NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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January 22, 2019

Alexander O. Matthews
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Self-Represented Representative for Plaintiff

Thomas J. Gartner, Esquire
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Counsel for Defendant

Re: ***Farmville Group, LLC v. Shapiro Brown & Alt, LLP***
Case No. CL–2013–11270

Dear Mr. Matthews and Counsel:

The issue before the Court is whether a non-lawyer former member of a dissolved limited liability company ("LLC") may engage in litigation on behalf of the dissolved LLC. The Court holds only a lawyer may represent a dissolved LLC. Alexander Matthews ("Matthews") is not a lawyer. Nonetheless, he signed and filed the Complaint on behalf of Plaintiff Farmville Group, LLC ("Farmville Group"), a dissolved LLC. Since the Complaint was improperly signed and filed, the Court sustains Defendant Shapiro Brown & Alt, LLP's ("Shapiro Brown's") Demurrer without leave to amend and dismisses the Complaint.

I. FACTUAL OVERVIEW

Matthews, a non-lawyer, filed a Complaint on behalf of Farmville Group concerning a property allegedly owned by the LLC, "8018 Railroad Street." Compl., ¶ 3. 8018 Railroad Street

was encumbered by a deed of trust securing a financing loan from Wells Fargo to purchase the property. Compl., ¶ 8. On February 19, 2013, acting on behalf of the substitute trustee on the deed of trust, Professional Foreclosure Corporation of Virginia, Shapiro Brown conducted a foreclosure sale of the property. Compl., ¶¶ 5, 15, Ex. 1. In brief, the Complaint alleges Shapiro Brown conducted the foreclosure unlawfully and seeks injunctive relief and prays for damages in the amount of $2 million. Compl., ¶¶ 20, 22.

Shapiro Brown demurred, asserting the Complaint is invalid because it was signed by a non-lawyer member of Farmville Group (*i.e.*, Matthews).[1] Shapiro Brown contends only an attorney licensed in Virginia may represent Farmville Group. At the initial hearing on the Demurrer, held November 16, 2018, Matthews volunteered Farmville Group was canceled at the time the Complaint was filed and maintained he was acting as a "trustee in liquidation" for Farmville Group pursuant to Virginia Code § 13.1–1050.2(C). Without further argument, the Court continued the hearing to January 11, 2019 so the parties could brief two issues: (1) whether Matthews may proceed on his own behalf after the dissolution of Farmville Group, and (2) whether the Complaint had legal effect where signed by a non-lawyer former member of a dissolved LLC.

In his brief, Matthews claimed Virginia Code § 13.1–1050.2(C) provides him authority to proceed *pro se* on behalf of Farmville Group and attached a copy of an uncertified letter from the Virginia State Corporation Commission indicating the date of cancelation for Farmville Group was June 30, 2012. Shapiro Brown too remained steadfast in its position, asserting Virginia Code § 13.1–1050.2(C) does not permit Matthews to proceed *pro se* as a trustee in liquidation on behalf of Farmville Group and remarking Matthews unsuccessfully made a similar assertion in a federal bankruptcy case, *Matthews v. HSBC Bank USA, National Association*, No. 1:14cv00810, 2014 WL 4270937 (Bankr. E.D. Va. Aug. 29, 2014).

II. A DISSOLVED COMPANY MAY NOT BE REPRESENTED BY A NON-LAWYER FORMER MEMBER.

LLCs are business entities organized under the Virginia Limited Liability Company Act, Virginia Code §§ 13.1–1000 through 13.1–1087. "'The [limited liability company] is a hybrid entity, borrowing from both the corporate and partnership models' to combine a corporation's limited liability for its owners with a partnership's pass-through treatment for income tax purposes." *Ott v. Monroe*, 282 Va. 403, 408 (2011) (alteration in original) (citing S. Brian Farmer & Louis A. Mezzullo, *The Virginia Limited Liability Company Act*, 25 U. RICH. L. REV. 789, 790 (1991)).

[1] Shapiro Brown also demurred on the grounds the Complaint: generally failed to state a cause of action, failed to properly plead the elements of cause of action brought under Virginia Code § 55–59.1, alleges a violation of federal bankruptcy law over which federal courts have exclusive jurisdiction per 28 U.S.C. § 1334, failed to state a claim for injunctive relief, failed to state a claim for "emotional distress," and is moot by the full consummation of a July 2, 2013 foreclosure sale. In light of the Court's holding Matthews lacked authority to proceed *pro se* on behalf of Farmville Group and dismissal of the Complaint without leave to amend on that ground, it need not reach these additional grounds of the Demurrer.

A limited liability company exists as "an entity separate from its members." *1924 Leonard Rd., L.L.C. v. Van Roekel*, 272 Va. 543, 553 (2006) (citing *Hagan v. Adams Prop. Assocs.*, 253 Va. 217, 220 (1997)). "Unless the articles of organization provide otherwise, every limited liability company . . . has the same powers as an individual . . . including, without limitation, power . . . [t]o sue and be sued, complain and defend in its name." VA. CODE § 13.1–1009(1). Furthermore, "[a] member of a limited liability company, solely by reason of being a member, is not a proper party to a proceeding by or against a limited liability company. . ." VA. CODE § 13.1–1020.

Based on these Code sections, Matthews clearly lacked standing to bring a cause of action belonging to Farmville Group while it was an active LLC. However, Matthews avouches Farmville Group's company status was formally canceled prior to the filing of the Complaint. He insists this fact alters the Court's analysis—a dissolved LLC ceases to exist in the eyes of the law and therefore a former member or trustee in liquidation can litigate a claim *pro se* on behalf of the dissolved LLC.

To support his position, Matthews cites Virginia Code § 13.1–1050.2(C), which, in pertinent part, reads: "[t]he properties and affairs of a limited liability company whose existence has been canceled . . . shall pass automatically to its managers, or . . . to its members, or . . . to the holders of its interests, in each such case as trustees in liquidation." The statute continues on to list the powers entrusted to trustees in liquidation—to collect assets of the LLC, to sell its properties, to pay its debts, and to "do all other acts required to liquidate its business and affairs." VA. CODE § 13.1–1050.2(C). Therefrom, Matthews ascribes himself the power to litigate on behalf of Farmville Group as a quasi-attorney-in-fact or *pro se* on his own general authority as the sole member. He rationalizes a dissolved company is a legal nonentity and he, as Farmville Group's sole member, essentially becomes the LLC's alter-ego post-cancellation.

Matthews reasons, just as he could represent himself in a legal action without a law license, and since his dissolved LLC ceased to exist, he can represent Farmville Group because its property and affairs dissolved into him. There are two flaws with Matthews' theory. First, a dissolved LLC does not entirely yield its identity to a member or trustee in liquidation. Second, non-lawyer trustees in liquidation do not have the power to practice law in Virginia.

It is commonly accepted an LLC, upon cancelation, generally ceases to exist.[2] Yet, it is also evident LLCs maintain some form of legal existence post-dissolution under Virginia law.

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[2] *See In re Yelverton*, No. 09-00414, 2011 WL 2413151, 2 (Bankr. D.D.C. June 10, 2011) (interpreting Virginia law); *see also In re Midpoint Dev., LLC*, 466 F.3d 1201, 1204 (Bankr. 10th Cir. 2006) (interpreting Oklahoma law); *Hullinger v. Anand*, No. CV 15-07185, 2015 WL 11072169, 9 (C.D. Cal. Dec. 22, 2015); *Decker v. Statoil USA Onshore Props., Inc.*, No. 5:15CV114, 2015 WL 6159483, 2 (N.D. W. Va. Oct. 20, 2015); *In re Hart*, 530 B.R. 293, 302 (Bankr. E.D. Pa. 2015) (referencing "certificate of dissolution" in lieu of "certificate of cancellation"); *HB Dev., LLC v. W. Pac. Mut. Ins.*, 86 F. Supp. 3d 1164, 1175 (E.D. Wash. 2015); *Phillips v. TDI Lakota Holdings LLC*, No. 10-cv-782, 2011 WL 13225282, 6 (E.D. Pa. Apr. 29, 2011) (interpreting South Dakota law); *In re Hayhook Cattle Co.*, 2010 WL 5289004, 9 (Bankr. D. Kan. Dec. 20, 2010); *In re Modanlo*, No. DKC 2006-1168, 2006 WL 4486537, 6 (D. Md. Oct. 11, 2006) (interpreting Delaware law); *DD Hair Lounge, LLC v. State Farm Gen. Ins. Co.*,

After the State Corporation Commission issues a certificate of cancellation, "the existence of the limited liability company shall cease, *except for the purpose of suits [and] other proceedings.*" VA. CODE § 13.1–1050(B) (emphasis added). In addition,

> [t]he cancellation of existence of a limited liability company *shall not take away* or impair *any remedy available to* [] the limited liability company . . . *for any right or claim existing . . . before the cancellation.* Any action or proceeding by or against the limited liability company may be prosecuted or defended *by the limited liability company in its name*. The members or managers shall have power to take limited liability company action or other action as shall be appropriate to protect any remedy, right, or claim.

VA. CODE § 13.1–1050.5 (emphasis added).

Virginia Code § 13.1–1050.5 clarifies the cancelation of an LLC does not eradicate an LLC's right to pursue any remedy for a right or claim existing pre-cancelation. Indeed, post-cancelation, the LLC may prosecute any such claims in its name. The law regards a canceled LLC as continuing to exist solely for this purpose and empowers its former members or managers to initiate an action in the LLC's name, a power not accorded to them pre-cancelation. To be sure, the cause of action continues to belong to the LLC, and the statutory authorization accorded to former members or managers to bring a suit in the name of the LLC post-cancelation does not permit them to proceed as the quasi-attorney-in-fact or *pro se* representative of the LLC. Instead, Virginia Code § 13.1–1050.5 authorizes a former member or manager protecting a right or claim of the LLC post-cancelation to circumvent the formalities of filing a derivative action, as required pre-cancelation. *See* VA. CODE §§ 13.1–1042 through 13.1–1045; *see also Mission Residential, LLC v. Triple Net Props., LLC*, 275 Va. 157, 161–62 (2008).

The use of "in its name" in Virginia Code § 13.1–1050.5 buttresses this conclusion. This language comports with the common law rule "that an action for injuries to a corporation cannot be maintained by a shareholder on an individual basis," *Simmons v. Miller*, 261 Va. 561, 573 (2001) (collecting cases), a rule applied with equal force to LLCs, *see Remora Investments, L.L.C. v. Orr*, 277 Va. 316, 322 (2009); VA. CODE § 13.1–1020. Presumably, the reason "in its name" was included in Virginia Code § 13.1–1050.5 was to "prevent[] a multiplicity of lawsuits" by various disgruntled members post-cancelation. *Simmons*, 261 Va. at 574 (quoting *Thomas v. Dickson*, 301 S.E.2d 49, 51 (Ga. 1983)).

This conclusion also reconciles best with an underlying purpose of the Virginia Limited Liability Company Act—providing limited liability for the LLC's members. *See* VA. CODE § 13.1–1019; *see also McFarland v. Va. Ret. Servs. of Chesterfield, L.L.C.*, 477 F. Supp. 2d 727, 739 (E.D. Va. 2007). Based on a plain reading of the Virginia Code § 13.1–1050.5, this Court

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230 Cal. Rptr. 3d 136, 139 (Cal. Ct. App. 2018); *AT & T Advert., L.P. v. Winningham*, 280 P.3d 360, 364–65 (Okla. Civ. App. 2012); *Techmer Accel Holdings, LLC v. Amer*, No. 4905-VCN, 2010 WL 5564043, 10 (Del. Ch. Dec. 29, 2010); *Chadwick Farms Owners Ass'n v. FHC LLC*, 207 P.3d 1251, 1256 (Wash. 2009) (en banc).

concludes the Code section perpetuates the underlying purpose of shielding members from liability during the legal existence of the LLC post-cancelation.[3] Almost certainly, Matthews would not want to subject himself to personal liability for causes of action accruing during the legal existence of Farmville Group simply because the LLC was canceled at some point between the accrual of the action and the filing of the complaint thereupon. Mathews must have recognized this, perhaps explaining one reason he filed the Complaint in the name of "Farmville Group, LLC" and not "Alexander Otis Matthews."

In sum, Matthews is incorrect to conclude Farmville Group dissolved and devolved into him, thereby permitting him to sue as a quasi-attorney-in-fact or *pro se* representative for claims concerning rights or injuries belonging to Farmville Group. That said, the straits Matthews finds himself in do not end here.

According to the Complaint, Farmville Group has a cause of action against Shapiro Brown because it allegedly owned 8018 Railroad Street at the time of the foreclosure, February 19, 2013. That is, Matthews did not own the property and has no legal right to assert these claims on behalf of Farmville Group, which owned the property. [4] Put differently, Matthews lacks standing to assert these claims himself, as advised in federal bankruptcy court four years ago. *See Matthews*, 2014 WL 4270937 at 1, 3. Knowing this, Matthews nevertheless filed this Complaint in this Circuit contending he represents the LLC as a "trustee in liquidation."

"[W]hen a party without standing brings a legal action, the action so instituted is, in effect, a legal nullity." *Johnson Mem'l Hosp. v. Bazemore*, 277 Va. 308, 312 (2009) (quoting *Harmon v. Sadjadi*, 273 Va. 184, 193 (2007)). "An individual or entity does not acquire standing to sue in a representative capacity by asserting the rights of another, unless authorized by statute to do so." *Casey v. Merck & Co.*, 283 Va. 411, 418 (2012) (quoting *W.S. Carnes, Inc. v. Bd. of Supervisors*, 252 Va. 377, 383 (1996)). "The party with the cause of action may proceed on his own behalf but pleadings signed by a person acting in a representative capacity for the party with the cause of action are a nullity unless such person is licensed to practice law in this Commonwealth." *Aguilera v. Christian*, 280 Va. 486, 489 (2010) (citing *Kone v. Wilson*, 272 Va. 59, 62–63 (2006); *Shipe v. Hunter*, 280 Va. 480, 483 (2010); *Wellmore Coal Corp. v. Harman Mining Corp.*, 264 Va. 279, 283–84 (2002)). As the Supreme Court of Virginia has "repeatedly"

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[3] Courts "construe a statute 'with reference to its subject matter, the object sought to be attained, and the legislative purpose in enacting it; the provisions should receive a construction that will render it harmonious with that purpose rather than one which will defeat it.'" *Cyngus Newport-Phase 1B, LLC v. City of Portsmouth*, 292 Va. 573, 586 (2016) (quoting *Esteban v. Commonwealth*, 266 Va. 605, 609 (2003)). "[T]he plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction, and a statute should never be construed in a way that leads to absurd results." *Andrews v. Richmond Redev. & Hous. Auth.*, 292 Va. 79, 87–88 (2016) (quoting *Deutsche Bank Nat'l Tr. Co. v. Arrington*, 290 Va. 109, 116 (2015) (citation omitted)).

[4] "There has always been in law a symmetry between pleadings and proof. On essential matters, the latter can go no further than the former." *Parker v. Carilion Clinic*, 819 S.E.2d 809, 818 (2018) (citations omitted). Consequently, although the SCC letter and Matthews' proffer to the Court when arguing the Demurrer might indicate the cause of action belongs to one other than Farmville Group, the LLC is bound by the factual allegations of its pleading.

held, "a pleading, signed only by a person acting in a representative capacity who is not licensed to practice law in Virginia, is a nullity." *Shipe*, 280 Va. at 483 (collecting cases).

Furthermore, as a non-lawyer, Virginia's Unauthorized Practice Rules clearly prohibit Matthews from filing pleadings on behalf of Farmville Group. Farmville Group must be represented by a lawyer authorized to practice law in Virginia. This requirement is found in Part 6 of the Rules of the Supreme Court. *See* UPR 1–101(A). Unauthorized Practice Consideration 1–3 provides "[a] corporation can be represented only by a lawyer before a tribunal, with respect to matters involving legal conclusions, examination of witnesses or preparation of briefs or pleadings." Since he lacked authority to represent Farmville Group, Matthews lacked standing to file the Complaint on behalf of the LLC. The Court must conclude the pleading is a nullity and sustains the Demurrer without leave to amend. See Va. Sup. Ct. R. 1:1(c).[5]

One may argue it is unfair to effectively compel an owner of a single-member LLC to hire an attorney to prosecute a claim belonging to the LLC, whether dissolved or active. However, this is a public policy determination set forth in the rules of the Supreme Court of Virginia. Of course, one need not organize his business as an LLC. The default business organization is a sole proprietorship. There is no requirement sole proprietors use lawyers to represent their enterprises. However, under current law, businesspeople such as Matthews forgo the ability to bring legal action *pro se* to protect their business interests in exchange for benefits, such as limited liability, conferred to them by the formation of an LLC.

III. CONCLUSION

For the reasons stated herein, the Court holds a non-lawyer, former member of a dissolved LLC may not litigate on behalf of the dissolved LLC as a quasi-attorney-in-fact, as a *pro se* representative, or as a trustee in liquidation. Only a lawyer may represent a dissolved LLC. Since Matthews is not a lawyer, Shapiro Brown's Demurrer is sustained without leave to amend.

An appropriate Order is attached.

Kind regards,

[redacted]

David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

[5] Since the Complaint was filed as a nullity, a proper person or entity would need to refile, if such action is possible at this point.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FARMVILLE GROUP, LLC,	)	
	)	
Plaintiff,	)	
v.	)	CL–2013–11270
	)	
SHAPIRO BROWN & ALT, LLP,	)	
	)	
Defendant.	)	

FINAL ORDER

THIS MATTER comes before the Court on Defendant's Demurrer to the Complaint filed by Alexander O. Matthews, acting in a representative capacity, for Plaintiff Farmville Group, LLC; and

UPON CONSIDERATION of the Demurrer, Matthews' Responses thereto, the supplemental briefs of Defendant and Matthews; and

UPON HEARING oral argument of counsel and Matthews on the matter on November 16, 2018 and January 11, 2019; it is hereby

ORDERED and DECREED Defendant's Demurrer is SUSTAINED and WITHOUT LEAVE TO AMEND; and

ORDERED and DECREED the Opinion Letter issued by this Court dated January 22, 2019 in this matter is hereby adopted by reference into this Order as though it were fully restated herein.

THIS ORDER IS FINAL.

JAN 2 2 2019 [redacted]

Dated

[redacted] Judge David A. Oblon

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA.