

SUPREME COURT OF NEW HAMPSHIRE

Mark E. McDonough v. Patrick M. McDonough & a.

169 N.H. 537 (2016) · No. Merrimack No. 2015-0694 · Decided December 23, 2016

SUMMARY

The New Hampshire Supreme Court affirmed summary judgment for the defendants in a dispute over whether TASC Technical Services, LLC was required to dissolve on September 30, 2015. The court held that TASC's operating agreement and New Hampshire's Limited Liability Company Act permitted a majority of the members to revoke the dissolution or otherwise continue the company. The court declined to address the plaintiff's argument concerning compensation upon withdrawal because it was not preserved for appellate review.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Dalianis, C.J.; Hicks, J.; Conboy, J.; Lynn, J.
JURISDICTION	New Hampshire
DECIDED	December 23, 2016
DOCKET	Merrimack No. 2015-0694
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mark E. McDonough appealed from an order of the Superior Court denying his motion for summary judgment and granting summary judgment to the defendants in his declaratory action concerning whether TASC Technical Services, LLC was required to dissolve on September 30, 2015.
STANDARD OF REVIEW	The court reviews summary-judgment rulings by considering the evidence in the light most favorable to each nonmoving party and determining de novo whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. Statutory interpretation and interpretation of the operating agreement are also reviewed de novo.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Mark E. McDonough v. Patrick M. McDonough, Matthew J. McDonough, TASC Technical Services, LLC

TOPICS

limited liability companies

dissolution

statutory interpretation

contract interpretation

appellate procedure

PRACTICE AREAS

limited liability company law

business law

contract law

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether TASC's operating agreement required the LLC to dissolve on September 30, 2015.
2. Whether the New Hampshire Revised Limited Liability Company Act permitted a majority of TASC's members to revoke a dissolution before completion of winding up.
3. Whether TASC's certificate of formation independently required dissolution after the stated twenty-year duration.
4. Whether Mark preserved his argument that continuation of TASC was unfair because withdrawal would not entitle him to compensation for his membership interest.

HOLDINGS

1. TASC's operating agreement did not require dissolution on September 30, 2015 because its provision establishing a twenty-year term also permitted the company to be continued under the further terms of the agreement.
2. Because RSA 304-C:130, III does not specify whether revocation requires a majority or unanimous vote, and neither the Act's unanimity provisions nor TASC's operating agreement provided otherwise, a majority of TASC's members could revoke the dissolution.
3. TASC's certificate of formation did not independently require the company to dissolve on September 30, 2015; under the Act, dissolution is determined by the operating agreement rather than solely by the duration stated in the certificate.
4. The court declined to address the merits of Mark's argument that withdrawal would not provide compensation for his membership interest because he failed to preserve that specific argument in the trial court or in a motion for reconsideration.

KEY QUOTATIONS

"TASC's operating agreement and the Act permit a majority of TASC's members to continue the company beyond September 30, 2015." (at 544)

"Thus, TASC's members may by majority vote revoke a dissolution pursuant to RSA 304-C:130, III." (at 541)

FACTUAL BACKGROUND

In 1992, Mark, Matthew, and Patrick McDonough established TASC, a technical engineering-services business, and converted it to a New Hampshire limited liability company in 1995. TASC's certificate of formation stated that its latest dissolution date was September 30, 2015, while its operating agreement provided for a twenty-year

term unless the company was sooner terminated or continued under the agreement. After the brothers' falling out, Matthew and Patrick, constituting a majority of TASC's members, voted to dissolve the company and immediately voted to revoke the dissolution. Mark contended that TASC nevertheless had to dissolve by September 30, 2015.

PROCEDURAL HISTORY

Mark sought a declaration that TASC was required to dissolve under its certificate of formation and operating agreement. On cross-motions for summary judgment, the Superior Court ruled that TASC was not required to dissolve because its operating agreement permitted continuation of the company, and entered judgment for the defendants. The New Hampshire Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Conant v. O'Meara, 167 N.H. 644, 648 (2015)
- JMJ Properties, LLC v. Town of Auburn, 168 N.H. 127, 130 (2015)
- Lakes Region Gaming v. Miller, 164 N.H. 558, 562 (2013)
- Birch Broad. v. Capital Broad. Corp., 161 N.H. 192, 196 (2010)
- Dukette v. Brazas, 166 N.H. 252, 255 (2014)
- LaMontagne Builders v. Bowman Brook Purchase Group, 150 N.H. 270, 274 (2003)
- N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002)
- Vogel v. Vogel, 137 N.H. 321, 322 (1993)