



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LINDA MERRITT (a/k/a LYN MERRITT), §

Defendant Below, §
Appellant, §

v. §

R&R CAPITAL, LLC, a New York limited §
liability company, and FTP CAPITAL, LLC, §
a New York limited liability company, §

Plaintiffs Below, §
Appellees, §

AND §

BUCK & DOE RUN VALLEY FARMS, §
LLC, a Delaware limited liability company, §
GRAYS FERRY PROPERTIES, LLC, a §
Delaware limited liability company, HOPE §
LAND, LLC, a Delaware limited liability §
company, MERRITT LAND, LLC, a §
Delaware limited liability company, §
UNIONVILLE LAND, LLC, a Delaware §
limited liability company, MOORE §
STREET, LLC a Delaware limited §
liability company, PDF PROPERTIES, §
LLC, a Delaware limited liability company, §
PANDORA FARMS, LLC, a Delaware §
limited liability company, PANDORA §
RACING, LLC, a Delaware limited §
liability company, §

Nominal Defendants Below, §
Appellees. §

No. 144, 2011

Court Below:

Court of Chancery of the
State of Delaware

C.A. No. 3989

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 14th day of January 2013, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) Linda Merritt, a/k/a Lyn Merritt, appeals from several decisions of the Court of Chancery relating to her removal as managing member of nine Delaware limited liability companies (the “Entities”). Specifically, she claims that the trial court erred in: 1) refusing advancement of her attorneys’ fees; 2) removing Merritt as managing member of the Entities; and 3) holding Merritt in contempt. She also contends that the trial court’s decisions should be vacated because of the trial court’s relationship to the Receiver and certain counsel.

2) The trial court’s ruling on Merritt’s motion for advancement of fees was the following statement made during a teleconference:

THE COURT: Am I correct that there’s also . . . a motion filed and pending that requests that I modify the status quo order to allow advancement of fees to Ms. Merritt?

COUNSEL FOR MERRITT: Yes

THE COURT: All right. Well, then, let me address that.

My view is that no one should be advanced any fees in this litigation – neither Ms. Merritt nor any of the plaintiffs who have brought the actions – until the Court is able to resolve finally the rights and liabilities and responsibilities of the various parties involved in these entities. Whether or not parties should remain as managing members, whether they should remain as members and what the respective responsibilities of the various members are in these entities is an open question. And my view is that it would be imprudent to order or authorize

advancement of fees before the Court has made those ultimate determinations.

And so based on that reasoning, I deny the motion to modify the status quo order to authorize or permit advancement of attorneys' fees to Ms. Merritt.

3) Merritt argues that the trial court erred in denying her motion for advancement of fees. She also contends that the trial court's decision prevented her from effectively presenting arguments on substantive issues, such as the propriety of her removal as managing member of the Entities.

4) Appellees argue, among other things, that the trial court's decision was harmless error, at worst. They say that if Merritt's removal for cause was authorized, she suffered no prejudice because she would not have been entitled to indemnification under the operative Entity agreements.

5) As the transcript quoted above reveals, the trial court did not provide the reasoning and legal support for its decision denying advancement of fees. Inasmuch as the judge who made that ruling has retired from the bench, we cannot remand for clarification of the basis for his decision. Nonetheless, the Court considers it a threshold issue since Merritt's lack of counsel may have impacted subsequent substantive decisions.

6) Accordingly, this case will be remanded to obtain a decision on the advancement issue from a newly-assigned judge. Specifically, the trial court should answer the following question:

Is the trial court's decision to defer ruling on the advancement of attorneys' fees supportable? Whether it is or is not, please explain the basis for your conclusion.

7) In addressing this question, the trial court should not consider whether Merritt suffered any prejudice, either because the decision removing Merritt for cause was correct, or because the assistance of counsel could not have changed the result.

NOW, THEREFORE, IT IS HEREBY ORDERED that the above-captioned matter is REMANDED for further action as specified in this Order. Jurisdiction is retained.

BY THE COURT:

/s/ Carolyn Berger
Justice