Illinois Official Reports

Appellate Court

AEB Merger, LLC v. Azari, 2024 IL App (1st) 230975

Appellate Court Caption	AEB MERGER, LLC, Successor by Merger to American Enterprise Bank, Plaintiff-Appellant, v. BARDAN AZARI, a/k/a Barden Azari; LINDBURGH E. BOATWRIGHT JR.; and OMNI INVESTMENTS, LLC, Defendants (Omni Investments, LLC, Defendant-Appellee).
District & No.	First District, Third Division No. 1-23-0975
Filed	December 26, 2024
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 12-L-4966; the Hon. Catherine A. Schneider, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	Phillip W. Nelson and James P. Chivilo, of Holland & Knight LLP, of Chicago, for appellant. Adam Goodman, of Goodman Tovrov Hardy & Johnson LLC, of Chicago, for appellee.

Panel JUSTICE D.B. WALKER delivered the judgment of the court, with opinion.
Presiding Justice Lampkin concurred in the judgment and opinion.
Justice Reyes specially concurred, with opinion.

OPINION

¶ 1 In November 2011, defendant Omni Investments, LLC (Omni), was administratively dissolved by the Illinois secretary of state. Shortly thereafter, American Enterprise Bank (American), the predecessor of plaintiff AEB Merger, LLC (AEB), brought a complaint against Omni for an outstanding debt owed by Omni. Defendants Bardan Azari and Lindburgh Boatwright Jr. were Omni's only two members and managers and had issued personal guaranties on at least some of the loans taken out by Omni. The circuit court returned judgments against Omni and Boatwright. Years later, AEB revived the judgment. Azari reinstated Omni's corporate status and moved to quash service on Omni in the original action. The circuit court granted summary judgment in Omni's favor and this matter comes before us on AEB's appeal of that order.

¶ 2 I. BACKGROUND

¶ 3 The key facts relevant to this appeal are undisputed. Starting in 2004, American issued a number of loans to Omni, the details of which we will omit, as they are not relevant to the issues before us. According to plaintiff's brief, the facts of which Omni called "complete and correct,"[1] Boatwright and Azari "issued certain guaranties with respect to the Omni loans," which included a property pledged by Azari to secure Omni's debt.

¶ 4 Omni was administratively dissolved in November 2011, after failing to file the required annual reports and to pay the required annual fees with the Illinois secretary of state.

¶ 5 In May 2012, American filed a complaint against Omni, Azari, and Boatwright in the circuit court of Cook County to enforce a promissory note on Omni's debt. Azari was dismissed as a defendant on July 2, 2012, as he had filed for bankruptcy. On July 10, 2012, American served Boatwright with a summons and complaint, both personally and in his capacity as Omni's registered agent of record, at an address in Burr Ridge that did not match Omni's listed principal office on West Fullerton Avenue. Neither Omni nor Boatwright appeared before the court, and neither answered the complaint. American moved for and, on October 10, 2012, obtained a default judgment against Omni and Boatwright. Following a prove-up hearing, the circuit court entered judgment against Omni and Boatwright in the amount of $777,069.52.

¶ 6 American merged into AEB in 2018, and AEB succeeded American as owner of the judgment against Omni and American's interest in the property that Azari had pledged to secure the relevant debt. AEB subsequently filed for revival of the judgment against Omni and Boatwright. On October 16, 2020, AEB's revival motion was granted. In 2021, AEB filed a foreclosure action on the Azari mortgage. Azari then filed the necessary paperwork on Omni's

[1]Neither Boatwright nor Azari filed an appearance or brief in this appeal.

behalf to reinstate the company. Azari again listed Boatwright as Omni's registered agent on the 2021 paperwork.

¶ 7 On March 23, 2022, Omni moved to quash service and vacate the judgment under section 2-1401 of the Code of Civil Procedure. 735 ILCS 5/2-1401 (West 2020). In the motion, Omni argued that it had been administratively dissolved at the time of the initial complaint and judgment against it; therefore, Boatwright was no longer its registered agent. As such, Omni argued, the service on Boatwright was statutorily insufficient, rendering the judgment against Omni void *ab initio*.

¶ 8 Omni and AEB filed cross motions for summary judgment. AEB attached to its motion an affidavit from Boatwright in which he averred that, on July 10, 2012, he "was served by [American] personally and in [his] capacity as registered agent for Omni with a summons and the Verified Complaint." Boatwright also averred that that same month, or the following month at the latest, he informed his attorney, who was also Omni's attorney, that he and Omni had been served. Around that same time, Boatwright called Azari and informed him that Omni had been served. Omni's response to AEB's motion included an affidavit from Azari, in which he averred that he disagreed with Boatwright's affidavit with regard to the call. Azari averred that he did not recall a conversation with Boatwright around that time and that he doubted that the conversation had occurred.

¶ 9 Further, Omni argued in its motion for summary judgment that the circuit court lacked personal jurisdiction over Omni when it entered the default judgment against Omni because the company had been administratively dissolved at that point in time and therefore Boatwright no longer had authority to accept service on behalf of the company. Omni cited *John Isfan Construction, Inc. v. Longwood Towers, LLC*, 2016 IL App (1st) 143211, in support of its argument that a registered agent does not retain such authority after the dissolution of a limited liability corporation.

¶ 10 In its motion, AEB argued (1) that Boatwright continued to be Omni's registered agent after its administrative dissolution and therefore service upon him was proper, (2) that the amendment of section 35-3 of the Limited Liability Company Act (Act) (805 ILCS 180/35-3 (West 2012)) four months after this court's decision in *Longwood* demonstrated the legislature's intention that administrative dissolutions and intentional dissolutions be treated differently with regard to the extent to which the company continues after dissolution, (3) that, even if the circuit court were to follow *Longwood*, the Act requires that a reinstated company's existence be deemed to have continued without interruption and, as a result, Boatwright must be deemed to have remained its registered agent and Omni was therefore properly served, and (4) that Omni and its members had actual notice of the action regardless of whether service should have been effected on the secretary of state.

¶ 11 The circuit court denied AEB's motion for summary judgment and granted Omni's, citing *Longwood* as its basis for doing so. The court reasoned that the subsequent amendment of the Act was not retroactive and therefore played no role in its analysis. The circuit court stated that the Act makes no mention of a limited liability company retaining its registered agent after dissolution and *Longwood* held that it does not. The circuit court went on to opine, without reference to anything more than the statute itself, that section 35-40(d) of the Act (*id.* § 35-40(d)), which provides for the company's retroactive existence upon reinstatement and the ratification of members and officers' acts taken during dissolution, does not work in concert with section 1-50 of the Act (*id.* § 1-50), which requires service upon the registered officer or

the secretary of state. Lastly, the circuit court rejected AEB's argument regarding effective service, stating that actual knowledge of an action is not equivalent to proper service and does not vest the court with jurisdiction.

¶ 12 The circuit court rendered its decision on April 26, 2023, and AEB timely filed the instant appeal on May 26, 2023.

¶ 13 II. ANALYSIS

¶ 14 AEB appeals the circuit court's grant of summary judgment in favor of Omni. Summary judgment is a "drastic means of disposing of litigation and therefore should be allowed only when the right of the moving party is clear and free from doubt." *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Summary judgment "must be awarded with caution in order to avoid preempting a litigant's right to trial by jury or his right to *fully* present the factual basis of a case where a material dispute *may* exist." (Emphases in original.) *Lamkin v. Towner*, 246 Ill. App. 3d 201, 204 (1993). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2020). To determine whether there is a genuine issue of material fact, we construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *MEP Construction, LLC v. Truco MP, LLC*, 2019 IL App (1st) 180539, ¶ 12 (citing *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 131-32 (1992)). If reasonable people would draw divergent inferences from undisputed facts, summary judgment is inappropriate. *Id.* (citing *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008)).

¶ 15 "In appeals from summary judgment rulings, review is *de novo*." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). "*De novo* review means that we perform the same analysis that a trial judge would perform." *Khan v. Fur Keeps Animal Rescue, Inc.*, 2021 IL App (1st) 182694, ¶ 25.

¶ 16 AEB argues (1) that the circuit court and the *Longwood* case upon which it relied both erred in finding that a registered agent is not retained when a limited liability company (LLC) is administratively dissolved, (2) that *Longwood* does not apply because it was not decided when Boatwright was served, (3) that a section 2-1401 motion is not a continuation of the underlying lawsuit but a new action, (4) that the circuit court erred by failing to retroactively apply the amended version of section 35-3(d), and (5) that even if the service effected on Boatwright was improper, Omni's reinstatement retroactively rendered that service valid and proper.

¶ 17 AEB asserts that *Longwood* was wrongly decided and asks that we disregard it. AEB asserts that the circuit court in this case, because it followed *Longwood*, failed to consider the effect of section 35-30(c) of the Act (805 ILCS 180/35-30(c) (West 2012)) on the question of whether a company's registered agent is maintained when the company is dissolved. Section 35-30(c) provides that an administratively dissolved company shall continue only for the purpose of winding up and "may take all action authorized under Section 1-30 or necessary to wind up its business and affairs and terminate." *Id.*

¶ 18 Section 1-30 of the Act enumerates the powers possessed by limited liability companies, which include both the power to "(1) [s]ue and be sued, complain and defend, and participate in administrative or other proceedings, in its name," as well as "(10) [e]lect managers and

appoint agents of the limited liability company, define their duties, and fix their compensation." *Id.* § 1-30(1), (10). AEB argues that because an administratively dissolved company retains the same powers it had prior to dissolution, and because that includes the ability to appoint agents and officers, there is "ample authority for the proposition that a registered agent retains authority to accept service of process in the case of an involuntary dissolution such as Omni's." Omni argues, in response, merely that *Longwood* controls and that "[d]issolved LLCs no longer have members, managers, or registered agents." Omni cites no authority for this assertion, and it is incompatible with the Act's grant to administratively dissolved companies of the power to appoint officers.

¶ 19 *Longwood* is distinguishable from the facts of this case, and its holding should be limited to its unique facts. In *Longwood*, the plaintiff sued an LLC that had been "involuntarily dissolved" prior to the suit being filed. *Longwood*, 2016 IL App (1st) 143211, ¶ 1. The plaintiff obtained a default judgment and, nearly two years later, initiated supplementary proceedings to attempt to collect on the judgment from former members, claiming that they had received unlawful distributions that should have gone to paying the defendant LLC's debt to the plaintiff company. *Id.* ¶ 2. The individual defendants moved to vacate the default judgment, and their motion was denied. On appeal, the defendants argued that the defendant LLC was never properly served. Plaintiff had served the defendant LLC's listed registered agent post-dissolution at an address other than the one listed as the defendant LLC's place of business. *Id.* ¶ 16. The LLC in *Longwood* was never reinstated.

¶ 20 The defendants in *Longwood* argued that "service on a defunct company must be made through the secretary of state, pursuant to the Limited Liability Company Act." *Id.* ¶ 36. The plaintiff argued that the registered agent's status as such continued beyond the dissolution of the company. *Id.* Though this court found that the plaintiff forfeited this argument, it nonetheless analyzed the issue and cited its conclusion on the matter, not plaintiff's forfeiture, as part of the basis for its holding. *Id.* ¶¶ 40, 54.

¶ 21 *Longwood*'s reasoning is inapposite. *Longwood* held that

> "[w]hen any of the conditions of [section 1-50(b)] are present, a plaintiff is required to serve process upon the Secretary of State, and it must also serve copies at the company's last registered office as well as the address that the plaintiff believes is most likely to result in actual notice." *Id.* ¶ 38 (citing 805 ILCS 180/1-50(c) (West 2012)).

The *Longwood* court's reading of the statute is not supported by its text. In the version that was applicable to the facts of *Longwood*, and that also applies to the case before us, section 1-50 provided, in relevant part:

> "(a) Any process, notice, or demand required or permitted by law to be served upon either a limited liability company or foreign limited liability company shall be served either upon the registered agent appointed by the limited liability company or upon the Secretary of State as provided in this Section.
>
> (b) The Secretary of State shall be irrevocably appointed as an agent of a limited liability company upon whom any process, notice, or demand *may* be served under any of the following circumstances:
>
> (1) Whenever the limited liability company shall fail to appoint or maintain a registered agent in this State.

(2) Whenever the limited liability company's registered agent cannot, by registered or certified mail, be found at the registered office in this State or at the principal place of business stated in the articles of organization." (Emphasis added.) 805 ILCS 180/1-50(a)-(b) (West 2012).

¶ 22 *Longwood* reads section 1-50's dictate that the secretary of state *may* be served after being appointed as *an* agent of an LLC to be mandatory and exclusive. "Except in very unusual circumstances affecting the public interest, the legislative use of the word 'may' is permissive rather than mandatory." *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985) (citing *Boddiker v. McPartlin*, 379 Ill. 567, 578 (1942)). *Longwood* offers no compelling public interest to justify its reading of the word "may" as mandatory. We read it to be permissive. In the circumstances described in section 1-50(b)(2), an LLC's registered agent might prove difficult to find, but may still exist, so the permissive "may" in the statute leaves open the option of serving the agent *or* the secretary of state and does not require the secretary of state be served. Conversely, under the circumstances described in section 1-50(b)(1), no registered agent exists and so there would be no option but to serve the secretary of state. The question presented in our case is whether, despite Omni's administrative dissolution, Boatwright was still a registered agent at the time he was served. Service upon Boatwright was only improper if that question is answered in the negative.

¶ 23 *Longwood* next opined that "nothing in the Act indicates that a registered agent of a limited liability company retains authority after dissolution." *Longwood*, 2016 IL App (1st) 143211, ¶ 40. *Longwood* bolsters this assertion with comparison to the Business Corporation Act of 1983 (Business Corporation Act), which "explicitly provides that, for five years after a corporation is dissolved, the registered agent remains an agent of the corporation upon whom process can be served." *Id.* (citing 805 ILCS 5/5.05 (West 2012)). The opinion concluded that "[t]here is no parallel provision in the [Limited Liability Company Act], although the legislature could certainly have added such a provision if it chose." *Id.*

¶ 24 With regard to the Business Corporation Act, *Longwood* fails to acknowledge that, also unlike the Act, the Business Corporation Act explicitly provided, and still provides, a five-year period during which the dissolution of a corporation "shall not take away nor impair any civil remedy available to or against such corporation, its directors, or shareholders." 805 ILCS 5/12.80 (West 2012). "Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name." *Id.* We must conclude that the preservation of the registered agent of a defunct corporation for five years in the Business Corporation Act intentionally mirrors this five-year window to bring claims. As the Act has no such five-year window, it is no surprise that it has no similar explicit window during which a registered agent remains in place. As stated above, section 1-30 of the Act does allow an administratively dissolved LLC to sue and be sued during its post-dissolution wind up period. *Longwood*'s reliance on the lack of parallel to the Business Corporation Act does not hold up under scrutiny.

¶ 25 The *Longwood* court was technically correct in its reasoning that "nothing in the Act indicates that a registered agent of a limited liability company retains authority after dissolution." *Longwood*, 2016 IL App (1st) 143211, ¶ 40. However, nothing in the Act indicates how long a registered agent of a limited liability company retains his or her authority at all. The lack of an explicit statement regarding retention is only relevant within the context of *Longwood*'s flawed comparison to the Business Corporation Act. In *Longwood*, the plaintiff

did not provide legal support for its argument; here, AEB provides us one that is convincing, namely that the Act bestows upon administratively dissolved LLCs the power to appoint agents and officers. The circuit court found that argument unconvincing, agreeing that such power was granted, but noting that "no reference to maintaining agents is made, and it is for this reason that this Court concurs with the Longwood court that a registered agent is not retained after dissolution."

¶ 26 "A statute capable of two interpretations should be given that which is reasonable and which will not produce absurd, unjust, unreasonable or inconvenient results that the legislature could not have intended." *Collins v. Board of Trustees of the Firemen's Annuity & Benefit Fund of Chicago*, 155 Ill. 2d 103, 110 (1993). If we interpret the statute as the circuit court has, and as *Longwood* did, we reach absurd results. For instance: On Monday, an LLC exists, with officers and agents; on Tuesday, it is administratively dissolved; on Wednesday, is the dissolved entity mandated to reappoint its officers and agents anew to go about winding up? This would be absurd. Who causes the company to appoint those agents and officers if there are no longer any agents or officers? One could argue that the members could appoint the agents and officers anew, but the statute does not state that members are maintained either. If we were to read the statute's lack of an explicit provision stating that the registered agent is maintained post-dissolution to mean that it is not, we would be obligated to reach the same conclusion regarding the company's members, which would leave no one with authority to appoint a new registered agent. That reading cannot be reasonably reconciled with section 35-7 of the Act, which provides that an LLC "is bound by a member or manager's act after dissolution that: (1) is appropriate for winding up the company's business." 805 ILCS 180/35-7 (West 2012). This language makes clear that, despite the lack of an explicit statement that members and managers are maintained, there are still members and managers post-dissolution. There is nothing in the language of the statute regarding registered agents that suggests or demands that we should interpret their post-dissolution status any differently. The registered agent is still on record with the secretary of state, even if the paperwork is outdated. We must conclude that, where an LLC is granted the power to sue or be sued and the statute provides for an agent through which such action is to be taken, the legislature must have anticipated that the LLC would have such an agent any time it is expected to take such an action, which, in this case, includes post-dissolution.

¶ 27 "When interpreting a statute, the primary objective is to give effect to the legislature's intent, which is best indicated by the plain and ordinary language of the statute itself." *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶ 25. The purpose of the section of the Act devoted to service on an LLC is to provide the secretary of state as an alternative recipient if no registered agent is apparent or available. Neither *Longwood* nor the circuit court provides any support for a conclusion to the contrary.

¶ 28 In sum, we conclude that a registered agent of an administratively dissolved LLC continues to hold that role, unless he or she resigns, during the wind up period that follows dissolution. Section 35-30 states that, upon administrative dissolution, "a dissolved limited liability company shall continue for only the purpose of winding up its business." 805 ILCS 180/35-30(c) (West 2012). The LLC *shall* continue, albeit with a limited purpose. Whether Omni had concluded its wind up before American served its registered agent, Boatwright, is a genuine issue of material fact that was not resolved below. Accordingly, we reverse the summary judgment order and remand to the circuit court for further proceedings.

¶ 29 As AEB's first argument is sufficient to warrant reversal, we need not reach the other arguments presented.

¶ 30 III. CONCLUSION

¶ 31 As *Longwood* relies upon a misinterpretation of the relevant statute, we decline to follow it and hold that an administratively dissolved LLC's registered agent continues in that role during the LLC's wind up period. Since no factual determination has been made as to whether Omni was still within that wind up period when Boatwright was served, we reverse the summary judgment order and remand to the circuit court for further proceedings.

¶ 32 Reversed and remanded.

¶ 33 JUSTICE REYES, specially concurring:

¶ 34 I concur in the result only.