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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-76-22

HARRY JAY LEVIN, individually
And derivatively on behalf of
BAJA UNLIMITED, LLC,

Plaintiff,

v.

MICHAEL SWEIGART,

Defendant.

AMENDED OPINION

Decided August 21, 2025.

Levin & Associates (Harry Jay Levin, Esq., appearing), and Giordano, Halleran & Ciesla (Michael J. Canning, Esq., appearing), attorneys for plaintiff.

Stapleton Segal Cochran LLC (John S. Stapleton, Esq., and Jonathan L. Cochran, Esq., appearing), attorneys for defendant.

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

Having recently found after a nonjury trial that a minority member was oppressed by the majority member of the limited liability company in question, the court must now determine the meaning and scope of N.J.S.A. 42:2C-48(c), which allows for a fee award when the nonprevailing party in such an action has acted vexatiously or in bad faith. Apparently, no court has previously attempted to interpret this statute. And while the New Jersey Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 to -94, is based on the Uniform Limited Liability Company Act, the latter doesn't include a fee-shifting provision, thus troubling an understanding of what our Legislature might have had in mind when enacting N.J.S.A. 42:2C-48(c).

To put the issue in perspective, this court previously found after a three-day trial that plaintiff Harry Jay Levin, a 30% member and an employee of Baja Unlimited, LLC, was oppressed in various ways by defendant Michael Sweigart, the owner of the LLC's other 70%. That decision prompted this case's next phase: a consideration of the remedy or remedies that ought to be awarded. See Opinion (Feb. 18, 2025) at 37. But, before the case could reach that next phase, Levin moved under N.J.S.A. 42:2C-48(c), and N.J.S.A. 2A:15-59.1, for an award of the more than $350,000 in counsel fees he claims to have incurred. For the following reasons, the court grants in part but denies the rest of Levin's motion.

The court starts with a recognition that there is nothing about the findings of oppressive conduct delineated in the court's prior opinion that should be equated with the frivolous requirement of N.J.S.A. 2A:15-59.1. The parties' rights emanating from their membership in the LLC – a critical part of the claim – were never crystal clear. Indeed, both parties had assumed for the longest time they had never entered into a written operating agreement. Only much later – twenty months after the suit was commenced and quite literally on the eve of a summary judgment motion's return date, see Yannacone Certification (Feb. 5, 2024), ¶ 2[1] – did Levin produce an undated, two-page "shareholder/partnership" agreement both parties had apparently forgotten. That document, id., Exhibit A, which offered only bareboned expressions of their intentions, hardly clarified how the parties had agreed to operate or what they both expected from their relationship to a degree that would preclude any characterization of any dispute about or opposition to it as frivolous. That necessary understanding about the scope of their relationship couldn't be pinned down or adequately appreciated until the matter was tried. This alone precludes a finding that Sweigart's resistance to Levin's claim that Sweigart frustrated his reasonable expectations was frivolous. N.J.S.A. 2A:15-59.1(a)(1) allows for an award of fees only when

[1] The certification claimed that the document was found the day before the motion's return date at 4:01 p.m.

a court finds "a complaint, counterclaim, cross-claim or defense of the nonprevailing person was frivolous"; Sweigart filed no complaint, counterclaim, or cross-claim, he only filed an answer and thereafter "defen[ded]" against Levin's suit.[2] His defense has not been frivolous within the statute's meaning.

The real question posed by Levin's motion is whether or to what extent a prevailing minority member in an oppression action against a majority member is entitled to counsel fees. The New Jersey Revised Uniform Limited Liability Company Act (the Act), largely based on the Model Uniform Limited Liability Company Act, differs in that it allows a court to award fees in the following limited respect:

> If the court determines that any party to a proceeding brought under [N.J.S.A. 42:2C-48(a)(4) or (5)] has acted vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including counsel fees incurred in connection with the action, to the injured party or parties.
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> [N.J.S.A. 42:2C-48(c) (emphasis added).]

This provision, or anything like it, cannot be found in the model act. Since the parties' written or oral submissions had not recognized this, the court allowed

[2] It is worth observing that at an early stage of this case the parties consented to an order, which was entered on August 1, 2022, that required the pendente lite payment of Levin's employment wages. Sweigart's consent to and compliance with this order for the past three years hardly bespeaks a frivolous approach toward Levin's rights as either a member or employee of the LLC.

them additional time to provide supplemental briefs with the hopes of attaining enlightenment about whether there was a particular reason why our Legislature departed from the model act in this respect and what it was that the Legislature had the intention to remedy, so that N.J.S.A. 42:2C-48(c) may be properly applied here. The parties' recent forceful submissions reveal there is nothing in the available but limited legislative history that would illuminate what it was the Legislature intended to accomplish by enacting N.J.S.A. 42:2C-48(c). The court is therefore left to ascertain this statute's meaning and scope from the overall tenor of the Act and the meaning of the words the Legislature employed. See, e.g., D'Annunzio v. Prudential Ins. Co. of Am., 192 N.J. 110, 119-20 (2007).

What's initially noteworthy about N.J.S.A. 42:2C-48(c) is its triggering verb and that verb's tense: "has acted." This suggests to the court that the focus, and the search for vexatiousness, must be placed on the nonprevailing party's pre-suit conduct. Another verb and its tense must also be considered; the statute directs that the fees to be awarded are those "incurred" in the action, obviously meaning the oppression suit, as the statute's next five words ("in connection with the action") conclusively demonstrate. So, applying the plain, unambiguous meaning of these words, see In re Civil Commitment of W.W., 245 N.J. 438, 449 (2021), the court concludes the statute authorizes an award of fees only

when they are incurred in the oppression suit and were caused by the nonprevailing party's pre-suit vexatious conduct.[3]

With that understanding, the court must next consider whether, in this case, Sweigart acted "vexatiously, or otherwise not in good faith" in relevant events preceding this lawsuit. In applying this standard, the court must reject Levin's argument that the prior findings of oppression are sufficient. They aren't. If the Legislature had intended to shift the burden of counsel fees – creating an exception to the American rule[4] – whenever a majority member oppresses a minority member[5] it could have dispensed with the "vexatiously . .

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[3] This seems logical because, when N.J.S.A. 42:2C-48(c) was enacted, there already existed legislative and rule-based fonts for the awarding of fees when a litigant acts frivolously or in bad faith in the prosecution or defense of the action itself. See N.J.S.A. 2A:15-59.1; R. 1:4-8. The Legislature was not likely reincorporating that authority by enacting N.J.S.A. 42:2C-48(c); it was clearly attempting to provide a remedy that did not previously exist in other statutes or rules.

[4] The American Rule, to which our courts "traditionally adhere[]," Walker v. Giuffre, 209 N.J. 124, 127 (2012) – that "prohibits recovery of counsel fees by the prevailing party against the losing party," In re Niles Trust, 176 N.J. 282, 294 (2003), absent authorization in a contract, statute, or court rule, Walker, 209 N.J. at 127 – is based on a "strong public policy" that favors "(1) unrestricted access to the courts for all persons; (2) ensuring equity by not penalizing persons for exercising their right to litigate a dispute, even if they should lose; and (3) administrative convenience," Niles, 176 N.J. at 293-94.

[5] The court is focused here on the conduct of the majority member because that is what is relevant to this motion. In so focusing, the court does not mean to suggest – and offers no view – about whether a majority member could obtain

. not in good faith" requirement it included in N.J.S.A. 42:2C-48(c). Instead, the Legislature, by including that language, must have intended to impose a higher burden on the prevailing party; it must have meant that fees could only be awarded in exceptional cases. To put it in basketball terms, the Legislature did not intend to authorize the court to award fees for just any foul; only a flagrant foul will do. To allow a fee to the prevailing party, the nonprevailing party's conduct must have been so out of bounds, so obviously contrary to what is right and proper as to truly earn the label "vexatious" – a label that connotes conduct with no hope of vindication, laced with bad faith, and driven by a desire to harass, distress, or deeply annoy.

In arguing for a further limitation on the statute's scope, Sweigart contends that N.J.S.A. 42:2C-48(c) has no application here because Levin has neither demanded in his complaint nor otherwise pursued a judgment of dissolution. The premise for this contention is certainly true; Levin's suit did not seek dissolution, and he does not seek it now. Sweigart contends such a claim is a condition precedent to a fee award under the Act because he believes N.J.S.A. 42:2C-48, which contains the fee-shifting provision in question,

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an award of fees under this statute for a minority member's vexatious conduct. That's another question for another day.

presupposes the assertion of a claim for dissolution, as N.J.S.A. 42:2C-48's title[6] connotes, and as the phrasing of subsection (a)[7] further suggests. The court rejects this theory. While subsection (a) certainly governs and limits the court's authority to dissolve a limited liability company, subsection (b) recognizes that a court "may order . . . a remedy other than dissolution," and describes those other remedies. All this persuades that while the Legislature was specific in subsection (a) about when dissolution may be decreed, it also recognized in subsection (b) that there are instances when some less drastic remedy might be appropriate, and logic therefore suggests that the fee-shifting provision set forth in subsection (c) must be understood in that overall context – that the three subsections should be read in harmony, In re Passaic County Util. Auth., 164 N.J. 270, 300 (2000), with respect to the subject matter of the other statutory provisions, Brown v. Brown, 86 N.J. 565, 577 (1981), and with an appreciation for how the Legislature organized the Act's many provisions, Schadrack v. K.P. Burke Builder, LLC, 407 N.J. Super. 153, 174 (App. Div. 2009). So, the court rejects the contention that fees are available only when dissolution has been

[6] "Events causing dissolution."

[7] The statute begins with: "[a] limited liability company is dissolved . . . upon the occurrence of any of the following . . . ."

affirmatively sought. The Legislature likely intended a broader application than that proposed by Sweigart.

One other statutory parameter warrants discussion. Levin seems to proceed on an assumption that a finding of vexatiousness or bad faith authorizes an award of all fees he incurred in this lawsuit. See Pb (July 28, 2025) at 11. Not so. The fees available to a prevailing party – if vexatiousness or bad faith is proven – are only those that were proximately caused by the vexatious conduct, not those incurred in the pursuit of relief because of other conduct not fitting that label, and certainly not those claims on which the moving party failed to succeed.

Based on the court's understanding of the events that led to this suit, as more fully explained in the court's prior decision, there is only one aspect of the many factual assertions that compels this court's conclusion that Sweigart acted vexatiously or in bad faith, and that is his contention that Levin violated RPC 1.8(a) or that Levin otherwise acted "improperly and unethically" when he acquired his interest in the LLC. See Opinion (Feb. 18, 2025) at 21-22. The evidence overwhelmingly revealed that Levin complied with RPC 1.8(a) and that his acquisition of an interest in the LLC from Sweigart had been entirely above board. This was so clear that a judge presiding over this matter at an earlier stage found the circumstances undisputed and granted partial summary

judgment in Levin's favor on that issue. By alleging ethical improprieties during the parties' pre-suit contretemps, Sweigart acted vexatiously; he undoubtedly used this baseless assertion as the means for wielding undue leverage in the hopes of securing a favorable resolution of Levin's demand for a buyout. Levin should be compensated for having to pursue that part of this suit and in securing a declaration that he acted appropriately and legitimately when he became the rightful owner of 30% of the LLC. But, as already observed, there was nothing vexatious or in bad faith in Sweigart's other conduct of which Levin complains.

For all these reasons, the court grants Levin's motion for a reasonable fee with respect to Sweigart's assertion of an ethical violation. The current moving papers, however, defy or, at least, unreasonably frustrate, the court's ability to quantify such an award. Indeed, while it is de rigueur for those seeking fee awards to provide the barest of certifications that do little more than attach unenlightening invoices, such a submission is hardly helpful to a court charged with determining the fee lodestar. Levin is therefore directed to provide a more fulsome and detailed description of the fees incurred in seeking vindication of his position that he did not act unethically or inconsistently with RPC 1.8(a).

Levin's certification should be submitted within seven days of the date of this decision. Sweigart may respond within the next seven days, following which

the court will make findings about the lodestar and quantify the reasonable fee to which Levin is entitled. An appropriate order has been entered.