicially estopped from taking this position at the end of the trial in this case. Further, as both the prior arbitration demand and civil complaint were withdrawn "voluntarily" by both parties in an effort to settle all of their claims,[35] it is doubtful that judicial estoppel would preclude Greenberg LP from taking this stance, even if late blooming, because the prior proceedings were dismissed at an early stage and never subject to any judicial determination.[36]

This court applies the objective rules of contract interpretation when the terms of an instrument are disputed, giving effect to the words, as written. The Elm Street Operating Agreement is a contract. A contract must be construed in its entirety so that no meaningful portion is disregarded or nullified during the course of judicial construction.[37] The mere fact that there is a disagreement over what a clause or term means does not

[34] Hearing of November 30, 2016; Tr. at 56:21-58:2.

[35] Levin LP requested AAA to close the arbitration on December 2, 2014. Greenberg LP voluntarily dismissed, without prejudice, its lawsuit on January 15, 2015.

[36] *See Dynacorp Ltd. v. Aramtel Ltd*., 208 Md. App. 403, 471-72 (2012); *Roane v. Washington County Hospital*, 137 Md. App. 582, 592-93 (2001).

[37] *Cochran v. Norkunas*, 398 Md. 1, 17-18 (2007).

make the contract ambiguous.[38] There is no ambiguity in this case. Section 6.5(a) provides an appropriate dispute resolution mechanism, and Greenberg LP has invoked that provision, as is its right. There is no need, therefore, to order the judicial dissolution of the limited liability company because the deadlock can "be remedied through a legal mechanism set forth within the four corners of the operating agreement."[39]

There is an additional reason that militates against judicial dissolution in this case. As noted above, the Act is founded upon principles of freedom of contract. For that reason, the existence of a reasonable exit mechanism within the text of the operating agreement bears on the propriety of judicial dissolution. "When the agreement itself provides a fair opportunity for the dissenting member who disfavors the inertial status quo to exit and receive the fair value of her interest, it is at least arguable that the limited liability company may still proceed to operate practicably under its contractual charter because the charter itself provides an equitable way to break the impasse."[40] In this case, there are at least two possible ways for Levin LP to exit its investment, short of judicial dissolution, fairly and equitably.

Levin LP, the court finds, seeks judicial dissolution not because Elm Street has been mismanaged or has not been profitable. The court finds the contrary to be true, based on the evidence presented a trial: the entity has been well managed and highly profitable. Levin LP wants a forced, judicial dissolution solely because it has been unable to come to terms with Greenberg LP over a global extrication of its business

---

[38] *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 332 (2014), *cert. denied*, 438 Md. 741 (2016).

[39] *Fisk Ventures, LLC v. Segal*, 2009 WL 73957, at *7.

[40] *Haley*, 864 A.2d at 96.

affairs from those of Greenberg LP. Although there is nothing *per se* improper about wanting a separation of business interests, the motivation behind the desire to separate may speak to the remedy. Under Section 4A-903 of the Corporations & Associations Article, the court "may" order judicial dissolution if certain circumstances exist; the court is not required to do so in all cases.

This is not a case in which a member has no viable exit option short of judicial dissolution. In this case, unlike the circumstance that existed in *Haley v. Talcott*, there is no "penalty to Levin LP for exiting its investment." First, the Operating Agreement permits a member to transfer his interest, subject to a right of first refusal, for sixty days following notification of the offer. Although Levin LP is dissatisfied with the status quo, and wants the court to order the dissolution of the company, Alan Levin testified at trial that he had no idea of what the tax and other economic consequences would be if the court ordered judicial dissolution. He further testified that, despite his long-standing dissatisfaction with Greenberg LP's management, Levin LP had not even attempted to solicit offers for its interest. And, as of the time of trial, Levin LP was still uncertain whether it wanted to be a buyer or a seller. He was "certain," however that he wanted the entity to be dissolved.

Second, in July of 2015, the parties jointly secured a third-party appraisal of the building owned by Elm Street. That appraisal valued the underlying asset at $7.8 million. Both sides agree that this represents the fair market value of the asset. In November 2015, Greenberg LP offered to purchase Levin LP's 50% interest in Elm Street for 50% of the appraised value of the asset, or $3.9 million. Such a price (if accepted by Levin LP) would represent, if anything, a premium over the fair market value

of Levin LP's limited liability company interest, as no discounts for lack of control or marketability were assessed against the purchase price, which likely would occur if the interest were sold to a third-party in an arm's-length transaction.

Conclusion

The plaintiff's request for judicial dissolution is denied. Counsel shall submit an implementing order, and proposed form of declaratory judgment, within ten (10) days. It is so ordered this ____th day of December 2016.

_____
Ronald B. Rubin, Judge