

State Law & State Taxation Corner

Purpose: If You Do Not Know Where You Are Going, How Will You Know If You Have Arrived

By Thomas E. Rutledge*

As a general proposition, LLCs organized in any of the states may engage in any lawful business or activity.¹ While the purpose of any particular LLC may not be expanded in the articles of organization and other organic documents,² it is permissible to restrict the purpose of a particular LLC in the articles of organization and other organic documents.³ More often than not, if the purpose of a particular LLC is addressed in either the articles of organization or the operating agreement, the purposes are nothing more than a generic statement that the company “may engage in any lawful activity or business.” Such a generic formula will ultimately have consequences; whether or not those consequences are advantageous or detrimental is dependent upon your position in the dispute.

Fiduciary Duties

Assume a promoter raises funds from a number of investors for the purchase, rehabilitation and leasing of a historic commercial property. This property is located at 123 Main St. The LLC’s operating agreement does not waive fiduciary duties but does incorporate the standard from the underlying LLC Act, namely:

The duty of loyalty applicable to each manager shall be to account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers, or a majority-in-interest of the members from:

- (a) Any transaction connected with the conduct or winding up of the limited liability company; or
- (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his or her status as manager or member.⁴

The project is a success; the rehabilitation comes in under budget, and the building is quickly fully leased out with quality tenants. Ultimately, all of the



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investors in an LLC that “may engage in any lawful activity” are quite happy.

Happiness, however, can be transient. Just as the efforts with respect to 123 Main St. come to fruition, our manager learns of opportunities to acquire and similarly redevelop the property located at 234 Chestnut Street. There is no question that our manager became aware of this opportunity only because of the success in the redevelopment of 123 Main Street; the letter advising him of the opportunity specifically referenced that prior successful redevelopment project. Clearly our manager is subject to a challenging question; must he utilize the existing LLC and its cadre of (up until now very happy) members to develop 234 Chestnut Street or, in the alternative, may he strike out on his own to develop that property with a different set of investors and, likely, an operating agreement that is more advantageous to him? Under *Meinhard v. Salmon*,⁵ and its progeny, our manager clearly may be challenged if he elects to act on this opportunity separate from the existing LLC.⁶ This is not to say he might not ultimately prevail on that challenge, but as goes the adage, “the second worst thing that may happen to you is that you win a lawsuit.”⁷ But that is not the focus of this column.

More often than not, if the purpose of a particular LLC is addressed in either the articles of organization or the operating agreement, the purposes of nothing more than a generic statement that the company “may engage in any lawful activity or business.” Such a generic formula will ultimately have consequences; whether or not those consequences are advantageous or detrimental is dependent upon your position in the dispute.

Rather, the focus of this column is upon purpose clauses. Our manager made the mistake on day one when a generic, “any lawful purpose” provision was put into the operating agreement. With that open-ended purpose, he burdened himself with a duty of loyalty that could conceivably extend to any business activity in any jurisdiction. While still retaining his fiduciary duty of loyalty with respect

to this particular venture, he could have included in the operating agreement a purpose clause as follows:

Purpose. The Purpose of the Company shall be to acquire, rehabilitate, lease and eventually sell the improved real property located at 123 Main Street, Some City, State of Nova.

By doing so he would have restricted the scope of his duty of loyalty. While there would not be remedied the question of how to resolve conflicts between numerous companies of which he might serve as a manager,⁸ he would have, in effect, made clear that this particular LLC has a specific purpose, one that does not extend to other projects, including the acquisition, rehabilitation and leasing of 234 Chestnut Street. The *Meinhard v. Salmon* challenge to his subsequent organization of a new LLC and the solicitation of a new suite of investors to undertake that project would have then immediately failed.⁹

Partnership at Will or Partnership for a Particular Undertaking

Stepping back from LLCs to traditional partnership law, the definition of a partnership’s purpose could have a material impact on whether the partnership is one “at will” or one for a “particular undertaking.”¹⁰ RUPA §101(6) defines a partnership at will as “a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.” Neither “particular term” nor “particular undertaking” are defined in either of the uniform partnership acts.¹¹ Into which category a partnership fits is important because the right of a partner to withdraw from the partnership is dependent upon that classification.¹² Withdrawal from an at-will partnership is permitted at any time, while premature withdrawal from a partnership for a term or a particular undertaking may give rise to a claim for damages owed by the withdrawing partner. For that reason, specificity is important in order to avoid later surprises and, no doubt, the charge that counsel failed to either understand the import of the words employed or failed to advise the participants in the venture of their effect.¹³

In *Fischer v. Fischer*,¹⁴ the Kentucky Supreme Court, interpreting a case that arose under the Kentucky adoption of UPA, stated a partnership for a particular undertaking as “one capable of accomplishment at some time,”¹⁵ citing in support the Pennsylvania case *Girard Bank v. Haley*.¹⁶ The court went on to hold that a partnership created for

the purpose of “purchasing, leasing, and selling real estate” at a particular address was a partnership for a particular undertaking, and not a partnership at-will, indicating by its reliance on *Girard Bank* that a partnership to purchase and lease real property, without the stated intent of selling same, would be a partnership at will.¹⁷ In contrast, in *Chandler Medical Building Partners v. Chandler Dental Group*,¹⁸ where the purpose of the partnership was “to own, hold for investment, improve, lease, manage or sale such building,” it was held that the partnership was not for a particular undertaking but was rather a partnership at-will. The *Chandler* court found:

According to the record, at the time the complaint was filed, the building had been constructed and was being leased, managed, or operated, but had not been sold. CMBP claims that the particular undertaking was the sale of the building, which had not been accomplished. We reject this argument because the agreement does not require that the building ever be sold; conceivably, it can be leased for an indefinite period of time. ... [W]e believe that CMBP has not established this was a partnership for a particular undertaking.¹⁹

As these cases illuminate, the specific wording utilized in the partnership agreement with respect to its purpose will have a significant impact upon whether it is a partnership at-will or for a particular undertaking.

Too Narrow a Purpose and 1031 Exchange Opportunities

The above discussion might lead one to believe that, when representing a real estate developer, the purpose clause should be restricted to the particular development at issue. Well, maybe. Doing so can hamstring future opportunities for the venture, particularly when it is one involving real estate. Often times the exit strategy from a particular real estate venture is a 1031 exchange of the sale proceeds into a new property. A too narrowly drawn purpose clause may preclude doing so.

Assume, as set forth above, that the express purpose of our successful LLC is defined as being restricted to 123 Main Street. Assume, as well, that the opportunity to acquire a trio of adjacent buildings on Chestnut Street has become available. All else being equal, 123 Main Street could be successfully sold and the proceeds rolled over, by means of a 1031 exchange, into the acquisition of the trio of buildings on Chestnut Street. Our original promoter

and all of the members of the LLC, save one, think doing so will be a good idea. That one holdout, for whatever reason, does not want to be involved in the transaction. In order for it to proceed, the articles of organization or operating agreement will need to be amended to alter the purpose of the company, expanding it to include the acquisition and redevelopment of the properties on Chestnut Street. Under the operative documents, however, that one member has a blocking position on the proposed amendment, the underlying state law has a unanimity requirement for the amendment of the articles of organization and operating agreement, and those rules were not altered in this LLC's organic documents.²⁰ Absent the buyout of our recalcitrant member, the expansion of the LLC's purpose will not take place, and it will not be able to undertake the Chestnut Street project.²¹

Dissolution

While certain of the LLC acts contain provisions allowing judicial dissolution in the event of some species of “oppressive” conduct,²² most LLC acts contain, as either the exclusive or an additional basis for judicial dissolution, some formula of it not being “reasonably practicable” to operate the LLC in accordance with its operating agreement.²³ An assertion that the LLC is not able to be operated for the aims of its purpose, or that the purpose has been completely frustrated, will necessarily require a reference back to what is the purpose of the LLC as defined in its organic documents. In these instances, a generic purpose clause may preclude dissolution. In *In re Arrow Investment Advisors, LLC*,²⁴ judicial dissolution of an LLC was denied where, notwithstanding the fact that the plaintiff had been removed as a manager of the company, the court noted that dissolution, an extreme remedy, should be limited to situations including “where the defined purpose of the entity has become impossible to fulfill.”²⁵ In this instance, notwithstanding management's decision to depart from its original business plan, doing so still fell within the purpose clause for the company, namely, “such ... lawful business as the Management Committee chooses to pursue.”²⁶ In doing so, the Chancery Court provided an observation with respect to purpose clauses, namely:

Moreover, an important reason for parties to include a broad purpose clause in an entity's governing instrument is to ensure that the entity has flexibility to adapt in the face of changing circumstances. Having agreed to such a clause in the Arrow LLC Agreement, and therefore having contemplated that Arrow may one day be something other than an investment advisor,

Hamman cannot now seek to prematurely end Arrow's existence because he is unhappy with how Arrow's management chose to exercise its discretion.²⁷

In *PC Tower Center, Inc. v. Tower Center Dev. Assocs. Ltd. P'ship*,²⁸ the court considered the application by the general partner of a limited partnership for its dissolution, the purpose of the limited partnership being:

The Partnership was formed for the purpose of acquiring, owning and operating the Mercantile Center located in Dallas, Texas. According to the Partnership Agreement, the Partnership was formed for the following purposes pertinent here: (a) to acquire certain tracts of land (some fee simple estates and some leasehold estates) together with the improvements located thereon, the improvements being comprised of the Mercantile Bank Building, the Mercantile Securities Building, the Mercantile Securities Annex, the Mercantile Dallas Building, the Mercantile Continental Building and the Jackson Street Garage (such land and improvements shall be referred to as the "Property"); (b) to invest in, hold, own, operate, maintain, improve, develop, sell, exchange, lease and otherwise use the Property, or direct or indirect interests therein, for profit and as an investment; and (c) to do any and all acts or things that may be incidental or necessary to carry on the business of the Partnership as described above in (a) and (b).²⁹

For a variety of reasons, purpose clauses in both a partnership and LLC agreements are important. All too often they get too little attention to little attention.

Essentially, the goal of owning and operating the Property "for profit and as an investment" was functionally unachievable, and the court granted judicial dissolution of a limited partnership on the basis that it was "practically impossible to locate a tenant consequent to market conditions."³⁰

Likewise, in *Venture Sales, LLC v. Perkins*,³¹ the court found it was not reasonably practicable to operate an LLC in accordance with its operating agreement where it contained a purpose of acquiring and developing real estate,

but the real estate of the company remained undeveloped for a decade. In *McConnell v. Hunt Sports Ent.*,³² judicial dissolution of an LLC, organized to seek and hold an NHL franchise, was appropriate where the purpose of the company had been frustrated by the awarding of that franchise to another LLC with a different investor group.³³

With respect to applications for judicial dissolution of an LLC, typically premised upon the suggestion that it is "not reasonably practicable to operate the LLC in accordance with its operating agreement,"³⁴ courts have looked to the purpose of the company in determining whether that standard has been satisfied. In instances in which the company operating agreement provided for a broad purpose clause, courts have denied judicial dissolution. For example, in *Matter of Ross (427 Old Country Rd., LLC)*,³⁵ where the company was authorized to engage in, *inter alia*, any lawful business, an action for judicial dissolution was denied.

Finding Purpose

To this point, it has been assumed that the LLC's articles of organization or operating agreement set forth a concise statement of the LLC's purpose. This may not be, however, the case.³⁶ Several cases have considered the utilization of extrinsic evidence as to purpose.

For example, the *In re: Meyer Natural Foods LLC v. Duff* decision is noteworthy for consideration of whether documents outside of the operating agreement may be used to supplement the stated purpose as set forth therein:

There is authority that limits analysis of an LLC's purpose to the purpose clause in an organizational document, but other authority suggests that additional evidence might inform the analysis ... A sensible interpretation of precedent is that the purpose clause is of primary importance, but other evidence of purpose may be helpful as long as the Court is not asked to engage in speculation.³⁷

The Chancery Court would look to related supply and non-compete agreements to collectively determine the LLC's purpose and ultimately award judicial dissolution consequent to the frustration thereof.

In *South Louisiana Ethanol L.L.C. v. CHS-SLE Land*,³⁸ where the LLC's articles of organization described its purpose as "shall be to engage in any lawful activity," "testimony at trial offered clarification" as to the company's purpose.³⁹ Likewise, in *In the Matter of the Dissolution of 47th Road LLC*,⁴⁰ considering an "any lawful business purpose" provision in an operating agreement, the court wrote:

Here, the general nature of the stated purpose in the Operating Agreement is vague; hence, it does not exist in determining the reasonable practicability of continuing the business. ... However, the evidence addressed at the hearing makes it clear that the purpose of the Company is to operate an eight-unit residential apartment building in an up and coming area of Queens County.

Of more recent vintage, in *Mace v. Tunick*,⁴¹ the court was asked to judicially dissolve an LLC with a beyond generic “any lawful purpose” purpose clause. While as much as anything else the decision is based upon what assumptions a court may make in ruling on a motion to dismiss, the trial court had put on blinders and restricted its analysis to the operating agreement’s purpose clause. That determination was reversed, and the ability to consider other records as to purpose was at least implicitly sanctioned:

Here, the plaintiff alleged in the complaint that [the LLC] was formed for the purpose of acquiring title to and managing property to serve as Ceres’ headquarters, and that it became impossible to fulfill that purpose once Ceres relocated to a different property, not owned by [the LLC]. Contrary to the defendants’ contention and the Supreme Court’s conclusion, the defendants did not show, through the operating

agreement or any other evidence, that the material fact alleged by the plaintiff regarding [the LLC’s] purpose “is not a fact at all” and that “no significant dispute exists regarding it” (*Guggenheimer v. Ginzburg*, 43 N.Y.2d at 275). In this respect, the operating agreement did not set forth any particular purpose for [the LLC]. The court’s determination that [the LLC’s] purpose was simply to acquire and manage property constituted an impermissible factual finding.⁴²

While reference to evidence outside the operating agreement’s purpose clause may be of assistance to those asserting that the real purpose was intended to be more narrow than essentially anything, it is open to question whether resort to extensive evidence will be permitted when the underlying state law specifically enforces limits on amendment of the operating agreement.⁴³ That will be an (expensive) fact battle that could have been avoided with a customized (and as necessary amended from time to time⁴⁴) purpose clause.

Conclusion

For a variety of reasons, purpose clauses in both a partnership and LLC agreements are important. All too often they get too little attention. Greater attention to these provisions likely will reduce the need for recourse to the courts and the expense thereof.

ENDNOTES

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¹ The “purpose” statutes of the various LLC Acts are collected in Larry E. Ribstein & Robert R. Keatinge, *Ribstein and Keatinge on Limited Liability Companies*, app’x 4–9 (June 2017).

² Once the range of permitted activities is anything that is lawful, that without this set is unlawful. While there has been consideration of use of LLC structures for illegal activities (see, e.g., Terence F. Cuff, *Shop Talk: Drafting Partnership and LLC Agreements: Part I*, 3 BUS. ENTITIES (May/June 2001); Cuff, *Shop Talk: Drafting Partnership and LLC Agreements: Part II*, 3 BUS. ENTITIES (July/Aug. 2001); Cuff, *Shop Talk: Drafting Partnership and LLC Agreements: Part III*, 3 BUS. ENTITIES (Sept./Oct. 2001); Cuff, *Shop Talk: Drafting Partnership and LLC Agreements: Part IV*, 3 BUS. ENTITIES 12 (Nov./Dec. 2001)), those activities are no more lawfully permitted because they are sanctioned by private ordering. See also Christine Hurt & D. Gordon

Smith, *Bromberg and Ribstein on Partnership § 2.11, Illegal Partnerships*.

³ Whether, by private ordering, third parties will be deemed to be on notice of that limited purpose is a state-specific question. For example, under Kentucky law, while the articles of organization may restrict the purpose of an LLC, and while those articles of organization will be a public record, third parties will not, merely by virtue of that filing, to be deemed to have notice of that limitation. See Ky. Rev. Stat. Ann. §275.025(7). The same rule exists in Indiana. See Ind. Code §23-18-2-7. In contrast, under the Utah LLC Act, a third party would be deemed to have notice of that limitation. See Utah Code Ann. §48-2c-802(2)(c); *Zions Gate R.V. Resort, LLC v. Oliphant*, 326 P3d 118 (Utah App. 2014). The notice effect on third parties of the provisions of the articles of organization of an LLC is collected at Ribstein & Keatinge, *supra* note 1, app’x 4-6. See also, generally, Deborah DeMott, *Agency in the Alternatives: Common-Law Perspectives on Binding the Firm* in RESEARCH HANDBOOK ON PARTNERSHIPS, LLCs AND ALTERNATIVE FORMS OF BUSINESS ORGANIZATIONS (Robert W. Hillman & Mark J. Loewenstein eds.) (Edward Elgar Publishing, 2015).

⁴ Ky. Rev. Stat. Ann. §275.170. This formula, as relates to the duty of loyalty, is essentially the same as that utilized in the UPA. See Unif. Part. Act §21(1); see also Thomas E. Rutledge & Thomas Earl Geu, *The Analytic Protocol for the Duty of Loyalty Under the Prototype LLC Act*, 63 ARK. L. REV. 473, 475–477 (2010).

⁵ *Meinhard v. Salmon*, 164 N.Y.S.2d 545 (N.Y. 1928).

⁶ See also J. William Callison & Maureen A. Sullivan, *Usurpation of Partnership Opportunities*, PARTNERSHIP LAW AND PRACTICE: GENERAL AND LIMITED PARTNERSHIPS, at §12:8 (2016–2017 ed.).

⁷ Robert R. Keatinge, *passim*.

⁸ See also Callison, *supra* note 6, §12:9, *Competition with Partnership*.

⁹ See, e.g., *Cass JV, LLC v. Host Int’l, Inc.*, No. 312-CV-00359, 2014 WL 3955366 (W.D. Ky. Aug. 13, 2014) (defendant granted summary judgement when plaintiff, one of two members in LLC, alleged that the defendant member had violated duty of loyalty by unilaterally pursuing subsequent term concession agreement; agreement between the plaintiff and defendant defined purpose of company as being the initial concession agreement); *Watkins v. PNC Bank, N.A.*, No. 2013-CA-001457-MR (Ky. App. Jan. 30, 2015) (complaint that institutional trustee failed to

satisfy Prudent Investor Rule dismissed where trust instrument directed trustee as to the assets to be held and trustee acted consistently therewith).

¹⁰ See also Ky. Rev. Stat. Ann. §275.005 (“A limited liability company may be organized under this chapter for any lawful purpose, including the provision of one (1) or more professional services conducted in or outside the Commonwealth.”); Del. Code Ann., tit. 6, §18-106(a) (“a limited liability company may carry on any lawful business, purpose or activity, whether or not for profit, with the exception of the business of banking as defined in § 126 of Title 8.”); Ind. Code. §23-18-2-1(a) (“Sec. 1. (a) A limited liability company may: (1) be organized under this article for any business, personal, or nonprofit purpose; and (2) conduct business in any state for any lawful purpose; unless a more limited purpose is set forth in its articles of organization.”).

¹¹ See also Unif. Part. Act. §31(1)(a).

¹² See Rev. Unif. Art. Act §602(b)(2), (c); see also Robert W. Hillman, Donald J. Weidner & Allan G. Donn, *The Revised Uniform Partnership Act §602, Authors’ Comment 3* (“Treatment of a dissolution as ‘wrongful’ carries a number of consequences. First, Section 602(c) renders the wrongfully dissociating partner liable in damages. Second, Section 803(a) limits the right to participate in the winding up of the partnership to partners who have not wrongfully dissociated. Third, Section 602(b)(2)(i), applicable to term partnerships, enables partners to withdraw (free of the taint of a wrongful dissociation) within ninety days after another partner’s wrongful dissociation. Finally, Section 802(2)(i), also applicable to term partnerships, provides that a wrongful dissociation launches the dissolution and winding up of a partnership unless within ninety days a majority in interest of the partners agree to continue the partnership.”).

¹³ No suggestion is intended that specificity as to a partnership intended to be for a term is not likewise necessary. See, e.g., *Zeibak v. Nasser*, 82 P2d 375 (Cal. 1932) (while partnership agreement was silent as to term, subject of partnership was to lease a theatre for a particular period, so partnership was for a particular term).

¹⁴ *Fischer v. Fischer*, 197 S.W.3d 98 (Ky. 2006).

¹⁵ *Id.*, at 102.

¹⁶ *Girard Bank v. Haley*, 332 A2d 443, 447 (Pa. 1975).

¹⁷ See also *Harshman v. Pantaleoni*, 741 N.Y.S.2d 348 (3rd Dept. 2002) (“as stated in the partnership agreement here, the only purposes of the partnership are ‘to purchase, hold, operate, improve, lease, and rent the real property ... and also ... to engage in the lumbering and farming thereof, and to lease fishing, hunting, and sporting rights thereto.’ These objectives are perpetual in nature, and place no time limitations on the duration of the partnership ... under the circumstances [to be] kept Supreme Court correctly found the partnership to have no definite term and to be, therefore, an at-will partnership terminated by the Plaintiff’s unequivocal election to dissolve it.”).

¹⁸ *Chandler Medical Building Partners v. Chandler Dental Group*, 855 P2d 787 (Ariz. Ct. App. Div. 1 1993).

¹⁹ 855 P2d at 794.

²⁰ See also, generally, Thomas E. Rutledge & Katharine M. Sagan, *An Amendment Too Far? Limits on the Ability of Less Than All Members to Amend the Operating Agreement*, 16 FLORIDA STATE UNIVERSITY BUSINESS REVIEW 1 (Spring 2017).

²¹ See also *Theater District Realty Corp. v. Appleby*, 986 N.Y.S.2d 113, 117 A.D.3d 596 (2014) (sale of building was outside ordinary course of corporation’s business).

²² See, e.g., Mich. Code §450.4515; Minn. Stat. §322B.833(2); N. D. Cent. Code §10-32-119(2); Cal. Corp. Code §17707.03(b) (2)-(5).

²³ See, e.g., Ky. Rev. Stat. Ann. §275.290(1); Revised Prototype Limited Liability Company Act §706(c), 67 Bus. Law. 117, 176 (Nov. 2011).

²⁴ *In re Arrow Investment Advisors, LLC*, 2009 WL 1101682 (Del. Ch. 2009).

²⁵ 2009 WL 1101682, *2 (note omitted).

²⁶ 2009 WL 1101682, *3 (footnote omitted).

²⁷ 2009 WL 1101682, *4.

²⁸ *PC Tower Center, Inc. v. Tower Center Dev. Assocs. Ltd. P’ship*, 1989 WL 63901, *6 (Del. Ch. June 8, 1989).

²⁹ 1989 WL 63901, *1.

³⁰ 1989 WL 63901, *5. See also *id.*:

[I]t is not possible to find tenants to occupy the Property. The current vacancy rate in the Dallas central business district is 25-30%. The Property is considered Class C space and there is a glut of Class A and B space on the market. Major financial concessions and renovations

are necessary in order to induce new tenants to relocate to the Property and the Partnership has no capital with which to engage in such a leasing project.

³¹ *Venture Sales, LLC v. Perkins*, 86 So3d 910 (Miss. 2012).

³² *McConnell v. Hunt Sports Ent.*, 32 Ohio App 3d 657 (1999).

³³ See also *Darwin Limes, L.L.C. v. Limes*, 2007 Ohio 2261, 2007 WL 1378357 (Ohio. App. May 11, 2007) (Interpreting purpose clause of LLC reading “The Company shall be to own and manage real estate and other investments.”).

³⁴ See, e.g., Ky. Rev. Stat. Ann. §275.290(1); Ind. Code §23-18-9-2; Tenn. Code §48-249-617(a).

³⁵ Index No. 605338/15 (Sup. Ct. Nassau County Dec. 10, 2015).

³⁶ See also Hillman et al., *supra* note 12, Authors’ Comment 5(a) (“Whether there exists an agreed term or undertaking for a given partnership cannot always be resolved by reference to the written partnership agreement.”).

³⁷ *Meyer*, 2015 WL 3746283, *4.

³⁸ *South Louisiana Ethanol L.L.C. v. CHS-SLE Land*, 161 So3d 83 (La. App. 4 Cir. 2015).

³⁹ *Id.*, at 96.

⁴⁰ *In the Matter of the Dissolution of 47th Road LLC*, 54 N.Y.S.3d 610, 54 Misc3d 1217(A) (2017).

⁴¹ 2017 NY Slip Op. 06170, 2017 WL 3496329 (2d Dept. Aug. 16, 2017). An excellent review of this decision and its place in the range of New York decisions on judicial dissolution is set forth by Peter Mahler in his blog *New York Business Divorce*; the posting is *Does Your LLC Agreement Have a Purposeless Purpose Clause?* (Aug. 21, 2017), available online at www.nybusinessdivorce.com/2017/08/articles/llcs/llc-agreement-purposeless-purpose-clause/.

⁴² 2017 WL 3496327, *2.

⁴³ See, e.g., Ky. Rev. Stat. Ann. §275.177 (providing, *inter alia*, that an operating agreement may provide that it may only be amended in a certain manner, including in a signed writing, which limitation will be specifically enforced to the exclusion of, for example, course of conduct amendment); *contrast* Rev. Prototype Limited Liability Company Act, *supra* note 23, §112(a) (“or as otherwise permitted by law”); Ala. Code §10A-5A-1.10(a) (same).

⁴⁴ Berkshire Hathaway started off as a textile company, while MacAndrews & Forbes was a licorice extract and chocolate distributor.

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