

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO: 09-CVS-2227

Elizabeth C. Donovan,

Plaintiff,

v.

Jeffrey Scott Huffman, Charlotte Internet,
LLC, and Bank of America Corporation

Defendants.

REPLY BRIEF IN SUPPORT OF MOTION
TO DISMISS SCOTT HUFFMAN

The Defendants submit this Reply Brief in support of the Motion To Dismiss Scott Huffman.

I. ARGUMENT

1. This Is An Action For Judicial Dissolution of a Limited Liability Company Only
The Plaintiff's Response to the Motion to Dismiss and her other filings remain consistent in identifying her litigation as an action for dissolution of Charlotte Internet, LLC. "This is an action for dissolution of Defendant Charlotte Internet, LLC.... [and] ancillary relief in the form of receivership pending the dissolution of the company". Plaintiffs Motion To Terminate Deposition and Move for Protective Order Rule 30(d) Rule 26 (c) February 25, 2009.

On June 5, 2009, The Plaintiff's Motion To Disqualify Defendants' attorney restated its case and says, "The Plaintiff seeks receivership and dissolution of Charlotte Internet, LLC due to

the unlawful exclusion of Donovan from management, gross mismanagement by Huffman and waste of the Company's assets by Huffman.” Motion To Disqualify, Para 2.

This is an action for dissolution and dissolution only. There is no relief sought against Mr. Huffman. The odd language in the Response Brief that “Donovan’s Complaint provides sufficient notice to Huffman of the causes of action and claims for relief against Huffman as provided in the notice pleading statutes” (Response Brief at 3) simply refers the court to the Complaint which seeks no relief from Mr. Huffman.

The Complaint, however, must “provide a statement of the claim sufficiently particular to give the court and the parties notice of the transactions, occurrences , or series of transactions or occurrences, intended to be proved showing that the pleader is entitled to relief”. Rule 8(a)(1). The Response Brief and the Complaint does not identify personal claims for relief other than dissolution to which she claims to be entitled as a member. Her statement of her claim identifies the basis for her dissolution claim only. She seeks not relief from Huffman.

The only apparent goal in joining Mr. Huffman as a defendant now appears to be that of increasing the litigation costs to the company by requiring him to engage separate counsel from the company despite the fact that no claim is asserted against him and that the company and he oppose dissolution.

2. Since No Relief Is Sought Against Huffman, He Should Not Be Joined.

The Plaintiff argues in its Response Brief that, “Dissolution of Charlotte Internet without Huffman’s presence in the action would prejudice his rights, whether Huffman has a 45% membership interest, 50% membership, 50% membership interest, or an 85% membership interest.” Response Brief at 2. Apparently, the Plaintiff is asserting and vindicating Mr.

Huffman's rights as grounds to force him to participate as a defendant in this action by joining him as a defendant.

However, the law governing actions for judicial dissolution of a limited liability company is clear in North Carolina that, "It is not necessary to join members as parties to a proceeding to dissolve a limited liability company unless relief is sought against them individually; however, the court shall order that appropriate notice of the dissolution proceeding be given to all members by the party initiating the proceeding". Snyder, North Carolina Corporation Law and Practice (4th Ed 2003) §115:2.1, at 949.

The Plaintiff's Responsive Brief misreads N.C.G. S. 1A-1 Rule 19 and N.C.G.S. 57C-6-02(2) (ii) and (iii) in its attempt to justify joining Mr. Huffman as a defendant. Under Rule 19, "A person is a necessary party to an action when the person's interest in the controversy involved in the action is so vital that a valid judgment cannot be rendered in the action completely and finally determining the controversy without the person's presence as a party. The interest must be such that no decree can be rendered which will not affect this person." Shuford North Carolina Civil Practice and Procedure (6th Ed. 2003) §19:2, 403. Neither Mr. Huffman nor Mr. Flake, the other two members, of the company is a necessary party under Rule 19. There is no more need to join Mr. Huffman than there is to join Mr. Flake to secure the relief that the Plaintiff seeks. If she succeeds, the court will rule that the company should be dissolved. The company may then seek an order from the court allowing it to purchase her interest at a fair value.

Judicial dissolution claims are brought by a member against the company. The statutory scheme recognizes that other members are not necessary parties by its specific requirement that they receive notice. There is no basis under North Carolina law for requiring the joinder of

members as defendants as “necessary parties” under Rule 19. Moreover, the issue is addressed by statute in Section 57C-3-30(b) which provides specific guidance whether members are necessary or even proper parties in this action and the law is clear: members are not necessary or proper parties. Section 57C-3-30(b) states that members are not even proper parties to an action by or against a limited liability company unless they are suing the company or being sued by the company or on its behalf. There is no room in the language of Section 57C-3-30(b) for joining members in an action that seeks dissolution.

3. The Complaint Fails To State A Claim Against Mr. Huffman Upon Which Relief Can be Granted

In choosing to join Mr. Huffman as a party to a dissolution action without asserting a personal claim for relief against him, the Plaintiff has failed to state a claim upon which relief can be granted. The Response Brief’s discussion of the measure of damages sought from a defendant being forecast in the pleadings tested by Rule 8 (a) and the scope of relief available in a Judgment under Rule 54(c) has no bearing on the question under Rule 12(b) (6) whether the Complaint states a claim against Mr. Huffman upon which relief can be granted. There is no claim for damages asserted against him and no other relief sought against him.

II. CONCLUSION

The Plaintiff has chosen to seek judicial dissolution of Charlotte Internet, LLC as the remedy for the alleged behavior alluded to in her Complaint. Her Complaint rests on the provisions of N.C.G.S. 57C-6-02(ii) and (iii). In the seven months since she filed this action, her claim has not changed and she seeks no recovery or relief against Mr. Huffman individually.

In proving her case, under Section 57C-6-02(ii) and (iii), the Plaintiff may offer evidence of activities by Mr. Huffman and others, but that does not make him or any other person a party.

The Responsive Brief does not deny that no relief is sought against Mr. Huffman in the action. It confirms that this is a dissolution action and provides no statutory, case law, or legal analysis to contradict or challenge that the parties to this dissolution action are the Plaintiff and the company only.

WHEREFORE, The Defendants pray that the court dismiss the action against Mr. Huffman with prejudice.

JEFFREY SCOTT HUFFMAN
CHARLOTTE INTERNET, LLC

By Their Attorney

The SFS Law Group

S/Dennis O’Dea
Dennis O’Dea, President
N.C. Bar No. 35072
SFS Law Group
The Cadagon
2617 Cadagon Court
Charlotte, NC 28270
Telephone: (704)780-1544
Facsimile: (704) 973-0043
Email: dennis.odea@sfslawgroup.com

CERTIFICATE OF SERVICE

August 14, 2009
Charlotte, NC

I certify under penalty of perjury that I have this day served a true copy of the foregoing Notice upon Plaintiff Elizabeth C. Donovan through her counsel Kenneth T. Davies by confirmed telefacsimile transmittal received at the telefacsimile number set forth below on this date, as evidenced by a telefacsimile transmittal report:

Kenneth T. Davies, Esq
Davies & Grist, LLP
200 The Wilkie House
2112 East Seventh Street
Charlotte, North Carolina 28204
Telefacsimile Number: 704-499-9872

s/DennisO'Dea
Dennis O'Dea