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OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-66-23

ZHANNETTA CHESHUN,

Plaintiff,

v.

SANJAY SIKAND,

Defendant.

OPINION

Decided March 31, 2025.

Law Office of Alexander Sakin, LLC (Alexander Sakin, Esq., appearing), attorneys for plaintiff.

Saul Ewing, LLP (Ronald Colicchio, Esq., and Melissa Clarke, Esq., appearing), attorneys for defendant.

FISHER, P.J.A.D. (t/a, retired on recall).

Defendant – one of two equal and managing members of a limited liability company – has moved, on the eve of trial,[1] for summary judgment in his favor dismissing the plaintiff-member's claims that allege, in part, breaches of the fiduciary duties defendant owed, or owes, the LLC. The matter has been fully briefed – and well briefed – by both sides. Despite defendant's forceful arguments, the court finds no merit in defendant's motion.

For starters, there is no dispute that plaintiff Zhannetta Cheshun and defendant Sanjay Sikand are the only two members – and equal members as well as co-managing members – of Mid Atlantic Pulmonary Research Associates, LLC (hereafter "the LLC"). Defendant Sikand's summary judgment motion attacks all four counts of Cheshun's complaint. Those counts assert that Sikand breached (1) the fiduciary duty he owed her and (2) the fiduciary duty he owed the LLC; plaintiff also seeks (3) a dissolution of the LLC pursuant to N.J.S.A. 42:2C-48, and (4) an accounting.

The motion, insofar as it seeks dismissal of the third and fourth claims, was dead on arrival. As to the former, Sikand too seeks a dissolution, so there seems to be little doubt about the viability of Cheshun's similar claim; indeed,

[1] The court previously extended the deadline contained in an earlier case management order for the filing of dispositive motions, and allowed this motion to be returnable on March 28, 2025, even though the trial date was scheduled for March 31, 2025.

Sikand hasn't persuasively explained why he may seek a dissolution while Cheshun cannot. The fourth cause of action, which seeks an accounting, also seems meritorious because there appears to be no dispute that when Sikand declared to Cheshun that he didn't want to proceed further with their business, he emptied the LLC's bank account; he apparently continues to retain those funds.[2] If nothing else, it seems clear Cheshun is entitled to an accounting of those funds. That accounting would include, at least, answers to the chief questions prompted by Sikand's undisputed actions: when was the fund taken, where was it put, what use (if any) was made of it since he took it, and where is it now?[3] And so, although plaintiff hasn't moved for summary judgment, it is difficult, when considering that part of Sikand's deposition quoted in footnote 2 below, to assume the court won't be compelling an accounting from Sikand. See N.J.S.A. 42:2C-39(b)(1)(a) (declaring the "fiduciary duty of loyalty . . . includes the duties . . . to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member . . . in the conduct or winding up of the company's activities").

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[2] When asked at his deposition whether it was true he "closed the LLC's bank account," Sikand answered "[y]es," and when asked what happened with the money, he testified it "wound up with me" and that he continues to retain the money. See Pb at 19 (and portions to the record cited there).

[3] Sikand's reply brief states only that the amount on deposit was approximately $3,000. See Drb at 3.

Turning to the other two counts – the alleged breach or breaches of Sikand's fiduciary duties to Cheshun and to the LLC – the record presents material and genuine factual disputes that can't be resolved by way of summary judgment. To start, the parties seem to mutually acknowledge that their rights and remedies are governed by statute, N.J.S.A. 42:2C-39, which imposes broad fiduciary obligations on LLC members.

The business the parties were conducting was created to secure and operate clinical drug trials. To conduct this business, the parties formed the LLC in October 2021. There was no operating agreement, but the parties apparently agreed they would equally split expenses and equally share profits, except Cheshun asserts that Sikand agreed to bear the office rent, a claim Sikand disputes. They also agreed to co-manage the business.

After the LLC's formation, Sikand sought a proper location for his medical office, from which the drug trials the LLC was conducting or were planning to conduct were to take place. That search was finalized in or about February 2022, thus seemingly marking the moment at which the LLC could proceed in earnest. Cheshun alleges she was then pursuing opportunities for the LLC with pharmaceutical companies, filling out applications for drug trials, ordering equipment, and training Sikand's staff on the administration of drug trials. The LLC opened a bank account in late May 2022.

Cheshun alleges that in early September 2022 the LLC entered into an agreement with a pharmaceutical company for a drug trial for an asthma medication and was on the verge of two other agreements later in September and in October 2022. But, around this same time, for reasons that might be partially in dispute, the relationship began to fall apart. Based on their memorialized communications, Cheshun objected to Sikand's office manager, Michele Press – his so-called "work wife" – having access to the bank account and was concerned about Press's perceived attempt to insinuate herself into some of the LLC's business decisions.[4]

Cheshun's resistance to these and other things are suggested by and revealed in a text she sent to Sikand, wherein she insisted that Press "stay[] away and only support[] what you and I ask for" and that Press "not get involved." Sakin Certification, Exhibit 14. An emphatic response came from Press,

[4] Cheshun claims that the trouble began when Press, who Sikand allowed to play "an outsized role" in the LLC, became interested in "grabbing a bigger piece of the pie," demanded signatory authority on the LLC's bank account, and personally sought to be an owner of "a part of the business." See Pb at 14-15. When Cheshun said no to those requests, the die was seemingly cast. Considering that the question about the viability of Cheshun's claims is put to the court by way of Sikand's summary judgment motion, the court will rule on the motion by assuming the truth of Cheshun's view of these communications and events. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (motion courts must "consider whether the competent evidential materials presented, when viewed in the light of the non-moving party" – here, Cheshun – "are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party").

ostensibly speaking on Sikand's behalf, declaring that "SANJAY IS OUT" coupled with a demand that Cheshun "[l]eave Sanjay alone." Id., Exhibit 15. On October 26, 2022, Cheshun emailed Sikand, stating, among other things, "I also understand that you want to close. No problem." See Db at 13-14. She, therefore, "propose[d] [a] friendly conclusion." Id. at 14 (emphasis added). On November 1, 2022, Sikand emailed Cheshun to state that "our professional relationship has ended" and "any prior agreements will be considered null and void." In applying the Brill standard, see, e.g., n.4, the court must assume that Cheshun, while apparently agreeing the relationship was doomed, was only "proposing" a conclusion, not that the game had ended, that all bets were off, and that the players were free to snatch up whatever chips they could find.

That is, the court concludes that it probably doesn't matter in this case whether there was a mutual understanding to disband or a unilateral decision by one or the other to end the relationship. To be sure, the LLC was headed toward a dissolution. But that doesn't mean either LLC member was entitled to invoke the laws of the Wild West and grab whatever they wanted. As both sides agree, because they have no operating agreement their disputes are governed by the Revised Uniform Limited Liability Company Act (RULLCA), N.J.S.A. 42:2C-1 to -94. The RULLCA contemplates that there be a civilized dissolution and an orderly winding down, N.J.S.A. 42:2C-39(b)(1)(a), and affirmatively recognizes

that a court may apply "principles of law and equity" to ensure a thoughtful resolution of such disputes, N.J.S.A. 42:2C-7, a process that would not approve of allowing members to simply help themselves to the remains of the LLC and its opportunities.

Judge Cardozo famously wrote for New York's highest court in Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1978) (quoted with approval and endorsed by Justice O'Hern for our Supreme Court in Muellenberg v. Bikon Corp., 143 N.J. 168, 177 (1996)), that joint venturers or copartners "owe to one another . . . the duty of the finest loyalty"; that "[m]any forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties." These parties were tethered by fiduciary bands that by law remain intact – even now – and until such time as the LLC is properly wound down and dissolved. In such a circumstance, an LLC member has no right to "glom" whatever assets or business opportunities an LLC may have possessed even though its members have expressed a desire to dissolve. Members must instead be guided by Judge Cardozo's wise words that partners owe each other "[n]ot honesty alone, but the punctilio of an honor the most sensitive." Meinhard, 249 N.Y. at 464, 164 N.E. at 546. The RULLCA's directions about managing-members' fiduciary duty of loyalty and the imposition of obligations to hold LLC property in trust and to account for "any

property, profit, or benefit derived by the member," N.J.S.A. 42:2C-39(b)(1), and the duty of all members to act in "good faith" and with "fair dealing," N.J.S.A. 42:2C-39(d), certainly encompasses the notions expressed by Judge Cardozo in Meinhard.

It was noted above – and seems undisputed – that the LLC's home base was Sikand's medical offices. Cheshun was kept from those offices after their falling-out,[5] leaving Sikand with a continuing opportunity to grab whatever assets and opportunities the LLC possessed.[6] If it can be proved – at the trial which will immediately follow this decision – that Sikand did follow through and benefit from the LLC's business opportunities,[7] the court would be fully

[5] Cheshun alleges that she was prevented from entering the premises. See Cheshun Cert. ¶ 45. When asked at his deposition whether he barred Cheshun from the LLC's offices, Sikand testified: "I would think so. I don't think she's allowed in my office if we're not doing business together." See Sikand Dep. at 154.

[6] The court is not presently saying that is what Sikand did, only that in applying the Brill standard to this motion, there is evidence to support or suggest a basis for Cheshun's claim that Sikand wrongfully benefitted from the LLC's business opportunities.

[7] Sikand seems to deny that any such thing occurred. But Cheshun alleges that in September 2022 the LLC was on the verge of entering into an agreement with one major pharmaceutical company about a drug for chronic obstructive pulmonary disease (COPD) and that, sometime after the parties' October-November 2022 communications, Sikand contracted with that company and is currently engaged in the COPD drug trial that should have belonged to the LLC. See Pb at 13 and citations to the record set forth there. The Brill standard requires that the court assume for the moment the truth of Cheshun's allegations.

empowered to impose a constructive trust, to award damages, and to impose any other relief that equity demands. And, even if Sikand's alleged self-help winding down or dissolution of the LLC was performed in good faith – although if that is so, where is Sikand's explanation to Cheshun about how he unilaterally wound down the business? – there are at least disputed questions about materials facts concerning what happened with the actual or prospective economic benefits the LLC may have had or did in fact obtain from third persons. In short, the parties' texts and emails quoted earlier did not immediately dissolve or wind down the LLC and did not immediately free the parties of the fiduciary obligations they owed each other and the LLC.[8] Sikand's motion and factual contentions, viewed in the light most favorable to Cheshun, appear to presume or be based on a premise that the parties' communications fully ended their relationship and that whatever the LLC possessed – money, office supplies, business opportunities –

[8] Sikand alternatively argues that he chose to dissociate himself from the LLC and therefore "did not owe either [Cheshun or the LLC] a duty following [that] decision." See Drb at 7. This too is erroneous because a dissociation presupposes that the LLC continues after that member's departure. If, in these circumstances, Sikand could simply dissociate himself and ostensibly relieve himself of all duties to Cheshun and the LLC, then by what right did he thereafter help himself to the LLC's money on deposit? That step alone runs counter to dissociation. Moreover, even if Sikand had dissociated himself, he still would not be entitled to tortiously compete against the LLC by taking advantage of the LLC's prospective business opportunities as a result of what he may have learned while associated with the LLC.

was there for anyone, even a managing-member, to take. Nothing could be further from the truth.

Motion denied.