Insert at page 648 after Problem 6.8

RADDING v. FREEDOM CHOICE MORTGAGE, LLC
76 Conn. App. 366, 820 A.2d 317 (App. Ct. 2003)

WEST, J.

The defendant Freedom Choice Mortgage, LLC (Freedom),[1] appeals from the judgment of the trial court rendered in favor of the plaintiff, Gregory Radding, in this breach of contract action. The court was called on to determine the effective dates of the plaintiff's membership in the defendant limited liability company for the purpose of deciding whether the plaintiff was entitled to certain remuneration arising from that membership. The defendant claims that the court improperly concluded * * * that the plaintiff did not cease being a member of Freedom on the termination of his employment.

Freedom is a limited liability company that was organized pursuant to the laws of the state of Connecticut on September 26, 1994. Freedom is in the business of providing residential mortgages. Freedom hired the plaintiff as a commissioned loan representative in August, 1995. When the plaintiff began his employment, the terms and conditions of that employment were governed by an oral agreement. The plaintiff's work consisted of fielding telephone calls from persons interested in obtaining a mortgage, either to purchase a residence or to refinance an existing mortgage, and obtaining mortgage commitments from potential customers. The plaintiff was compensated on a commission basis, receiving a percentage of the fees generated on the closing of the mortgage loans.

In December, 1995, Freedom established a production bonus and profit sharing program for certain of its commissioned loan representatives. Freedom subsequently informed the plaintiff and certain other loan representatives about the production bonus and profit sharing program, and delivered to them the following documents: * * * (3) a copy of the "Operating Agreement of Freedom Choice Mortgage, LLC" (operating agreement), signed September 26, 1994, and (4) a copy of the first amendment to the operating agreement, dated December 12, 1995. The plaintiff signed the workers' compensation waiver form on December 22, 1995, and the CLR agreement on December 28, 1995. Pursuant to paragraph 7.2 of the operating agreement, no member of the company would be eligible to receive income from the production bonus or profit sharing programs until he or she had been a member for one full calendar year.

On December 13, 1996, the plaintiff and Freedom's principal owner had a heated telephone conversation that resulted in the plaintiff's termination of employment with the company. The plaintiff subsequently filed this action, seeking, inter alia, damages for breach of contract for the company's refusal to award him production bonus and profit sharing payments. Central to the plaintiff's claims were the dates on which he became a nonequity member of Freedom and when he ceased to be a member.

---

[1] Frank Noe, the principal owner of Freedom, also was named as a defendant. The action against him subsequently was withdrawn. We therefore refer in this opinion to Freedom as the defendant.

The court found that Freedom's amendment of the operating agreement on December 12, 1995, made the plaintiff a nonequity member of the company as of that date. The court further found that the plaintiff continued in his capacity as a nonequity member loan representative following the termination of his employment with the company on December 13, 1996.[2] The parties stipulated that the properly calculated amounts for the disputed bonus and profit sharing would be as follows:[3]

1996 Production Bonus:	$ 6425.64
1996 Profit Sharing:	955.00
1997 Profit Sharing:	394.39
1998 Profit Sharing:	623.98
	$ 8399.01[4]

I

* * *

On the basis of the foregoing, we conclude that the court correctly concluded that the plaintiff became a member of Freedom effective December 12, 1995.

II

The defendant also claims that the court improperly found that the plaintiff did not cease being a member of Freedom following the termination of his employment as a loan representative with the company.[7] We disagree.

As with the previous claim, because there is definitive contract language to guide our disposition of the issue, we are presented with a question of law and, therefore, our review of the present claim is plenary. Paragraph 9.3 of the operating agreement states that

---

[2] Although the court never expressly stated that the plaintiff did not cease being a member of Freedom, that conclusion is implicit in the court's finding that he never withdrew his membership and in the judgment awarding him unpaid profit sharing for the period through the end of 1998.

[3] Because production bonuses, though not profit sharing, were calculated on the basis of the amount of business each individual loan officer closed on during the previous year, the plaintiff concedes that he is not entitled to any production bonus for the time period following the termination of his employment, when he ceased to conduct business for the company.

[4] The parties stipulated to a total of $8409.01. That figure is a miscalculation of the total of the annual payments by $10.

[7] See footnote 2.

> [a] person ceases to be a member of the Company upon the occurrence of any of the events of disassociation set forth in the Connecticut Limited Liability Company Act [§ § 34-100 through 34-242] (the 'Act').

General Statutes § 34-180(a) provides in relevant part:

> [A] person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events: (1) The member withdraws by voluntary act from the limited liability company ... (3) the member is removed as a member (A) in accordance with the operating agreement, or (B) unless otherwise provided in writing in the operating agreement, when the member assigns all of his interest in the limited liability company with the written consent or by an affirmative vote of a majority in interest of the members who have not assigned their interests....

Section 34-180(b) provides that

> [t]he members may provide in writing in the operating agreement for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

Thus, a member may cease being a member when he (1) voluntarily withdraws from the limited liability company, (2) is removed by a majority vote of the extant members or (3) assigns all of his interest in the company. The court found, and we agree, that none of those events applied to the present case.

Freedom argues that the plaintiff was removed as a member as a result of his name being removed from schedule A by Frank Noe.[8] The defendant argues that such action was in accordance with the applicable provisions of the operating agreement, specifically article VII, paragraph 7.1, and article V, paragraphs 5.1 and 5.2.[9] We disagree.

---

[8] We note that this is a different ground than that presented at trial. At trial, the defendant argued that the plaintiff ceased to be a member of the company as a result of his voluntary termination of his employment with Freedom. The court concluded that such action did not comport with the requirements of the act because the plaintiff did not provide written notice of his intention to withdraw from membership in the company.

[9] Paragraphs 5.1. and 5.2, covering management of the company, provide no assistance to the defendant. Paragraph 5.1 states:

> The management and general overall supervision of the business and affairs of the Company shall be vested in a manager who shall be the chief executive officer of the Company.

Paragraph 5.2 states:

> The manager shall take all such action or actions to carry out the business, affairs, and purposes of the Company which the manager deems to be in the best interest of the Company or as permitted by Connecticut law.

It is beyond peradventure that those clauses cannot be read to convey authority to do that which is in contradiction to the express requirements of other clauses of the agreement. See *Shawmut Bank Connecticut, N.A. v. Connecticut Limousine Service. Inc.,* 40 Conn. App. 268, 273, 670 A.2d 880 (contract clauses must be construed in such a way as to reconcile apparent inconsistencies

Paragraph 7.1 of the operating agreement states that

> [t]he profits and losses of the company shall be allocated among the members in accordance with their respective percentage interests set forth on Schedule A attached hereto which may be amended from time to time by the majority vote of the members.

The defendant argues that because Frank Noe individually held a majority of the membership interest, his unilateral alteration of schedule A effectively operated as a majority vote for the purpose of amending the operating agreement. The defendant's argument ignores the fact that there is no evidence that any vote of the members actually occurred. Although, given Frank Noe's majority interest, the outcome of such a vote may have been a foregone conclusion, the voting procedures established by the operating agreement cannot be so cavalierly disregarded.[10]

> Parties do not ordinarily insert meaningless provisions in their agreements and, therefore, if it is reasonably possible to do so, every provision must be given effect. (Internal quotation marks omitted.)

Shawmut Bank Connecticut, N.A. v. Connecticut Limousine Service, Inc., 40 Conn. App. 268, 273, 670 A.2d 880, cert. denied, 236 Conn. 915, 673 A.2d 1143 (1996). In the present case, the operating agreement expressly sets forth the procedures governing member voting. Paragraph 12.1 of the agreement states:

> In all matters for which a vote of the members is required by this Agreement or by the Act, each member shall be entitled to the number of votes equivalent to his percentage interest in the company. All members may vote for all matters for which a vote is required by this Agreement or the Act, or for which a vote is requested at any member's meeting, unless a member's vote is specifically excluded by the terms of this Agreement.

Because paragraph 7.1 of the operating agreement requires a majority vote of the members to amend schedule A of the operating agreement and no such vote took place, we conclude that the court properly found that the plaintiff did not cease to be a member of Freedom following the termination of his employment as a loan representative.

The judgment is affirmed.

In this opinion the other judges [DRANGINIS, BISHOP, JJ.[*]] concurred.

"because it cannot be assumed that the parties intended to insert inconsistent and repugnant provisions"), cert. denied, 236 Conn. 915, 673 A.2d 1143 (1996). A contrary reading would render paragraph 12.1 superfluous.

[10] Compare the requirements of article III, providing that the termination of *the company* may be effected on the "*written consent* of at least a majority in interest of the members." (Emphasis added.)

[*] By editors.