

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DISSOLUTION OF KBA)
WURZBACH PORTFOLIO, LLC, a) C.A. No. 2025-1092-LWW
Delaware Limited Liability Company)

MEMORANDUM OPINION

Date Submitted: February 18, 2026
Date Decided: April 30, 2026

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WILL, Vice Chancellor

This case asks whether an involuntary foreclosure constitutes a dissolution event under a limited liability company agreement and the Delaware Limited Liability Company Act.

The nominal defendant is a Delaware limited liability company formed to own two apartment complexes in Texas. After the company defaulted on its mortgages, no third party purchased the properties at foreclosure, and they became lender owned. One of the company's members now petitions for judicial dissolution. The respondent member has moved to dismiss the petition.

The motion to dismiss is granted. The petitioner unambiguously waived its right to seek statutory dissolution and is therefore bound by the contractual dissolution terms it bargained for. Although a sale of the company's real estate assets is one such event, an involuntary transfer to a lender to satisfy a debt is not a sale under the operative agreement. The petition is dismissed.

I. BACKGROUND

The following facts are drawn from the Verified Petition for Dissolution (the “Petition”) and the documents it incorporates by reference.¹

A. The Company

Nominal defendant KBA Wurzbach Portfolio, LLC (the “Company”) is a Delaware limited liability company.² It was formed in March 2021 to acquire, renovate, and operate two apartment buildings in San Antonio, Texas (the “Properties”).³ The Company had two members—petitioner KBA Wurzbach Investors, LLC (“KBA Investors”) and respondent Davenport Investments X, LLC—each of which owned a 50% stake in the Company when this action was filed.⁴

¹ Verified Pet. for Dissolution (Dkt. 1) (“Pet.”); see *Freedman v. Adams*, 2012 WL 1345638, at *5 (Del. Ch. Mar. 30, 2012) (“When a plaintiff expressly refers to and heavily relies upon documents in her complaint, these documents are considered to be incorporated by reference into the complaint[.]” (citation omitted)); *In re Books-A-Million, Inc. S’holders Litig.*, 2016 WL 5874974, at *1 (Del. Ch. Oct. 10, 2016) (providing that the court may take judicial notice of “facts that are not subject to reasonable dispute” (citation omitted)), *aff’d*, 164 A.3d 56 (Del. 2017) (TABLE).

² Pet. ¶ 1.

³ *Id.* ¶¶ 1, 4. The Company owns the Properties through two wholly-owned subsidiaries: KBA 11530 Vance Jackson Apts, LLC and KBA 400 W Bitters Apts, LLC. *Id.* ¶¶ 22-23.

⁴ *Id.* ¶ 2. KBA Investors is a Delaware limited liability company with offices in Richland Hills, Texas. *Id.* ¶ 13. Davenport is a Delaware limited liability company with its principal place of business in Philadelphia, Pennsylvania. *Id.* ¶ 14.

To finance part of the Properties’ purchase, the Company secured two mortgage loans (the “Loans”) from a third party lender.⁵ KBA Investors and Davenport also contributed a combined \$16.7 million toward the purchase of the Properties.⁶ Davenport invested \$8 million and, in return, acquired a preferred equity position.⁷ KBA Investors invested \$8.7 million and received common equity.⁸

B. The LLC Agreement

To consummate their shared investment, KBA Investors and Davenport signed a Limited Liability Company Agreement for the Company in April 2021 (the “LLC Agreement”).⁹

Under Section 7.2, the parties irrevocably waived their rights to maintain an action for dissolution, “except pursuant to Section 8.1” of the LLC Agreement.¹⁰ Section 8.1 enumerates four “Events Giving Rise to Dissolution” and explains that “[t]he happening of any one of [those] events . . . shall work an immediate

⁵ *Id.* ¶¶ 5, 24-25, 39.

⁶ *Id.* ¶ 26.

⁷ *Id.* ¶ 30.

⁸ *Id.* At the time of the initial investment, Davenport owned 48% of the Company, and KBA Investors owned 52% of the Company. *Id.* Those percentages were modified in 2023, after new contributions were made. *Id.* At the time the Petition was filed, Davenport and KBA Investors were both 50% owners. *Id.* ¶ 2.

⁹ *Id.* ¶ 29; *see also id.* at Ex. A (“LLC Agreement”).

¹⁰ LLC Agreement § 7.2.

dissolution of the Company.”¹¹ Relevant here, Section 8.1.3 provides that “[t]he sale of all or substantially all of the real estate assets of the Company and each Company Subsidiary” triggers an immediate dissolution.¹²

Section 8.2 establishes the procedure for dissolution and winding-up if an “Event[] Giving Rise to Dissolution” occurs.¹³ It explains that:

Subject to the prior written approval of the Preferred Member [Davenport], the Winding-Up Member [either Davenport or KBA Investors, depending on the triggering event] shall have discretion to determine in good faith the time, manner and terms of any sale or sales of the assets of the Company and the Company Subsidiaries pursuant to such liquidation having due regard to the activity and condition of the relevant market and general financial and economic conditions.¹⁴

C. The Foreclosure

The Loans matured on June 1, 2024.¹⁵ The Company was unable to repay or refinance the Loans and defaulted on its obligations.¹⁶ The lender commenced foreclosure proceedings in Texas in July 2024.¹⁷

¹¹ *Id.* § 8.1.

¹² *Id.* § 8.1.3; *see also id.* § 1.6 (defining “Company Subsidiary”).

¹³ *Id.* § 8.2.

¹⁴ *Id.*; *see also id.* § 1.6 (defining “Preferred Member” and “Winding-Up Member”).

¹⁵ Pet. ¶ 39.

¹⁶ *Id.*

¹⁷ *Id.* ¶ 40.

No third parties purchased the Properties at the foreclosure auction.¹⁸ As a result, they became lender owned.¹⁹ The Properties were then assigned to another entity affiliated with the lender.²⁰

After the foreclosure, the Company no longer holds any real estate assets.²¹

D. The Plenary Action

On June 24, 2024, Davenport filed a lawsuit against KBA Investors in this court (the “Plenary Action”), seeking a declaration that KBA Investors had been removed as the Company’s “Administrative Member,” and bringing direct and derivative claims for breach of the LLC Agreement.²² Davenport moved for partial summary judgment on its declaratory judgment claim.²³ That motion was granted on February 18, 2026.²⁴

¹⁸ *Id.* ¶ 41.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* ¶ 42.

²² Verified Compl., *Davenport Invs. X, LLC v. KBA Wurzbach Invs., LLC*, C.A. No. 2024-0683-LWW (Del. Ch. June 24, 2024) ¶¶ 128-63.

²³ Mot. for Partial Summ. J., *Davenport Invs. X, LLC v. KBA Wurzbach Invs., LLC*, C.A. No. 2024-0683-LWW (Del. Ch. Jan. 28, 2025).

²⁴ Order Granting Partial Summ. J., *Davenport Invs. X, LLC v. KBA Wurzbach Invs., LLC*, C.A. No. 2024-0683-LWW (Del. Ch. Feb. 18, 2026).

E. This Litigation

KBA Investors filed this dissolution action in September 2025.²⁵ It asks this court to dissolve the Company pursuant to the LLC Agreement and 6 *Del. C.* § 18-802.²⁶ Davenport believes that the dissolution action is designed to thwart the Plenary Action and prevent it from pressing its breach of contract claims against KBA Investors.²⁷

In November 2025, Davenport moved to dismiss the Petition.²⁸ Briefing on the motion closed in February 2026.²⁹ Oral argument on the motion took place on February 18, 2026, and the matter was taken under advisement.³⁰

II. ANALYSIS

Davenport moves to dismiss the Petition under Court of Chancery Rule 12(b)(6) for failure to state a claim upon which relief can be granted.³¹ In resolving the motion, I must “(1) accept all well pleaded factual allegations as true,

²⁵ Dkt. 1.

²⁶ Pet. ¶¶ 43-54.

²⁷ *See* Resp’ts’ Opening Br. in Supp. of Mot. to Dismiss (Dkt. 5) (“Resp’ts’ Opening Br.”) 1.

²⁸ *See id.*; *see also* Resp’ts’ Mot. to Dismiss (Dkt. 4).

²⁹ *See* Pet’r’s Answering Br. in Opp’n to Resp’ts’ Mot. to Dismiss (Dkt. 9) (“Pet’r’s Answering Br.”); Resp’ts’ Reply Br. in Further Supp. of Mot. to Dismiss (Dkt. 11).

³⁰ Tr. of Oral Arg. on Pl.’s Mot. for Summ. J. on Count I and Pet’r’s Mot. to Dismiss (Dkt. 17) (“Hr’g Tr.”). The motion for partial summary judgment in the Plenary Action was heard alongside the motion to dismiss in this case.

³¹ Ct. Ch. R. 12(b)(6).

(2) accept even vague allegations as ‘well pleaded’ if they give the opposing party notice of the claim, [and] (3) draw all reasonable inferences in favor of the non-moving party.”³² I need not “accept every strained interpretation of [the non-moving party’s] allegations”³³ or conclusory statements “unsupported by allegations of specific facts.”³⁴ Dismissal is appropriate only if the non-moving party cannot recover “under any reasonably conceivable set of circumstances susceptible of proof.”³⁵

A. Choice of Law

I first address whether Delaware or Texas law applies to KBA Investors’ claim that dissolution is warranted under the LLC Agreement.³⁶ KBA Investors asserts that Texas law dictates whether the foreclosure was a “sale” that triggered dissolution under Section 8.1.3 of the LLC Agreement.³⁷ Davenport counters that

³² *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 535 (Del. 2011) (citing *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002)).

³³ *In re Gen. Motors (Hughes) S’holder Litig.*, 897 A.2d 162, 168 (Del. 2006).

³⁴ *In re Lukens Inc. S’holders Litig.*, 757 A.2d 720, 727 (Del. Ch. 1999), *aff’d sub nom.*, *Walker v. Lukens, Inc.*, 757 A.2d 1278 (Del. 2000) (TABLE).

³⁵ *Savor*, 812 A.2d at 896-97 (citation omitted).

³⁶ At oral argument, the parties agreed that Delaware law governs. Hr’g Tr. 21. Because their briefing focused heavily on the choice of law issue, I address it here for the sake of completeness.

³⁷ Pet’r’s Answering Br. 14-15.

Delaware law governs the interpretation of the LLC Agreement.³⁸ Davenport is correct.

This dispute concerns the internal affairs of a Delaware limited liability company: whether a dissolution event occurred as defined in its governing agreement. “A claim to enforce [an] entity’s constitutive document necessarily implicates the special interest that a sovereign has in adjudicating cases involving the internal affairs of entities created under its laws.”³⁹ As a Delaware limited liability company, the interpretation of the LLC Agreement is a matter of Delaware law.⁴⁰

The terms of the LLC Agreement confirm that conclusion. Section 13.7 states that the “laws of the State of Delaware” govern, “without regard to conflicts of laws.”⁴¹ Although the foreclosure of the Properties took place in Texas, the legal

³⁸ See Resp’ts’ Opening Br. 6.

³⁹ *Terramar Retail Ctrs., LLC v. Marion #2 Seaport Tr. U/A/D June 21, 2002*, 2017 WL 3575712, at *7 (Del. Ch. Aug. 18, 2017), *aff’d*, 184 A.3d 1290 (Del. 2018) (TABLE); *see also VantagePoint Venture P’rs 1996 v. Examen, Inc.*, 871 A.2d 1108, 1112 (Del. 2005) (explaining that the internal affairs doctrine ensures that “only one state [has] the authority to regulate a[n entity’s] internal affairs”).

⁴⁰ *See, e.g., In re Coinmint, LLC*, 261 A.3d 867, 890 (Del. Ch. 2021) (“Delaware’s LLC law . . . fundamentally regards and enforces the limited liability company agreement as a contract.”).

⁴¹ LLC Agreement § 13.7.

effect of that event and whether it affects the Company’s continued existence, are matters governed by the LLC Agreement. Delaware law therefore applies.⁴²

B. Dissolution Under the LLC Agreement

On the merits, KBA Investors first argues that the Company must be dissolved under Section 8.1.3 of the LLC Agreement, which mandates dissolution upon the “sale of all or substantially all of the [Company’s] real estate assets.”⁴³ It asserts that the lender’s foreclosure of the Properties constitutes a “sale” within the meaning of that provision. I reject this interpretation.

“[W]hen analyzing an LLC agreement, a court applies the same principles that are used when construing and interpreting other contracts.”⁴⁴ “Delaware law adheres to the objective theory of contracts,” meaning that “a contract’s construction should be that which would be understood by an objective, reasonable third party.”⁴⁵ When interpreting a contract, this court “give[s] priority to the parties’ intentions as

⁴² See *infra* notes 44-47 and accompanying text (articulating Delaware’s core principles of contract interpretation).

⁴³ LLC Agreement § 8.1.3.

⁴⁴ *Holifield v. XRI Inv. Hldgs. LLC*, 304 A.3d 896, 923-24 (Del. 2023) (citation omitted); see also 6 *Del. C.* § 18-1101(b) (“It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.”).

⁴⁵ *Salamone v. Gorman*, 106 A.3d 354, 367-68 (Del. 2014) (quoting *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010)).

reflected in the four corners of the agreement[.]”⁴⁶ The contract is read “as a whole” to “give each provision and term effect, so as not to render any part of the contract mere surplusage.”⁴⁷

Section 7.2 of the LLC Agreement states that “the Company may be dissolved and terminated *only* pursuant to the provisions of Article VIII . . . [and] pursuant to Section 8.1.”⁴⁸ Section 8.1, in turn, lists the “Events Giving Rise to Dissolution” and explains that the occurrence of such an event “shall work an immediate dissolution of the Company.”⁴⁹ Those “Events Giving Rise to Dissolution” include the “sale of all or substantially all of the real estate assets of the Company” under Section 8.1.3.⁵⁰

Read in context, Section 8.1.3 applies only to *voluntary* sales. Section 6.1.1 of the LLC Agreement defines “Transfer” broadly as any “sale . . . whether voluntary, involuntary, [or] by operation of law”⁵¹ This expansive definition expressly includes “involuntary” acts, such as foreclosure.⁵² Section 8.1.3, by

⁴⁶ *Id.* (quoting *GMG Cap. Invs., LLC v. Athenian Venture P’rs I, L.P.*, 36 A.3d 776, 779 (Del. 2012)).

⁴⁷ *Osborn*, 991 A.2d at 1159 (quoting *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 397 (Del. 2010)).

⁴⁸ LLC Agreement § 7.2 (emphasis added).

⁴⁹ *Id.* § 8.1.

⁵⁰ *Id.* § 8.1.3.

⁵¹ *Id.* § 6.1.1.

⁵² *Id.*

contrast, uses the narrower term “sale” and omits the “voluntary or involuntary” qualifier in Section 6.1.1.⁵³

Dictionary definitions of “sale” and “transfer” confirm this distinction.⁵⁴ “Transfer” means “[a]ny mode of disposing of or parting with an asset or an interest in an asset,” which “embraces every method[,] . . . voluntary or involuntary[,] . . . of disposing of or parting with . . . an interest in property[.]”⁵⁵ “Sale” is more narrowly defined as “[t]he transfer of property or title for a price” through an agreement requiring “mutual assent[.]”⁵⁶ A “foreclosure”—a “legal proceeding to terminate a mortgagor’s interest in [a] property”—does not involve mutual assent.⁵⁷ It is an involuntary transfer, not a sale.

⁵³ Compare *id.*, with *id.* § 8.1.3.

⁵⁴ See *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 738 (Del. 2006) (“Under well-settled case law, Delaware courts look to dictionaries for assistance in determining the plain meaning of terms which are not defined in a contract.”).

⁵⁵ *Transfer*, Black’s Law Dictionary (12th ed. 2024); see also *Transfer*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/transfer> (last accessed Apr. 28, 2026) (defining “transfer” as the “conveyance of right, title, or interest in real or personal property from one person to another”).

⁵⁶ *Sale*, Black’s Law Dictionary (12th ed. 2024); see also *Sale*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/sale> (last accessed Apr. 28, 2026) (defining “sale” as the “transfer of ownership of and title to property from one person to another for a price”).

⁵⁷ *Foreclosure*, Black’s Law Dictionary (12th ed. 2024); see also *Foreclosure*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/foreclosure> (last accessed Apr. 28, 2026) (defining “foreclosure” as a “legal proceeding that bars or extinguishes a mortgagor’s right of redeeming a mortgaged estate”).

The Court of Chancery has previously held, in the corporate context, that “sale” means a “voluntary transfer of interests between similarly situated parties.”⁵⁸ On appeal, the Delaware Supreme Court emphasized the distinction between a voluntary sale, which is a transaction to monetize equity, and an involuntary transfer, which satisfies a debt.⁵⁹ These decisions support interpreting the term “sale” to exclude a foreclosure event.

The LLC Agreement respects this same distinction. Under the *expressio unius est exclusio alterius* canon of construction, the use of different terms in a contract suggests the parties intended different meanings.⁶⁰ If an involuntary foreclosure were to trigger dissolution, the parties would have used the term “Transfer” from Section 6.1.1 or added the “voluntary [or] involuntary” qualifier. By using the term “sale” alone, they limited dissolution under Section 8.1.3 to voluntary dispositions controlled by the Company.

⁵⁸ *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 250 A.3d 1016, 1040-41 (Del. Ch. 2020) (evaluating definitions of the term “sale” from Black’s Law Dictionary and Merriam-Webster), *rev’d in part on other grounds*, 279 A.3d 323, 354 n.178 (Del. 2022) (“*Stream TV II*”) (declining to “reach the question of whether a private foreclosure transaction . . . qualif[ies] as a ‘sale[.]’” but recounting the court’s “observations”).

⁵⁹ *Stream TV II*, 279 A.3d at 339-42, 354 n.178.

⁶⁰ *See Salzberg v. Sciabacucchi*, 227 A.3d 102, 120 n.77 (Del. 2020) (explaining that the canon means that “to express or include one thing implies the exclusion of the other, or of the alternative” (citing Black’s Law Dictionary (11th ed. 2019))); *see also Leatherbury v. Greenspun*, 939 A.2d 1284, 1291 (Del. 2007) (“[I]t is well established that ‘a court may not engraft upon a statute language which has clearly been excluded therefrom.’” (citation omitted)).

Section 8.2 of the LLC Agreement further supports this reading. It empowers the “Winding-Up Member”—either KBA Investors or Davenport, as relevant—to “determine in good faith the time, manner and terms of any sale . . . having due regard to the activity and condition of the relevant market.”⁶¹ This provision contemplates a controlled, discretionary, and market-driven liquidation process guided by a member of the Company. An involuntary, lender-initiated foreclosure removes the Company’s discretion. Adopting KBA Investors’ reading of Section 8.1.3 would render Section 8.2 “mere surplusage” by attaching a discretionary procedure to an involuntary event.⁶²

KBA Investors further contends that dissolution is warranted because post-foreclosure, the Company lacks a continuing purpose.⁶³ But the “Events Giving Rise to Dissolution” listed in Section 8.1 do not include the loss of a business purpose.⁶⁴ “Under Delaware law, courts will not rewrite contracts to read in terms that a sophisticated party could have, but did not, obtain at the bargaining table.”⁶⁵ If the

⁶¹ LLC Agreement § 8.2.

⁶² *Osborn*, 991 A.2d at 1159 (citation omitted).

⁶³ Pet’r’s Answering Br. 12-13 (explaining that, “[w]ith the Properties foreclosed upon and transferred, the Company’s purpose of acquiring, owning, renovating, and operating the Properties became moot”).

⁶⁴ *See* LLC Agreement § 8.1.

⁶⁵ *GRT, Inc. v. Marathon GTF Tech., Ltd.*, 2012 WL 2356489, at *6 (Del. Ch. June 21, 2012) (citing *Nemec v. Shrader*, 991 A.2d 1120, 1126 (Del. 2010)).

parties intended for a loss of business purpose to constitute a dissolution event, the LLC Agreement would have so stated.⁶⁶

C. Dissolution Under Section 18-802

KBA Investors next argues that dissolution is warranted under Section 18-802 of the Delaware Limited Liability Company Act (the “LLC Act”).⁶⁷ At oral argument, KBA Investors clarified that its statutory theory is coextensive with its contractual theory.⁶⁸ Even if it were advancing a standalone statutory claim, KBA Investors waived its right to pursue judicial dissolution.

The LLC Act promotes giving “maximum effect to the principle of freedom of contract.”⁶⁹ “This provides contracting parties with a wide latitude of contractual freedom.”⁷⁰ To that end, the LLC Act provides a series of default rules, which parties may contract around as they see fit.⁷¹

⁶⁶ I note that the Company continues to serve as the nominal defendant for Davenport’s derivative claims in the Plenary Action. *See generally Davenport Investments X, LLC v. KBA Wurzbach Investors, LLC*, C.A. No. 2024-0683-LWW.

⁶⁷ Pet. ¶¶ 43-54 (seeking dissolution under both 6 *Del. C.* § 18-802 and the LLC Agreement).

⁶⁸ Hr’g Tr. 20-21.

⁶⁹ 6 *Del. C.* § 18-1101(b).

⁷⁰ *Baldwin v. New Wood Res. LLC*, 283 A.3d 1099, 1117 (Del. 2022).

⁷¹ *See id.*

One such default rule concerns seeking judicial dissolution of a limited liability company.⁷² Section 18-802 of the LLC Act provides that the “Court of Chancery may decree dissolution of a[n LLC] whenever it is not reasonably practicable to carry on the business in conformity with [its LLC agreement].”⁷³ But as Vice Chancellor Glasscock noted in *Huatuco v. Satellite Healthcare*, sophisticated parties may contractually waive their right to seek judicial dissolution under Section 18-802.⁷⁴ He explained that “[p]ermitting waiver of a contractual right to judicial dissolution, or enabling opting out of the statutory right altogether, is consistent with the broad policy of freedom of contract underlying the LLC Act[.]”⁷⁵

The parties have done just that. Section 7.2 of the LLC Agreement states that the Company’s members “irrevocably waive any and all other rights . . . to maintain any action for . . . dissolution . . . except pursuant to Section 8.1.”⁷⁶ That text unambiguously limits the parties’ dissolution rights to the circumstances set forth in Section 8.1.⁷⁷ Accordingly, KBA Investors waived its right to petition this court for

⁷² 6 *Del. C.* § 18-802.

⁷³ *Id.*

⁷⁴ 2013 WL 6460898, at *4-5 (Del. Ch. Dec. 9, 2013), *aff’d*, 93 A.3d 654 (Del. 2014) (TABLE).

⁷⁵ *Id.* at *5.

⁷⁶ LLC Agreement § 7.2.

⁷⁷ *Id.*; *see also supra* notes 49-50 and accompanying text (explaining that Section 8.1 articulates the circumstances that might trigger a dissolution event).

dissolution outside the scope of Section 8.1, including dissolution where it is “not reasonably practicable” to maintain a given business.⁷⁸

III. CONCLUSION

For the foregoing reasons, the Petition fails to state a claim. Davenport’s motion to dismiss is therefore granted, and the Petition is dismissed with prejudice.

⁷⁸ See *Huatuco*, 2013 WL 6460898, at *5 (“Sophisticated parties entering unambiguous LLC agreements are presumed to understand the consequences of the language they have chosen, and are bound thereby, lest contract rights be subject to endless second-guessing and opportunistic revision.”).