EFiled: Oct 13 2025 05:01PM EDT
Filing ID 77297355
Case Number 289,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIK HOLZBAUR, Plaintiff Below, Appellant, vs. TROLLEY SQUARE HOSPITALITY GROUP, LLC, a Delaware limited liability company and ERIC C. SUGRUE, Defendants Below, Appellees.	:	C.A. No. 289, 2025 Trial Court Below: Chancery Court of the State of Delaware C.A. No. 2023-0181 MTZ

APPELLANT'S REPLY BRIEF

JOHN R. WEAVER, JR., ESQ.
DE Bar #911
2409 Lanside Drive
Wilmington, DE 19810
T: 302-655-7371
Email: jrweaverlaw@verizon.net
Attorney for Plaintiff Below, Appellant, Erik Holzbaur

Date: 10/13/25

TABLE OF CONTENTS

Page

Table of Citations ii

Nature of Proceedings 1

Statement of Facts 2

Summary of Arguments 4

Arguments 5

I. The Chancery Court and the Appellee's Opening Brief failed to apply Sections 3.1 and 3.2 of the Operating Agreement and when applied, Appellant is a cash contributing member of Appellee, Trolley Square 5

II. The authority placed in one individual to terminate ownership and lose a membership in an LLC and when that individual also drafts every sentence of the operating agreement adhesion is created and the doctrine of contra proferentem applies 8

Conclusion 10

TABLE OF CITATIONS

Page(s)

Cases

Honeywell Intern. Inc. v. Air Products & Chemicals, Inc., 872 A.2d 944 (Del. Supr. 2005) 5,8

McKnight v. USAA Cas. Ins. Co., 871 A.2d 446 (Del. Super. 2005) affirmed 900 A.2d 101 (Del. Supr. 2006) 7

NATURE OF PROCEEDINGS

This will serve to supplement the Nature of Proceedings produced in Appellant's opening brief.

Plaintiff Below, Appellant, Erik Holzbaur, (hereinafter referred to as "Holzbaur") filed his Opening Brief and Appendix on August 28, 2025. Defendants Below, Appellees, Trolley Square Hospitality Group, LLC (hereinafter referred to as "Trolley Square") and Eric C. Sugrue (hereinafter referred to as "Sugrue) filed their Answering Brief and Appendix on September 26, 2025.

This Holzbaur's Reply Brief to Trolley Square and Sugrue's Answering Brief.

STATEMENT OF FACTS

Holzbaur wishes to reply to the facts stated in the Answering Brief. Holzbaur finds two recitation of facts to be in error. There is a third portion of their statement of facts which Holzbaur believes is in opposition to the testimony at trial by Sugrue.

In the second paragraph of the Trolley Square - Sugrue Statement of Facts, it is stated, "Sugrue and Holzbaur repeatedly discussed Holzbaur's role in Trolley." (Answering Brief, page 5). Sugrue did testify that the conversations were "probably more than 15." The substance of those conversations were never testified to. Of those 15 or more conversations, the topic or topics of discussion were never detailed. The parties were opening a restaurant. From the testimony of Sugrue, this Court cannot determine whether the menu was discussed or the governance of Trolley Square.

One exception to the this lack of clarity is the coffee shop meeting (Answering Brief, page 6). However, a review of the testimony by Sugrue again shows no content about what was actually talked about. Sugrue testified that he "wanted to make sure everyone understood what the circumstances were." (A-72). There is no testimony that states what was said, what words did he used to convey those "circumstances." The words, "sweat equity" were introduced at the coffee shop meeting (A-71). Again, there is no testimony as to what was actually said and what would be the import of "sweat equity" on Holzbaur's role as a member of Trolley Square.

Most important, there is no testimony about how Holzabaur could lose his membership in Trolley Square. This litigation is about Sugrue as managing member of Trolley Square removing Holzbaur as a member. There is no testimony that this issue was ever discussed in the 15 plus conversations between Sugrue and Holzbaur. The central issue before this Court about Holzbaur losing his membership was never discussed.

On page 6 of the Trolley Square - Sugrue Statement of Facts quotes paragraph 9.20 as specifically emphasizes,

> "cash distributions will be paid out based on case equity first and will continue until all cash equity if returned. Once returned, cash will be distributed based on pro rata percentage interest in the company."

On the following page 7, Trolley Square and Sugrue attempts to state as fact those words delineate a difference between "cash equity partners and other partners." That is not the case. That language only serves to detail how cash distributions are to be paid. It doesn't seek to create classes of members. It doesn't even mention Stuart Stafman as a member.

ARGUMENT I

I. **THE CHANCERY COURT AND THE APPELLEES' ANSWERING BRIEF FAILED TO APPLY SECTIONS 3.1 AND 3.2 OF THE OPERATING AGREEMENT AND WHEN APPLIED, APPELLANT HOLZBAUR IS A CASH CONTRIBUTING MEMBER OF APPELLEE, TROLLEY SQUARE.**

A. Question Presented.

Are Sections 3.1, 3.2 and Exhibit A without ambiguity so that parol evidence is not needed to define them.

B. Standard and Scope of Review.

Issues of interpretation of contract language are reviewed "de novo for legal error." *Honeywell Int'l Inc. V. Air Prods. & Chems., Inc.*, 872 A.2d 944, 950 (Del. Supr. 2005).

C. Merits of Argument.

Argument I of the Answering Brief is tasked with stating that the Limited Liability Company Agreement of Trolley Square is ambiguous. Argument II attempts to resolve the ambiguity Trolley Square and Sugrue states exists to remove Holzbaur as a member. Holzbaur reiterates that the operating agreement has no ambiguity.

The only way to find ambiguity and to effectuate the Trolley Square and Sugrue arguments is to ignore multiple paragraphs of the operating agreement. Those paragraphs of the operating agreement are paragraphs 3.1 and 3.2 (A-19). When those

two paragraphs are applied, there is no ambiguity.

Trolley Square and Sugrue starts their Argument I by stating "Holzbaur never contributed any cash to Trolley." However, that lack of contribution does not make Holzbaur a non cash contributing member under the operating agreement. Holzbaur is already defined as member with "Cash Capital Contribution" under Exhibit A of the operating agreement (A-33).

Paragraph 2.7 defines who a member is under the operating agreement. They are named in Exhibit A (A-19). Section III of the operating agreement defines "Members; Capital; Capital Accounts" (A-19). Paragraph 3.1 states:

> 3.1 **Initial Capital Contributions.** The members have contributed to the Company cash or property in the amount respectively set forth on *Exhibit A.* (A-19)

The 3.2 states:

> 3.2 **No Additional Capital Contributions.** No Member shall be required to contribute any additional capital to the company..." (A-19)

A reasonable person reading paragraphs 2.7, 3.1, 3.2 and Exhibit A together as a unit would "believe" that Holzbaur is a cash contributing member, the monies listed on Exhibit A are "contributed" and Holzbaur need not contribute any additional monies to the limited liability company. To decide otherwise would make sections 3.1 and 3.2 illusory or meaningless which is not permitted when interpreting the

construction of a contract. *McKnight v. USAA Cas. Ins. Co.*, 871 A.2d 446 (Del. Super. 2005) affirmed 900 A.2d 101 (Del. Supr. 2006).

By definition in the operating agreement for Trolley Square, Holzbaur is a cash contributing member of the limited liability company. Sugrue cannot use section 5.1.2.11 to remove Holzbaur (A-22).

II. THE AUTHORITY PLACED IN ONE INDIVIDUAL TO TERMINATE OWNERSHIP AND LOSE A MEMBERSHIP IN AN LLC ASSET AND WHEN THAT INDIVIDUAL ALSO DRAFTS EVERY SENTENCE OF THE OPERATING AGREEMENT ADHESION IS CREATED AND THE DOCTRINE OF CONTRA PROFERENTEM APPLIES.

A. Question Presented.

Does the situation where a party has to lure a person to take employment by offering membership in a limited liability company and that same party drafts the operating agreement so that he can terminate the membership at will creates duress so that the contra proferentem applies.

B. Standard and Scope of Review.

Issues of interpretation of contract language are reviewed "de novo for legal error." *Honeywell Int'l Inc. V. Air Prods. & Chems., Inc.*, 872 A.2d 944, 950 (Del. Supr. 2005).

C. Merit of Argument.

Argument III of the Answering Brief states that contra proferentem does not apply. The reasoning of the Answering Brief is that Holzbaur gained a large benefit from receiving membership in Trolley Square. He received membership payouts of profits from the restaurant. Since he was paid his portion of the profits, Holzbaur cannot claim there is adhesion in the operating agreement. Without adhesion contra proferentem does not apply.

The Answering Brief is wrong. The conditions under which the manager of a restaurant operates are difficult. A restaurant member has to work late. The position requires long hours. The job is really a challenge. (A-78) To make Holzbaur take the position, Sugrue knew he had to "incentivize" and "reward" him. (A-19) That incentive was membership in Trolley Square. The membership was not so much a benefit as it was a lure to get Holzbaur to take the job.

After Holzbaur agrees to take the position of restaurant manager, Sugrue, on his own, drafts the operating agreement. (A-14) In that operating agreement he places section 5.1.2.11 which gives Sugrue authority to "remove non cash contributing members." (A-20) He does not need any excuse. On a whim, he can remove a "non cash contributing" member. Sugrue is using that section to remove Holzbaur and that is adhesion. Contra proferentem applies.

Applying contra proferentem, the language in the operating agreement clearly establishes Holzbaur as a cash contributing member of Trolley Square. Exhibit A (A-33) and sections 2.7, 3.1 and 3.2, when read together define Holzbaur as a cash contributing member. His membership cannot be terminated by section 5.1.2.11. (A-22)

CONCLUSION

By simply concentrating on section 9.20 and Exhibit A, the Answering Brief is in error to find ambiguity. Holzbaur stands by his Opening Brief to say that section 9.20 does not exist to define what a non cash contributing member is. When the totality of the operating agreement is read, there is no ambiguity. Holzbaur is by definition a cash contributing member of Trolley Square.

When applying contra proferentem, interpretation of the operating agreement clearly states that Holzbaur cannot be removed as a member by section 5.1.2.11.

JOHN R. WEAVER, JR., P.A.

s/ John R. Weaver, Jr.
JOHN R. WEAVER, JR., ESQ.
DE Bar #911
2409 Lanside Drive
Wilmington, DE 19810
T: 302-655-7371
Email: jrweaverlaw@verizon.net
Attorney for Plaintiff Below, Appellant, Erik Holzbaur