NOT FOR PUBLICATION WITHOUT THE APPROVAL
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 May 7, 2025.

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

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

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

The parties' disputes, explored during a five-day bench trial, concern the short life and unhappy death of their limited liability company. As it turns out, there's nothing novel about the situation giving rise to the parties' claims. They simply had different expectations about their undertaking and soon found their differences irreconcilable. Like it would with any bad marriage, the court will decree, as the parties desire, a dissolution of the LLC; the court will also grant some of the monetary relief plaintiff seeks because of defendant's failure to responsibly participate in a winding down of the LLC.

I

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 (referred to throughout the trial as "MAPRA" but mostly referred to here as "the LLC"), which was dedicated to performing clinical drug trials. As the record reveals, an entity like this one requires a few essentials, namely: contacts with pharmaceutical entities, administrative savvy in this particular context, and willing patients. Plaintiff, who before, during and after has been involved in many drug trials for many years with other enterprises (P-4), including one which she operates with defendant's brother, was to provide the first two things; defendant, who was and still is running a medical practice in Ocean County, the third. Not long after the

parties formed their LLC[1] and began the process of preparing for and pursuing drug trials, disagreements arose and, before long, they ceased working together and the business became inactive.

Plaintiff commenced this action, alleging in four counts that defendant breached the fiduciary duty he owed her and the fiduciary duty he owed the LLC; she also seeks a dissolution of the LLC and an accounting. Defendant filed a counterclaim in which he alleges, in eight counts, that plaintiff breached the fiduciary duties she owed him and those she owed the LLC, and he too seeks the LLC's dissolution; defendant seeks as well an award of damages based on plaintiff's alleged defamatory conduct and fraud, and he further claims plaintiff has been unjustly enriched and that she breached their oral agreement about a COVID-19 prevalence study they performed in the spring of 2021, prior to MAPRA's formation.

Defendant moved for summary judgment on the eve of trial. The court denied that motion in its entirety for reasons set forth in a March 31, 2025 written opinion. Immediately, following that decision, a non-jury trial was conducted on March 31, and April 1, 2, 3, and 4, 2025, during which the court heard testimony from both plaintiff and defendant, as well as Alex Cheshun (an accountant and plaintiff's husband), Dr. Vinay Sikand (defendant's brother and

[1] The LLC was formed in October 2021 (P-17).

an equal member, with plaintiff, in PURE, LLC, which also conducts drug trials), and Michele Press (defendant's office manager). The parties provided their written post-trial summations on April 25, 2025; the parties were also permitted to file written responses to the other's summation by May 5, 2025, and those were received and have been considered.

II

Many relevant facts are undisputed. Both sides agree that because they had no written operating agreement their rights and liabilities with respect to this LLC, which was formed in this State, are governed by the Revised Uniform Limited Liability Company Act (RULLCA), N.J.S.A. 42:2C-1 to -94.

Although the teaming of plaintiff and defendant would have appeared to be a nice fit,[2] there is no dispute that the parties soon concluded their enterprise should not go forward. Much of the elicited testimony focused on who was to blame for this falling out. Their disagreements and differences seem to have begun when defendant or his office manager began questioning plaintiff's activities. Many of their questions focused on the types of expenses that the LLC might be expected to incur. The testimony of both defendant and his office

[2] Plaintiff had a long and successful track record – revealed in part by the successful relationship she had with defendant's brother in PURE, LLC – resulting from plaintiff's contacts in the industry. She, of course, cannot conduct such a business alone. A physician like defendant or his brother was needed, in part, to provide their expertise and the required number of patients.

manager reflects that defendant hadn't focused on the details about the expenses a drug trial generates. It appears to the court that defendant had previously observed how his brother had been involved with plaintiff in such matters, and he was looking for a piece of the action. When his office manager began asking for additional information – perhaps because, as plaintiff suspected, defendant's office manager wanted her own piece of the action – plaintiff began expressing her own concerns about the operation. This led to differences that seemed to reach a boiling point in October 2022, as reflected in various emails and text messages the parties then exchanged (P-2). Defendant expressed concerns about financial information that he thought wasn't being made available, that he might be expected to bear more than his fair share of the expenses, and that he felt plaintiff was being clandestine (P-2 at page 9[3]). He also dredged up questions about the income he had earned in the past when he worked as a sub-investigator for PURE, LLC, which was plaintiff's and his brother's similar LLC that operated out of the latter's medical office.

In the midst of their dialogue and exploration of these concerns, plaintiff provided, as requested by defendant, the amount of the payments made by PURE

[3] In this text message, defendant demanded that they "do business only one way, balance sheets are maintained and looked over by my accountant. [A]ll expenses are shared and the remaining profit gets shared equally. [I]t doesn't sound like you are interested in this. [I]f you are not I do not think we can work together."

to defendant from 2016 to 2021, which ranged from a low of $1,000 in 2018 to a high of $5,586 in 2021 (P-2 at page 4).[4] This information seems to have ignited further concerns for defendant, since he felt PURE grossly underpaid him to a degree he found, as he testified, "insulting." It is not clear, however, why defendant didn't come to this conclusion sooner, since there is no claim that the information provided was inaccurate or that he didn't actually receive PURE's payments at the time. If defendant felt the compensation he received from PURE was "insulting," the time to complain was then, not now. In any event, as it pertains to this matter, the court finds defendant wasn't so much concerned about his PURE compensation as he was looking for an excuse to separate from plaintiff.

Defendant also claims that plaintiff wasn't being "transparent" about PURE's past performance and that this raised questions for him about MAPRA's future performance. Plaintiff responded rather quickly to his concerns and his questions; she emphasized they would "work 50/50," that her husband Alex was the LLC's CFO but that Alex would "work with [defendant's] accountant"; and

[4] There is no claim in this action by defendant against PURE, which is not a party to this suit, despite defendant's attempts – even as late as his reply summation – to claim entitlement to relief against plaintiff for PURE's alleged breach of contract. Defendant was employed by PURE, not plaintiff, so any claim he may have to damages based on compensation he believes he should have but didn't receive in the past is a claim that would have to be pursued against PURE only.

she sought defendant's agreement that "Michelle [Press] [would] stay[]" away and that Press should only "support[] what [she and defendant] ask for" (P-2 at page 10).[5] Clearly, plaintiff viewed Michele Press as an impediment to a productive relationship and, in response, defendant viewed plaintiff's uneasiness or unhappiness with Press's involvement as something he could not live with.[6]

As noted above, the parties would have this court say who was right and who was wrong about their disagreements. The court finds no villain here. It's just one of those situations best explained by songwriter Dave Mason's "We Just Disagree": "there ain't no good guys, there ain't no bad guys, there's only you and me and we just disagree." No consensus was reached in October 2022 about their differences except their agreement to mutually part ways.

---

[5] Plaintiff objected to Press – defendant's so-called "work wife" – having access to the LLC's bank account and was concerned about Press's perceived attempt to insinuate herself into some of the LLC's business decisions.

[6] Another reason offered by defendant for ending the parties' business relationship was his concern about document-storage costs. One aspect of drug-trial contracts deals with document storage, something necessitated because there may be future regulatory proceedings regarding the drugs in question. Plaintiff normally included provisions in the drug-trial contracts along these lines and routinely stored and retained paperwork at Iron Mountain. Defendant claims to have found this exorbitant and unnecessary, relying only on what an unidentified "friend" told him. The court finds no merit in defendant's claim that the costs were either exorbitant or could be eliminated by returning the paperwork to the drug manufacturer, based on plaintiff's credible testimony to the contrary.

The parties, as mentioned, had no operating agreement, but they had an oral understanding that they would jointly manage the LLC and that they would equally split expenses and profits. One exception from the sharing agreement may have been the cost of the rent being paid by defendant for space he rented in the same building as his medical office for the LLC's work. Defendant claims he and plaintiff were to share that particular expense, and in evidence is a check plaintiff sent him for $400 that he claims was her payment toward rent (that word is contained in the check's memo section (D-9)), and yet his counterclaim asserted that they orally agreed "to jointly manage and operate MAPRA . . . whereby [plaintiff] agreed to split expenses (except for office rent) with [him] 50/50." Counterclaim, ¶ 141 (emphasis added).[7] They apparently expressed no other details about how they would operate.

And so, to summarize, as the practice began in earnest, areas of disagreement quickly arose and led to defendant's desire to end things. Even though plaintiff repeatedly sought a meeting to discuss these things, defendant was finished with the whole subject and his office manager texted plaintiff on defendant's behalf that the relationship was over: "SANJAY IS OUT" and plaintiff should "[l]eave Sanjay alone" (P-1 at 091).

[7] The allegation in the counterclaim is evidential since it was a "statement by a person authorized . . . to make a statement concerning the subject." See N.J.R.E. 803(b)(3). This dispute about rent will be discussed more fully later.

On October 26, 2022, plaintiff emailed defendant, stating, among other things, "I also understand that you want to close.[8] I see. No problem"; she, therefore, "propose[d] [a] friendly conclusion" (P-3 at page 3). But defendant wouldn't sit down with her or discuss it further. On November 1, 2022, defendant emailed plaintiff to state that "our professional relationship has ended" and "any prior agreements will be considered null and void" (D-2). Plaintiff continued to make entreaties but obtained no response of any sort.

The court finds from these clear statements by the parties to each other that they had mutually agreed to bring an end to the LLC at that time.

III

To repeat, without an operating agreement that might otherwise have limited or defined the events that might constitute a ground for dissolution, the parties' relationship as it pertained to the LLC was (and is) governed by the RULLCA, which is very clear on the subject. N.J.S.A. 42:2C-48(a) recognizes, as occurred here, that an LLC may be dissolved with "the consent of all the members" (subsection 2) or by judicial fiat on the grounds that "it is not reasonably practicable to carry on the company's activities in conformity with . . . the operating agreement" (subsection 4(b)). If there is anything that's clear in this case, it is that the parties had agreed toward the end of October 2022 that

[8] By "close" plaintiff meant "close the LLC's doors" or "close the LLC's business."

the work of the LLC should not go forward, that, therefore, it was "not reasonably practicable" for the business to continue, and that the LLC should be dissolved. That doesn't mean, however, that these mere expressions of a desire to part did, there and then, caused a dissolution.[9] More was required. Plaintiff understood this; defendant apparently didn't.

That is, to the extent it matters to the real issues in this case, plaintiff's response to this circumstance – the agreement that the LLC's business not go forward – was appropriate while defendant's was not. Plaintiff, as already mentioned, agreed to disagree and "proposed" sitting down and winding down the LLC – what she called a "friendly conclusion" (P-3). Defendant, on the other hand, just simply refused to speak with plaintiff or even recognize her existence. In shutting plaintiff out, however, defendant ignored the fact that, among other things: the LLC had a bank account with cash on hand; it had a contract with Parexel International LLC to run a trial on a drug manufactured by AstraZeneca (what the parties have referred to as the Chronicle study (P-5)); it was pursuing

[9] Defendant seems to be mistaken in this regard the way The Office's main character, Michael Scott, misunderstood how to seek bankruptcy protection; just as Michael Scott couldn't go into bankruptcy by stepping out of his office and shouting "I declare bankruptcy," defendant also couldn't declare a dissolution just by saying so.

two other drug-trial prospects (see P-10 and P-15[10]); it had a small amount of equipment; and it had office space that, in defendant's words, was vacant "and gathering dust." Due to defendant's silence about how to deal with these assets, and the state of un-woundedness the LLC was in, plaintiff was forced to commence this action.

As mentioned in the court's March 31, 2025 opinion denying summary judgment, if the parties were mutually desirous of ending their relationship – and they clearly were – that did not mean they were free to grab whatever assets or business opportunities the LLC possessed or was pursuing. "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." See Opinion (March 31, 2025) at 6-7.

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

[10] One was with a member of the Roche Group of pharmaceutical companies (P-10) and the other was for an AstraZeneca drug; the latter was referred to in the testimony as the Oberon study (P-15).

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."

There is no doubt, and the court so finds, that 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 possess 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 recognizes that managing-members' owe fiduciary duties to each other and the LLC, and it imposes obligations on members 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). All LLC members have an obligation to act in "good faith" and with "fair dealing," N.J.S.A. 42:2C-39(d), toward all others. Those legislatively-mandated duties certainly encompass the notions expressed by Judge Cardozo in Meinhard.

IV

So, in that spirit, the court approaches the situation presented by reference to the credible evidence elicited at trial. That is, it is undisputed – because both parties seek it – that the LLC must be dissolved. And, because the LLC must be dissolved, then it must be wound down and a disposition must be made of its few assets. The court makes the following findings about the assets the LLC possesses.

First, even if plaintiff had agreed – contrary to what defendant asserted in his own counterclaim[11] – to share in the leasing of the LLC's office space, defendant excluded her from that office space; he alone had the capacity to use the office space because of his unilateral actions and his dominion over the space.

Second, the court turns to the contract the LLC had entered into, and the two other opportunities plaintiff was pursuing on the LLC's behalf. The court

[11] The court finds that the parties did not agree that any rent the LLC might be required to pay would be shared equally; instead, the court finds that this was a burden that would rest only on defendant. That's because the LLC itself required very little space beyond that which defendant had or would need to care for his patients with or without drug trials. Although the $400 check that bears the notation "rent" gives pause, a closer examination reveals that the check was issued in August 2021 (D-9), months before the LLC was formed in October 21 (P-17) and related, as plaintiff credibly testified, to some other enterprise, likely the COVID study that was conducted in the Spring of 2021. In any event, the court ultimately rests its finding that defendant alone was to bear the LLC's rent expenses on plaintiff's testimony, which the court found far more credible than defendant's.

finds that the first (the agreement to perform the Chronicle study) was an LLC asset but that the two other opportunities that never culminated in a binding contract are not.

As for the existing Chronicle-study contract, the evidence reveals that following the Fall 2022 agreement to dissolve the LLC, defendant created his own LLC (Proxygen, LLC) and contracted behind plaintiff's and the LLC's backs to do the Chronicle study. When defendant took that step, he acted as a constructive trustee for the LLC and whatever he earned on Proxygen's contract should be viewed as having been done on the LLC's behalf. The court finds from credible evidence (P-28) that profits in the amount of $7,425 were earned in that respect by the time Proxygen stopped participating sometime in 2023 because it was either unable to continue (see D-23) or because the litigation called into question his right to pursue it.

The other two prospective clinical trials never reached the contract stage by the time the parties agreed to dissolve. Contrary to defendant's arguments, the court doesn't find that the potential for obtaining those contracts was too speculative to warrant the imposition of a remedy; indeed, his own claim for damages based on work done on one of these by PURE would suggest defendant doesn't view these opportunities as illusory or speculative. It seems from plaintiff's credible testimony that the LLC would likely have entered into

agreements on these two prospects. But the court also finds that the parties' mutual understanding and agreement to go their separate ways compels a finding that they also mutually agreed not to enter into those other two potential contractual agreements and, therefore, there should be no relief for these nascent prospective business opportunities. As noted earlier, the court finds no breach by either party with respect to the dissolution of the LLC. They mutually agreed to part and those steps the LLC might have or could have taken had it continued being a going concern should not, therefore, give rise to an award of damages or relief for those roads not taken.

Third, the LLC's bank account held $3,500. Defendant testified that after he and plaintiff agreed that the LLC would be dissolved he closed the account and took possession of the funds. He did not tell that to plaintiff or seek her agreement, and, to this day – more than two years later – he alone continues to hold those funds.

Before dealing with what is to become of the few assets mentioned above, as well as the consequences of defendant's breaches of his fiduciary duties in failing to deal with the need to wind down the LLC, the court turns to the other claims asserted in the complaint and counterclaim.

V

First, the court finds no other breach of a fiduciary duty by either party in connection with the dissolution; the parties simply found they weren't on the same page and mutually agreed to bring an end to their relationship. That the parties disagreed about the way in which plaintiff would keep defendant informed about those things that she was doing for the LLC does not amount to such a breach even if plaintiff was wrong or misguided about how she intended to proceed. It was just a difference in style and expectation about which Dave Mason has already spoken. Beyond that, it isn't clear to the court what the parties believe was some other breach of the duties they owed each other as LLC members or the duties they owed to the LLC itself,[12] and so the court finds no other breach.

Second, defendant's breach of contract claim is based on the assertion that plaintiff "opaquely and unilaterally managed MAPRA to the detriment of MAPRA." That claim is no different than the assertions that gave rise to the

[12] Since they agreed to dissolve the LLC, the LLC had no expectation of other business opportunities or interests being pursued. Even if either party had not adequately protected any other interests or assets, it could cause no harm to the moribund LLC. By agreeing to go their separate ways, the parties were free to compete with each other for those prospective economic benefits on behalf of their own drug-trial LLCs with the exception, as already observed, that neither was free to interfere with the one contract the LLC had entered into. When defendant did that, he acted as a constructive trustee for the parties' LLC.

claim that the LLC should be dissolved. And it has not been shown that – even if cognizable or even if it had a factual foundation, which it doesn't – what damages the LLC or plaintiff may have incurred as a result.

Third, defendant claims in the last count of his counterclaim that prior to the LLC's formation he and plaintiff had an oral agreement regarding the conducting of a COVID study and that plaintiff "improperly withheld tens of thousands of dollars" from him. There was no evidence – only unsupported innuendo and non-credible testimony from defendant – to support that claim. The same may be said for defendant's unjust enrichment claim, in which he alleges plaintiff "is in receipt of and holds tens of thousands of dollars, at least, rightly belonging to [defendant] as a result of their business dealings." Counterclaim, ¶ 136. There was no evidence to support that allegation. Those two counts will be dismissed.

Fourth, defendant claims he was defrauded by plaintiff because she falsely "presented herself as a registered nurse in order to convince [him] that she was knowledgeable and to persuade [defendant] that she was credible in the industry when, in fact, she is not a registered nurse." Counterclaim, ¶ 124. To be sure, plaintiff concedes she was not then and is not now a registered nurse but she also credibly testified that she never represented herself as a registered nurse, only a graduate nurse and, indeed, all of her many emails in the record list the

following acronyms after her name: "CRC, GN, BS, CEO" (see, e.g., P-19), meaning, respectively, clinical research coordinator, graduate nurse, bachelor of science, and chief executive officer of AZ Perfection, her own company. While perhaps grandiose, those acronyms did not misrepresent plaintiff's positions. The court simply does not believe the testimony of either defendant or his office manager that plaintiff ever asserted she was a registered nurse to them or anyone else. As stated elsewhere herein, defendant was simply looking for anything he could throw at plaintiff to justify the imperiousness with which he both abandoned the LLC and ignored plaintiff's desire to sit down and wrap things up. This particular claim was just one more attempt to unreasonably smear plaintiff.

The court lastly rejects defendant's claim that he dissociated himself from the LLC, perhaps as a basis to avoid any liability for his failure to consult about how to dissolve and wind down the LLC. This claim has no merit. If, in these circumstances, defendant could simply dissociate himself and ostensibly relieve himself of all duties to plaintiff and the LLC, then by what right did he thereafter help himself to the LLC's money on deposit and exclude plaintiff from what he claims was the LLC's office space? Dissociation, in the sense in which defendant must mean it, is a voluntary withdrawal or resignation. See N.J.S.A. 42:2C-45(a). Clearly, defendant was not forced from the LLC by another

member, N.J.S.A. 42:2C-46(b), nor did legal impediments arise that might have warranted his departure, see, e.g., N.J.S.A. 42:2C-45(b)(2)(b). The alleged departure, in his own view, was something he alone did freely and voluntarily.

But a voluntary dissociation from an LLC, as defendant claims it, presupposes that the LLC would go on without him. Defendant, however, didn't act that way. If he was just walking away, then he would not have removed the LLC's money from the bank and put it in his own pocket, and he would not have exercised dominion over what he claimed was the LLC's offices. Those acts of exercising dominion over LLC assets run counter to defendant's claim that he freely and expressly dissociated himself from the LLC.

Even if it could be said that defendant dissociated himself from the LLC, the law still imposed on him the same obligations he had until such time as the LLC was dissolved. N.J.S.A. 42:2C-47(b) (declaring that a person's dissociation "does not of itself discharge the person from any . . . obligation . . . which the person incurred while a member"). So, the dissociation claim here – even if meritorious – would not change the outcome.

VI

And so, what does all this mean and how does all this fit into a resolution of the parties' disputes? It's simply this. That which the LLC owned at the time

the parties' agreed to call it quits is to be divided equally in accordance with their agreement to share expenses and profits equally.

To start, there is the fund held by the LLC at Chase Bank that defendant withdrew; this should be equally divided.

Next, to the extent defendant incurred the expense of having rented an office for the LLC, the court provides nothing to him. There was no agreement between the parties that plaintiff would share in the rent. Even if plaintiff had so agreed, defendant imperiously barred plaintiff from the premises and exerted dominion over this office space once they agreed to end the business, and so he should be left with the burden of this allegedly unused office space to which he helped himself.[13]

As noted above, defendant also took over the performance of the contract the LLC had on one clinical trial (the Chronicle study) although his new clinical trial company (Proxygen) did not make much on it. Nevertheless, by usurping that LLC asset, law and equity view defendant as having acted in trust for the

[13] As noted, defendant claimed in his testimony that the office just "gathered dust," but the court does not credit that testimony or the testimony of his office manager because the court, for the most part, does not find them credible. Their testimony was clearly motivated by their hostility toward plaintiff and the protection of their own self-interests. The court finds that it is more likely than not that defendant ended up using that space in the conducting of his medical practice. But, even if he didn't, he had an obligation to mitigate this loss by making some other arrangement for that space and he has utterly failed to show that he made any attempt to do so.

LLC. 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"). The profit earned by Proxygen ($7,425) should be shared with plaintiff as if the work was done by the LLC as originally anticipated.

The court finds no merit in plaintiff's claim to a similar award for that which the LLC might have earned from the two other prospective contracts plaintiff was in the process of negotiating when the parties agreed to dissolve the LLC. The same must be said for defendant's claim that plaintiff diverted the same studies to PURE. That should be the result because the parties agreed to dissolve their LLC, leaving those prospects to whoever might come along – including themselves or some other iteration, like Proxygen or like plaintiff's other similar company, PURE – in the future. And that is evidenced by, among other things, plaintiff's own statements to the entities that were looking to work with the LLC that are featured in defendant's May 5, 2025 reply summation. That is, both parties agreed that the LLC would not pursue these other drug trials and would, quite simply, do nothing further but wind down and dissolve the LLC, so neither are entitled to either damages or an accounting for that which

they believe the LLC would have done or what it might have earned in the future if they had not agreed to dissolve the LLC.

VII

The court lastly considers whether counsel fees should be awarded in favor of either party. N.J.S.A. 42:2C-48(c) authorizes such an award when a party to a proceeding brought under either subsection (4) or (5) of N.J.S.A. 42:2C-48(a) "has acted vexatiously, or otherwise not in good faith." It seems to this court that the refusal of an LLC member to cooperate in the dissolution of the LLC once the parties have agreed to dissolve, constitutes the type of vexatiousness or the lack of good faith that the Legislature intended to sanction through fee shifting. It was simply irresponsible for defendant to turn his back on the situation, while at the same time retaining LLC assets, and refusing to speak about an orderly dissolution with his soon-to-be former partner, who repeatedly urged a "friendly conclusion." She got nowhere informally and was thus relegated to the only remaining avenue to end their relationship: this lawsuit.

That, however, doesn't mean plaintiff is entitled to all the fees she has incurred in this matter. Far from it. What was at stake in regard to that in which defendant acted in bad faith was a comparatively small thing. That is, this lawsuit seems to have focused largely on the placing of fault on the dissolution

and the pursuit of remedies that have been rejected, such as the profits the LLC might have earned had it gone forward. The bad faith or vexatiousness relates only to defendant's refusal to responsibly participate in a winding down of the LLC's affairs, as best evidenced by his unilateral closing of the LLC bank account and his retention of the funds on deposit, and plaintiff's pursuit of relief for defendant having usurped the Chronicle study. Plaintiff should be awarded a counsel fee, under N.J.S.A. 42:2C-48(c), for her pursuit of dissolution of the LLC and for the winding down and disposition of the assets the LLC then possessed. In short, the fee to which plaintiff is entitled will be related to that outcome and not those things that have not been awarded. The fixing of that amount, however, must await plaintiff's submission of a certification of services, any response from defendant, and the court's application of the principles set forth in Rendine v. Pantzer, 141 N.J. 292, 316-20 (1995) and RPC 1.5(a).

* * *

Judgment has been entered dissolving the LLC, imposing a monetary judgment in plaintiff's favor and against defendant in the amount of $5,462.50, and declaring plaintiff's entitlement to counsel fees in an amount to be determined within the time frame permitted, together with costs to be taxed in

plaintiff's favor upon her submission of a bill of costs, pursuant to N.J.S.A. 22A:2-8.