IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE CARLISLE ETCETERA LLC, a Delaware limited liability company.	))	C.A. No. 10280-VCL

ORDER GRANTING SUMMARY JUDGMENT

WHEREAS on November 13, 2014, the petitioners, Well Union U.S. Holdings, Inc. ("WU Sub") and its parent company Well Union Capital Limited ("WU Parent"; collectively, "Well Union" or "Petitioners"), jointly petitioned for judicial dissolution of Carlisle Etcetera LLC (the "Company"), a limited liability company whose initial members were WU Parent and respondent Tom James Company ("James");

WHEREAS on December 12, 2014, Petitioners moved for summary judgment on the question of judicial dissolution;

WHEREAS the parties briefed the motion for summary judgment and the court heard oral argument;

NOW THEREFORE, THE COURT FINDS AND ORDERS AS FOLLOWS:

1. Under Court of Chancery Rule 56, summary judgment "shall be rendered forthwith" if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Ct. Ch. R. 56(c). The moving party bears the initial burden of demonstrating that, even with the evidence construed in the light most favorable to the non-moving party, there are no genuine issues of material fact. *Brown v. Ocean Drilling & Exploration Co.*, 403 A.2d 1114, 1115 (Del. 1979). If the moving party meets this burden, then the non-moving party must "adduce some evidence of a dispute of material fact" to avoid summary judgment. *Metcap Sec. LLC v. Pearl Senior Care,*

Inc., 2009 WL 513756, at *3 (Del. Ch.), *aff'd*, 977 A.2d 899 (Del. 2009) (TABLE); *accord Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

> [T]he function of the judge in passing on a motion for summary judgment is not to weigh evidence and to accept that which seems to him to have the greater weight. His function is rather to determine whether or not there is any evidence supporting a favorable conclusion to the nonmoving party. When that is the state of the record, it is improper to grant summary judgment.

Cont'l Oil Co. v. Pauley Petroleum, Inc., 251 A.2d 824, 826 (Del. 1969).

2. The Company is a two-member LLC with a short-form operating agreement (the "Initial LLC Agreement"). The Initial LLC Agreement contemplates that the parties will replace it with a more detailed operating agreement. The Initial LLC Agreement vests managerial authority solely with its board of directors ("Board"), which is composed of two James designees and two Well Union designees. The Initial LLC Agreement requires that all decisions of the Board be unanimous.

3. The decision to order dissolution lies in the discretion of the court. One context warranting dissolution is where (1) the managers are deadlocked; (2) the operating agreement provides no means of navigating around the deadlock; and (3) the deadlock is threatening harm to the business. *See Vila v. BVWebTies LLC*, 2010 WL 3866098, at *1 (Del. Ch. Oct. 1, 2010) (Strine, V.C.); *Fisk Ventures, LLC v. Segal*, 2009 WL 73957, at *4 (Del. Ch.) *aff'd,* 984 A.2d 124 (Del. 2009).

4. The Company faces deadlock at the member and manager level. The members are deadlocked over the terms of the replacement operating agreement to replace the Initial Operating Agreement. The manager is deadlocked because the Board's

members are divided. Issues on which deadlock exists include the termination of the CEO, the hiring of a creative director, and the deployment of tax minimization strategies.

5. James argues that deadlock does not exist over any purportedly necessary matters, only discretionary matters. A court should strive to avoid calibrating the significance of management decisions because the importance of an issue is itself a matter of business judgment. Regardless, here the issues are facially significant, including the potential termination of the CEO.

6. James, the party resisting dissolution, previously recognized the need for the parties to go their separate ways. Its CEO, who is also a member of the Board, wrote:

> It seems to be a waste of your time and our time to continue to try to persuade each other of our respective points of view regarding the management of the company. If we continue in this way, our mutual investment will be damaged.
>
> Therefore we think that the only sensible course is for one or the other of us to own the company and run it as they see fit.

James previously approved of a plan to resolve the deadlock through a buyout. The plan failed because of the parties' failure to agree on a price and on who would do the buying.

7. The Initial LLC Agreement indisputably lacks an exit mechanism. The Company does have what appears to be a viable business, but the Company currently is operating contrary to its LLC Agreement. The fact that the CEO is operating without Board oversight and exercising *de facto* control over the Company does not mean that a problematic deadlock does not exist. The current situation represents "a residual, inertial status quo that just happens to exclusively benefit one of the 50% members." *Haley v.*

Talcott, 864 A.2d 86, 96 (Del. Ch. 2004). When an LLC has "two willing buyers and no willing sellers," dissolution is appropriate. *Id.* at 92.

8. The motion for summary judgment is GRANTED. By separate order, the court will appoint a custodian to carry out the dissolution.

Vice Chancellor J. Travis Laster
Dated: May 4, 2015