

LGB Group LLC v. John Booty, John Booty v. LGB Group, LLC, et al, Cases No. CAL 03-00088, CAE 02-00408, CAL 03-08305, 2004 MDBT 1 (Circuit Court for Prince George's County) (January 28, 2004) (per Steven I. Platt)

Facts: The Court ruled against the former president of a limited liability company. The limited liability company, LGB Group, LLC, was comprised of nine husband and wife teams (the members). John Booty was president. The members found Booty was stealing company assets and sought to remove him. Booty challenged the attempted removal and LGB counterclaimed for money Booty embezzled. The jury at the trial found that LGB had not followed the technicalities of the operating agreement but also found that Booty had misappropriated \$99,790.¹ As a result, on December 17, 2002, the Court reinstated Booty and entered judgment against him in LGB's favor for \$99,790.

The day judgment was entered, Booty requested LGB's office manager to provide him with two blank checks, saying he needed to pay counsel and reimburse himself for legal fees. Booty's request was refused. Booty then went to LGB's bank and provided it with a phony resolution from a non-existent meeting (supposedly occurring on December 20) saying that only Booty would be a signatory on LGB's accounts and the other signatories were removed. In reliance on that representation, the bank issued over \$28,000 in checks to Booty.

In truth, on December 19, 2002, LGB acted by written consent in lieu of having a meeting and did away with the office of president, providing that the functions were to be performed thereafter by an executive committee.

LGB assessed the value of Booty's interest in it at \$87,000. The \$87,000 interest was forfeited because of the \$99,790 judgment against Booty. LGB filed a request for garnishment of Booty's interest on July 3, 2003. The resulting garnishment was served on July 26, 2003. LGB then moved for judgment and Booty filed no response. On February 11, 2003, Booty filed a "counterclaim for partition" against LGB.

Booty also sought reimbursement from LGB for \$86,525.56 for what he claimed were legitimate business expenses pursuant to the terms of the operating agreement.

Held: (1) The Operating Agreement was properly amended to do away with the office of the presidency; (2) Booty's interest in LGB was forfeited to LGB under the Limited Liability Company Act; (3) Booty had not opposed LGB's request that Booty's interest in LGB be garnished to satisfy his debt; 4) by filing a complaint seeking "partition" of LGB, Booty forfeited his membership in LGB pursuant to §4A-406 of the Corporations and Associations Article; (5) Booty's requests for reimbursement are dismissed for several reasons: (a) none of the expenses previously were submitted for reimbursement; (b) \$69,000 of what he was claiming he acknowledged was not permitted by the Operating Agreement; (c) he previously was reimbursed for \$8,216.61 of the expenses; (d) Booty admitted he was not entitled to \$2,486.15 of the

¹It should be noted that included in the amounts stolen from LGB were unauthorized salary bonuses, taking dividends when no dividend was issued, and payment of personal expenses, including expenses for champagne and lap dancing at a gentleman's club in Las Vegas.

expenses at issue; and (6) judgment entered against Booty in favor of LGB for \$27,636.65 for funds Booty took without authorization.

Synopsis:

- (1) The LGB Operating Agreement specifically stated that it could be altered, amended, or repealed by a vote of 75% of the members . . . acting by written consent in lieu of a meeting. It only generally stated that any action could be taken without a meeting if all members consent in writing. The Court held that the specific language of the first cited clause prevailed over the general language of the second clause.
- (2) Section 4A-502(c) of the Maryland Limited Liability Act provides that a member's failure to make a payment to the company permits the company to order that the member's interest in the company be forfeited. Therefore, Booty's interest in LGB properly was forfeited because he failed to pay the judgment of \$99,789 that he owed to LGB.
- (3) LGB had a common law right to remove Booty for cause, which in this case was Booty's theft that had put LGB in a "dire situation."
- (4) LGB was entitled to garnish Booty's interest in it. Booty still had not filed a responsive motion or pleading to LGB's motion for judgment. Accordingly, the motion was granted.
- (5) Section 4A-606 of the Corporations and Associations Article provides that a person ceases to be a member of a limited liability company when he or she files a petition seeking liquidation, dissolution, or similar relief. Booty's counterclaim for partition met the criteria.
- (6) Under the business judgment rule, it has to be shown that the business has acted fraudulently or in bad faith. Booty failed to show fraud or bad faith, hence the amendments to the Operating Agreement would stand.
- (7) Booty took \$28,318.33 from the company. The company can only reimburse a manager for expenses when the members make a finding that the manager acted in good faith and in a manner he/she believed to be in the best interests of the company. No such finding was made, nor, the Court concluded, could such a finding be made.
- (8) Booty claimed he was due \$86,525.66 for business expenses. \$69,343.64 of that could not be awarded under the terms of the Operating Agreement as an initial capital contribution. He did not submit requests for reimbursement as to other portions; moreover, his statements that he thinks he did were not believable. Finally, he failed to meet his burden as to \$6,479.16 of his claim.

Counsel

Cary J. Hansel, Esquire
6404 Ivy Lane, Suite 400
Greenbelt, Maryland 20770
Counsel for LGB Group, LLC

Perry Paylor, Esquire
Solomon & Martin
7500 Greenway Center Drive, Suite 1100
Greenbelt, MD 20770

Peter Maignan, Esquire
Maignan & Associates, LLC
8181 Professional Place, Suite 105
Landover, Maryland 20785
Counsel for John Booty