

Georgia State University College of Law
Reading Room

Georgia Business Court Opinions

7-18-2011

Order on Plaintiffs' Motion for Partial Summary
Judgment (HATCHER MGMT HOLDINGS)

John Goger

Superior Court of Fulton County

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

Institutional Repository Citation

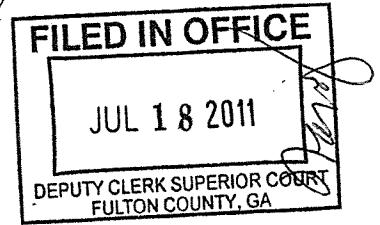
Goger, John, "Order on Plaintiffs' Motion for Partial Summary Judgment (HATCHER MGMT HOLDINGS)" (2011). *Georgia Business Court Opinions*. 209.

<https://readingroom.law.gsu.edu/businesscourt/209>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact mbutler@gsu.edu.

COPY

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



HATCHER MANAGEMENT HOLDINGS,)
LLC, JERRY B. HATCHER, ALAN)
BARRY HATCHER, MARY BETH)
HATCHER, ANNA C. HATCHER, MARY)
GRACE HATCHER, CAROL B.)
HATCHER, DEBORAH G. HATCHER,)
JASON H. HATCHER, ALAN B.)
HATCHER, JR., MEREDITH HATCHER)
MCDOWELL, STEVE P. MCDOWELL,)
CAITLIN MCDOWELL, and JESSICA)
MCDOWELL,)

Plaintiffs,)

v.)

Civil Action File No.
2009-CV-179145

HENRY MAURY HATCHER, III,)

Defendant.)

ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

On June 17, 2011, counsel appeared to present oral argument on Plaintiffs' Motion for Partial Summary Judgment, filed December 3, 2010. After reviewing the briefs, the arguments presented, and the record of the case, the Court finds as follows:

Background

This case involves a dispute over the management of a family-owned limited liability company, Hatcher Management Holdings, LLC. Deceased patriarch, Henry M. Hatcher ("Mr. Hatcher"), created several real estate businesses that acquired commercial and investment property holdings. Following a debilitating stroke, Mr. Hatcher asked his son, Defendant Henry Maury Hatcher III ("Maury"), to assume control of the family business.

Shortly before Mr. Hatcher's death, Maury, with the assistance of attorney Jack Sawyer, created Hatcher Management Holdings, LLC ("HMH" or the "Company"), in order to consolidate various real estate businesses and establish an estate planning mechanism for Mr. Hatcher. Pursuant to the Operating Agreement, Maury was appointed Manager of HMH in 2001, and he served in that capacity until his resignation in January, 2009.

While acting as Manager, Plaintiffs contend that Maury committed a series of improprieties. Specifically, Plaintiffs allege that Defendant (1) took excessive cash distributions for himself and his family and withheld distribution rightfully owed to the other family members, (2) sold real estate without the consent of the other members as required by the Operating Agreement, (3) failed to prepare and circulate financial statements, (4) admitted a new member to the Company without approval, (5) redeemed his and his immediate family's membership interest at an excessive value, and (6) paid himself excessive compensation for managing the Company, without the requisite approval.

Plaintiffs filed a motion for partial summary judgment as to certain breaches of contract referenced in Count One, certain breaches of fiduciary duty referenced in Count Two, and Count Four.

Standard

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

Failure to Obtain Approval for Compensation

The Operating Agreement provides that “[c]ompensation shall be fixed from time to time by an affirmative vote of a Majority in interest.” Operating Agreement § 8.7. It is undisputed that Maury approved compensation for himself, including significant raises over the course of four years (from \$3,000/month to \$8,750/month¹), and that there was never a vote by the Company. Plaintiffs contend that this conduct amounts to a breach of contract, as well as a breach of fiduciary duty.

Breach of Contract

In order to recover on a claim for breach of contract, a plaintiff must demonstrate (1) a breach and (2) resulting damages. Graham Brothers Construction Co. v. C.W. Matthews Contracting Co., 159 Ga. App. 546, 550 (1981). The general rule in determining contract compliance is substantial compliance, not strict compliance. Piedmont Center 15, LLC v. Acquent, Inc., 286 Ga. App. 673 (2009).

Maury seeks to create a fact issue as to whether he “substantially complied” with the Operating Agreement on the basis that he and his siblings often veered from the strict language of the Operating Agreement, choosing to follow the “spirit of the agreement” instead. However, construing the record in the light most favorable to Maury, Maury has only established that his siblings knew, generally, that he was being compensated. Maury has not pointed to evidence that his siblings were aware of the amount, let alone the significant raises he unilaterally approved for himself over the years, such that they could have acquiesced in his compensation,

¹ Plaintiffs contend that Maury’s compensation actually totaled \$12,000/ month, but according to Maury, this figure also included certain administrative costs, as well as rent. Construing the evidence in Maury’s favor, the Court will take the lesser figure for purposes of summary judgment.

notwithstanding their failure to put the issue to a formal vote.² Accordingly, the Court **GRANTS** summary judgment as to the portion of Count One premised on Maury's failure to obtain approval of his compensation. Plaintiffs are entitled to damages in the total amount of unapproved compensation paid to Maury.

Breach of Fiduciary Duty

A claim for breach of fiduciary duty requires: (1) the existence of a fiduciary duty, (2) breach of that duty, and (3) damages proximately caused by the breach. Nash v. Suddard, 294 Ga. App. 845, 849-850 (2009). A managing member of an LLC owes a fiduciary duty to the LLC and its members. Internal Medicine Alliance, LLC v. Budell, 290 Ga. App. 231, 237 and 238 (2008). In that capacity, a manager is charged to act "in the best interests of the limited liability company and with the care an ordinarily prudent person in a like position would exercise under similar circumstances." O.C.G.A. § 14-11-305.

For his conduct in approving his own compensation, as well as the other challenged actions at issue in Plaintiff's Motion, Maury contends that he is entitled to the business judgment presumption, which "protects officers from liability when they make good faith business decisions in an informed and deliberate manner." Brock Built, LLC v. Blake, 300 Ga. App. 816, 822 (2009). However, the business judgment rule is not implicated for claims involving a breach of the duty of loyalty, which is the thrust of Plaintiffs' claims in this case. "[P]rotection of the

² At oral argument, Maury's counsel directed the Court to the Historical Income Statements for HMH, which he contended put Plaintiffs on notice of Maury's compensation as it was circulated annually to the members. However, the report discloses only "professional fees" in a lump sum, which includes all amounts paid for "Real Estate/General Management, Legal, Accounting, Tax, Mortgage Management, Investments Management and all other outside services." There is no specific break-out disclosing the amount of money paid to Maury. In fact, Maury, himself, admitted in his deposition that he could not glean from this disclosure what his yearly compensation was, so it would be unreasonable to assume that other members would be able to adduce this information, themselves.

business judgment rule will be lost if a director appears on both sides [of the transaction] or derives a personal benefit from it.” In re Intercat, Inc., 247 B.R. 911, 923 (Bkrtcy.S.D. Ga. 2000).

Here, the Court finds that Maury’s conduct, in paying himself a significant salary for managing HMH without disclosing the amount to the members, amounts to a breach of his fiduciary duty as a manager of a limited liability company. Maury has failed to come forth with facts that show that he ever disclosed the specific amount of his compensation to the other Members, and the unilateral approval of one’s own compensation without disclosure smacks of self-dealing. Accordingly, the Court **GRANTS** summary judgment as to the portion of Plaintiffs’ breach of fiduciary duty claim premised on Maury’s unapproved compensation.

Unilateral Admission of Gina

Plaintiffs also contend that Maury breached the Operating Agreement, as well as his fiduciary duty, by admitting his daughter-in-law, Virginia “Gina” Hatcher, by transferring \$11,000 of his mother’s, Mary Beth Hatcher’s, interest in the Company without approval. The Operating Agreement provides that new members may be admitted by consent of all the members or upon the transfer of one’s own interest, or a portion of an interest, to new persons. Operating Agreement § 17.2.

It is undisputed that neither Mary Beth Hatcher nor the other members of the Company voted to approve Gina’s admission as a member of the Company. However, construing the evidence most favorably to Maury, the Court finds that issues of fact exist as to whether Maury, who according to his affidavit was handling his mother’s affairs at the time, had the authority to transfer a portion of his mother’s interest to Gina. Moreover, as this transfer did not dilute the interests of the other members, the Court is unable to adduce any appreciable harm to the

members or the Company brought about by the transfer to Gina. Because damages are an element of both a breach of contract and a breach of fiduciary duty claim, summary judgment as to the portions of Counts One and Two premised on the admission of Gina Hatcher is **DENIED** at this time unless Plaintiffs can establish harm.

Cash-Out of Membership Interest

In August, 2008, Maury made the decision to cash-out his and his immediate family's interest in HMH. It is undisputed that Maury's solely owned valuation company, Hatcher/Johnson Valuation, Inc. ("HJV"), performed the valuation of the interests (valued at \$886,083). It is also undisputed that Maury drafted the Purchase Agreement, effective October 1, 2008, on behalf of himself and HMH. During the drafting of the Purchase Agreement up through closing, Maury concedes that he represented both himself and HMH. He also chose to redeem the interests primarily through publicly-traded securities, cash and a loan write-off, rather than any of the real estate holdings, which had lost significant value during the 2008 economic downturn. His family did not receive notice of the transaction until January 2, 2009, when Maury sent his family a letter informing them of his decision to cash out and resign as manager of HMH. Plaintiffs allege that Maury's conduct by acting on both sides of the cash-out transaction, which they contend was ultimately unfavorable to HMH, amounts to a breach of fiduciary duty, as well as a conflict of interest transaction in violation of O.C.G.A. § 14-11-307.

Breach of Fiduciary Duty

As stated above, Maury owed the Company and its members the fiduciary duty of care and loyalty. Rosenfeld v. Rosenfeld, 286 Ga. App. 61 (2007); see also O.C.G.A. § 14-11-305(a) ("Manager of an LLC has a duty to act in a manner [he] believes in good faith to be in the best interests of the limited liability company"). By acting on both sides of a deal that favored

himself and his immediate family at the expense of HMH, the Court finds no issue of fact as to whether Maury breached the duty of loyalty. Maury effectively “changed the character of the asset mix held by the Company” when he redeemed the interests with \$725,000 in publicly-traded stock. Moreover, the terms of the Purchase Agreement, which included only a 90-day survival period of the representations and warranties that expired before Plaintiffs even had notice of the transaction, favored Maury and his immediate family at the Company’s expense.

The Court **GRANTS** summary judgment as to the issue of Maury’s liability on the portion of Plaintiffs’ breach of fiduciary duty claim premised on the cash-out of Maury’s and his immediate family’s membership interest. Summary judgment is **DENIED** with respect to the extent of Plaintiffs’ damages, which will be subject to jury determination.

Conflict of Interest Transaction

A member or manager of an LLC has a “conflicting interest” concerning a transaction when “the member or manager has the power to act or vote...[and] he or she or a related person is a party to the transaction or has a beneficial interest” in the transaction. O.C.G.A. § 14-11-101(3). Such a conflicting interest transaction can give rise to damages if (1) the “manager’s action respecting the transaction was [not] ... in compliance with” the Limited Liability Company Act or (2) “the transaction... is established [not] to have been fair to the limited liability company.” O.C.G.A. § 14-11-307(c)-(d).

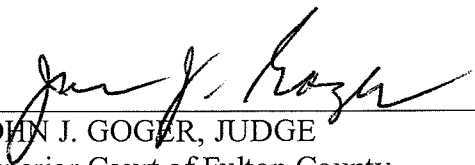
Defendant argues that his actions in connection with the transaction were in compliance with the LLC Act, which gives an LLC wide latitude to modify the fiduciary duty owed by its members under the operating agreement, because he followed the terms of the Operating Agreement in conducting the cash-out. As support, Defendant cites a case that found no breach of fiduciary duty with respect to a conflict of interest transaction where the operating agreement

specifically permitted other members to engage in other, potentially competing businesses that might result in a conflict of interest transaction. Ledford v. Smith, 274 Ga. App. 714 (2005). In contrast, the Operating Agreement at issue does not expressly permit a Manager to take part in activities that might result in conflict of interest transactions. Defendant's reliance on this case is misplaced.

The Operating Agreement here does not limit or change Maury's obligation with respect to conflict of interest transactions. Because he conducted every aspect of the transaction without disclosure, and he has not otherwise shown that the transaction was fair to the Company, his actions amount to a conflict of interest that can give rise to an award of damages under O.C.G.A. § 14-11-307.

Summary judgment is **GRANTED** with respect to whether the cash-out transaction amounts to a conflict of interest transaction thereby giving rise to an award of damages to Plaintiffs. However, summary judgment is **DENIED** with respect to the extent of Plaintiffs' damages, which will be subject to jury determination.

SO ORDERED this 19 day of July, 2011.



JOHN J. GOGER, JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies sent electronically to:

Attorneys for Plaintiff	Attorneys for Defendants
Harmon W. Caldwell, Jr., Esq. Jeremy M. Moeser, Esq. CALDWELL & WATSON, LLP Two Ravinia Drive Suite 1600 Atlanta, GA 30346 404-843-1956 hcaldwell@cwlaw.org jmoeser@cwlaw.org	F. Robert Slotkin, Jr., Esq. SLOTKIN LAW FIRM, PC 118 East Maple Street Decatur, GA 30030 404-370-1041 bobby@slotkinlawfirm.com