

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

CHARLES R. CROWLEY, et al.)	CASE NO. CV 13 801191
)	
)	JUDGE JOHN P. O'DONNELL
Plaintiffs,)	
)	<u>JOURNAL ENTRY GRANTING</u>
)	<u>AND DENYING IN PART THE</u>
vs.)	<u>DEFENDANTS' MOTION TO</u>
)	<u>VACATE THE PRELIMINARY</u>
WILLIAM G. AREKLETT, et al.)	<u>INJUNCTION AND TO DISMISS</u>
)	<u>THE COMPLAINT</u>
Defendants.)	

John P. O'Donnell, J.:

All four parties to this lawsuit – plaintiffs Charles R. Crowley and Michael C. Voinovich and defendants William G. Areklett and Jeffrey S. Boyle – are members of Paragon Capital Group, LLC. The lawsuit alleges a single cause of action for declaratory judgment. The plaintiffs seek “a declaration that defendants have acted in a manner that is inconsistent with the [Paragon] operating agreement, the fiduciary obligations owed to plaintiffs or otherwise acted unlawfully.”¹ Crowley and Voinovich’s complaint also asks for a declaration 1) that they are entitled to access to Paragon’s books and records and, 2) that, since they remain members of the board of managers, they are entitled to continue to participate in the management of the company’s business.

¹ Complaint, ¶ 65.

The complaint included a motion for a preliminary injunction. The gist of the injunction sought was an order requiring the defendants to continue to include the plaintiffs in decisions about how the company would be managed. The motion was granted by an entry journalized on November 25, 2013, which enjoined the defendants from the following conduct:

- 1) Engaging in any conduct that, pursuant to the terms of the Paragon Capital Group operating agreement, is required to be discussed and/or approved at a properly noticed meeting and/or vote of the Paragon members and/or the Paragon board of managers; and
- 2) Engaging in any of the following conduct in connection with the business of Paragon and/or ParaCap Group, LLC without the plaintiffs' prior knowledge and consent:
 - (a) transferring assets, in the form of draws, distributions, bonuses, salary or otherwise, of Paragon or its affiliates and/or subsidiaries to themselves or any other member in amounts greater than the amounts paid to members of Paragon in the fourth quarter of 2012;
 - (b) hiring new employees of Paragon or its affiliates and/or subsidiaries;
 - (c) incurring travel expenses exceeding \$1,000.00; and/or
 - (d) making payments and/or transfers to any of Paragon's affiliates or subsidiaries including, but not limited to: (i) ParaCap; (ii) Paragon Investment Advisors; and/or (iii) the Mezz Fund.

While this lawsuit was pending, the four members and the corporate entity Paragon Capital Group were parties to an arbitration conducted under the auspices of the Financial Industry Regulatory Authority. The FINRA arbitration has since concluded. The final award in that case ordered the dissolution of Paragon Capital Group, causing the members to appoint a liquidating trustee. As such, Paragon Capital Group is no longer doing business other than to wind up its affairs, and the liquidating trustee is responsible for the winding up. Because of that, the defendants are not in control of any company assets and do not have the ability to undertake conduct prohibited by the preliminary injunction.

Therefore, on June 24, 2014, the defendants filed a motion to vacate the preliminary injunction and to dismiss the lawsuit on the grounds that the injunction was no longer necessary

because the defendants did not control the company's assets and affairs, and that the plaintiffs' entire complaint for declaratory relief was barred by res judicata because of the FINRA award. The plaintiffs have opposed the motion to dismiss, but they do acknowledge that "the preliminary injunction can be dissolved" but only "once their request for declaratory relief is granted and a final judgment entered."²

The purpose for granting the motion for preliminary injunction – to prevent the defendants from causing irreparable harm to the plaintiffs – can no longer be accomplished since the defendants do not control the dissolved limited liability company and its assets. Hence, there is no reason to keep the preliminary injunction in place, even if it is equally true that there is no harm to the defendants in maintaining it, and the motion to vacate the preliminary injunction is granted.

At the same time, the plaintiffs are still entitled to pursue a declaration of the rights and obligations of the parties under the operating agreement, and the motion to dismiss is denied.

An evidentiary hearing is therefore required. At that hearing, the parties may present evidence relevant to the following factual issues: whether, until just prior to dissolution, Crowley and Voinovich remained members of the board of managers entitled to continue to participate in the management of the company's business; whether, until just prior to dissolution (and after, if applicable), the plaintiffs were entitled to access to Paragon's books and records; and whether Areklett and Boyle acted in a manner that is inconsistent with the Paragon Capital Group, LLC operating agreement or in violation of the fiduciary obligations owed to the plaintiffs as members by denying access to the books and records and by not including them in management decisions which, by the operating agreement, are for the board of managers.

² Plaintiffs' 7/18/2014 brief in opposition, page 4.

Between the date of this entry and the February 4, 2015, pretrial conference, the parties are ordered to confer to attempt to stipulate to any facts necessary for a determination of these three issues, and discovery on these issues may proceed if requested by either side. A date for the evidentiary hearing will be scheduled at the February 4 pretrial conference.

IT IS SO ORDERED:

Judge John P. O'Donnell

Date: _____

SERVICE

A copy of this journal entry was sent by email, this 9th day of December, 2014 to the following:

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Judge John P. O'Donnell