

STATE OF NORTH CAROLINA  
HAYWOOD COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
22 CVS 752

JILL MCCLURE,

Plaintiff,

v.

GHOST TOWN IN THE SKY, LLC,

Defendant.

**ORDER AND OPINION ON  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT AND  
MOTION TO STRIKE**

1. In this lawsuit, Jill McClure seeks to dissolve Ghost Town in the Sky, LLC. Pending is her motion for summary judgment. (See ECF No. 69.) For the following reasons, the Court **DENIES** her motion and **GRANTS** summary judgment in favor of Ghost Town in the Sky.

*McGuire Wood & Bissette, P.A., by Mary E. Euler, for Plaintiff Jill McClure.*

*McLean Law Firm, P.A., by Russell Lyway McLean, for Defendant Ghost Town in the Sky, LLC.*

Conrad, Judge.

I.  
BACKGROUND

2. The Court does not make findings of fact when ruling on motions for summary judgment. The following background, drawn from the evidence submitted by the parties, provides context for the Court's analysis and ruling only.

3. Ghost Town in the Sky has a short history. Its founders, Alaska Presley and Coastal Development, LLC, formed the company in 2020. Their aim was to redevelop a defunct, western-themed amusement park and 250 surrounding acres in the North

Carolina mountains. Presley contributed the property (which she had bought years earlier in hopes of opening a Christian amusement park), and Coastal Development promised future contributions of “cash or financing and labor for development.” Each received an equal 50 percent membership interest. (See V. Compl. ¶¶ 2, 25, 30, 32, 35, ECF No. 3; V. Compl. Ex. 1 [“Op. Agrmt.”] §§ 1.1, 5.1, Art. II, ECF No. 3; *see also* Ex. 1 to Pl.’s Ex. 12, ECF Nos. 74, 93.5.)

4. Shortly after forming Ghost Town in the Sky, Presley and Coastal Development drafted a written operating agreement to govern its affairs. They also designated Coastal Development—acting through its principal, Frankie Wood—as the managing member. Under the operating agreement, the managing member has broad authority to conduct the company’s day-to-day operations. Extraordinary acts, such as declaring bankruptcy or disposing of all company assets, require “the consent of all the Members,” however. (V. Compl. ¶ 31; Op. Agrmt. §§ 7.9, 7.10; Wood Aff., ECF No. 79.)

5. The record offers only a bare sketch of Ghost Town in the Sky’s activities over the next couple of years. Wood began attending town meetings and lobbying local officials on zoning and related matters. He and Presley also had discussions with Storyland Studios, a design and marketing company with theme-park experience. A few potential investors expressed interest in the project, but it is unclear how serious that interest was. Throughout this period, Ghost Town in the Sky did not secure financing, earn income, or hire employees. Indeed, Presley paid most of the company’s utility bills and property taxes out of her own pocket. (See 1st

McClure Aff. ¶ 4, ECF No. 26; McClure Dep. 38:12–20, 43:6–44:16, 64:7–25, 73:14–24, ECF No. 100; Wood Dep. v.1 49:9–17; 54:22–55:13, 56:14–57:24, ECF Nos. 74, 93.5.)

6. In the spring of 2022, Presley died at age 98. She had arranged in the operating agreement that McClure, her niece, would “succeed to all of” her “Membership interest . . . with all the interests, rights and duties previously held by the decedent.” McClure immediately began asking for books and records, an accounting and other financial information, and access to the property. She also expressed a willingness to sell her interest to Coastal Development. But buyout negotiations ended in an impasse. And Wood rejected McClure’s other demands, claiming that she was a mere economic interest holder, not a member. (V. Compl. ¶¶ 5, 6, 46–48, 56; Op. Agrmt. § 12.4; Wood Aff. at 3.)

7. Just four months after Presley’s death, McClure brought this suit to dissolve Ghost Town in the Sky and wind up its affairs under N.C.G.S. § 57D-06-02(2). She bases her claim on allegations that the company is insolvent, has virtually no income, and cannot pay its property taxes, insurance premiums, and other routine costs. She also blames Coastal Development for mismanaging the company and suppressing her rights as a member.<sup>1</sup> (See V. Compl. ¶¶ 37, 38, 45–47, 87–91.)

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<sup>1</sup> McClure’s complaint initially included a second claim to dissolve Maggie Valley RV Park, LLC—another entity jointly founded by Presley and Coastal Development. McClure succeeded to Presley’s membership interest in Maggie Valley RV Park, just as she had with Ghost Town in the Sky, and made similar allegations of insolvency and mismanagement by Coastal Development. This claim is no longer at issue, however, due to a settlement in which Coastal Development bought McClure’s interest in Maggie Valley RV Park. (See Consent Judgment as to Maggie Valley RV Park, LLC, ECF No. 53.)

8. The parties filed a flurry of motions right out of the gate. Ghost Town in the Sky moved to dismiss the complaint, arguing that McClure was not a member and therefore lacked standing to seek its dissolution. McClure moved for a preliminary injunction to enforce her membership rights, including informational rights granted by the operating agreement. She also moved to appoint herself as receiver to take control of Ghost Town in the Sky pending its dissolution, forecasting, in part, that restoration of her membership rights would inevitably lead to a managerial deadlock between her and Coastal Development. (See Mot. Dismiss, ECF No. 4; Mot. Prelim. Inj., ECF No. 15; Mot. Appt. Receiver, ECF No. 16.)

9. The Court denied each motion. As to Ghost Town in the Sky's motion to dismiss, the Court held that the operating agreement unambiguously conferred membership on McClure. See *McClure v. Ghost Town in the Sky, LLC*, 2022 NCBC LEXIS 151, at \*5 (N.C. Super. Ct. Dec. 5, 2022). In the wake of that decision, Ghost Town in the Sky represented that it would treat McClure as a member and honor her membership rights. As a result, the Court denied McClure's motions without prejudice, concluding that there was "no urgent need to appoint a receiver or to enter a preliminary injunction" once her rights had been restored and that her concerns about a future management deadlock were speculative at best. (See Order on Mots. for Appt. Receiver & Prelim. Inj. 2–3, ECF No. 30.)

10. Meanwhile, there have been a few noteworthy events. In November 2022, Ghost Town in the Sky signed a contract with Storyland Studios to create a project design plan, contingent on securing financing. In March 2023, McClure called a

member meeting for the purpose of removing Coastal Development as managing member. Her motion failed because Coastal Development voted against it, and the meeting was adjourned without further business. Since then, McClure and Coastal Development have quarreled over who must pay Ghost Town in the Sky's 2022 and 2023 property taxes, both of which are past due. (*See* Notice of Mtg. of Members, ECF No. 42; Pl.'s Ex. 9, ECF Nos. 74, 93.4; 2d McClure Aff. ¶¶ 2–4, ECF No. 84.1; *see also* Consent Judgment as to Maggie Valley RV Park, LLC.)

11. After discovery closed, McClure moved for summary judgment on her dissolution claim. (*See* ECF No. 69.) She also moved to strike certain exhibits that Ghost Town in the Sky submitted in opposition to the motion for summary judgment. (*See* ECF No. 85.) Following a hearing on both motions on 30 January 2024, the Court notified the parties that it intended to consider whether to enter summary judgment against McClure, as allowed by Rule 56(c) of the North Carolina Rules of Civil Procedure, and called for supplemental briefing on that question. The parties filed their briefs and additional supporting materials on 16 February 2024. The motions are now ripe for resolution.

## II. MOTION FOR SUMMARY JUDGMENT

12. Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. R. Civ. P. 56(c). A trial court may,

“when appropriate,” enter summary judgment “against the moving party.” *Id.*; see also *Brooks v. Hackney*, 329 N.C. 166, 170 n.2 (1991).

13. Involuntary dissolution is an equitable remedy and an “extraordinary” one at that. *Brady v. Van Vlaanderen*, 2017 NCBC LEXIS 61, at \*18 (N.C. Super. Ct. July 19, 2017). By statute, a trial court may dissolve an LLC only when a member shows that “it is not practicable to conduct the LLC’s business in conformance with the operating agreement and [governing statutes]” or that “liquidation of the LLC is necessary to protect the rights and interests of the members.” N.C.G.S. § 57D-6-02(2). And “even where a party establishes a statutory ground for dissolution,” whether or not to dissolve the LLC is “left largely to the discretion of the trial court.” *Reid Pointe, LLC v. Stevens*, 2008 NCBC LEXIS 16, at \*11–12 (N.C. Super. Ct. Aug. 18, 2008).

14. Nearly all the parties’ arguments center on whether it is or isn’t practicable for Ghost Town in the Sky to conduct its business in conformance with its operating agreement. The phrase “not practicable” means “unfeasible” (as opposed to “impossible”). *James H.Q. Davis Tr. v. JHD Props. LLC*, 2022 NCBC LEXIS 153, at \*13 (N.C. Super. Ct. Dec. 9, 2022). A managerial deadlock is perhaps the most common example of a circumstance in which it is unfeasible to carry on the LLC’s business. See, e.g., *id.* at \*13–14; *Battles v. Bywater, LLC*, 2014 NCBC LEXIS 54, at \*24 (N.C. Super. Ct. Oct. 31, 2014). Absent deadlock, though, courts near and far “have been reluctant to order dissolution so long as it is possible to continue to operate the company in accordance with its certificate of organization and management

agreement.” *Barkalow v. Clark*, 959 N.W.2d 410, 420 (Iowa 2021). As the Iowa Supreme Court recently put it, there must be “a clear inability to fulfill the contracted purposes of the LLC, usually but not invariably for financial reasons.” *Id.*; *see also In re 1545 Ocean Ave., LLC*, 72 A.D.3d 121, 131 (N.Y. App. Div. 2010) (holding that, absent deadlock, the member petitioning for dissolution must show that “continuing the entity is financially unfeasible”).

15. No deadlock exists here: the undisputed evidence shows that Coastal Development is the sole managing member of Ghost Town in the Sky and that it has unilateral authority under the operating agreement to manage the company’s day-to-day affairs without McClure’s consent. (*See* V. Compl. ¶ 31; Op. Agrmt. §§ 7.9, 7.10.) There is no doubt that McClure mistrusts Coastal Development and would remove it as managing member if she could. But her dissenting views, no matter how entrenched, cannot lead to deadlock because managerial authority lies exclusively with Coastal Development. *See, e.g., Comput. Design & Integration, LLC v. Brown*, 2018 NCBC LEXIS 216, at \*75 (N.C. Super. Ct. Dec. 10, 2018) (concluding that no deadlock existed when managing member had “full, complete and exclusive authority”); *see also* N.C.G.S. § 57D-3-20(a) (“The management of an LLC and its business is vested in the managers.”); *id.* § 57D-3-20(d) (“[T]hose persons designated as managers in, or in the manner provided in, the operating agreement will be managers.”).

16. Nor is it unfeasible for Ghost Town in the Sky to carry out its contracted purposes. Broadly defined in the operating agreement, those purposes are “to own,

lease and otherwise deal with real and personal property,” “to engage in real estate investment and management,” and “to engage in any other lawful business” deemed to be in its “best interest.” (Op. Agrmt. § 1.1.) Ghost Town in the Sky is doing just that by owning and managing the amusement park remnants and surrounding acreage.

17. McClure points out that Ghost Town in the Sky has no income and has not yet secured financing to develop its property. As she concedes, though, the company has no known creditors, and its property holds great actual and potential value. (*See* Br. Supp. Summ. J. 12, ECF No. 70; Pl.’s Ex. 4, ECF No. 72.) At most, the lack of income and outside investment suggests that the members have received an underwhelming return to date, not that it is impracticable to continue. *See, e.g., Jacobson v. Walsh*, 2014 NCBC LEXIS 2, at \*25 (N.C. Super. Ct. Jan. 22, 2014) (holding that “[t]he mere fact of foreclosure and the loss of investments, standing alone,” did not support claim for dissolution); *see also Dysart v. Dragpipe Saloon, LLC*, 933 N.W.2d 483, 486–87 (S.D. 2019) (“Nor do the historic losses or Dragpipe’s failure to return income distributions to its members render its operation impracticable.”).

18. Moreover, Ghost Town in the Sky is young, having been formed just two years before this litigation began. No evidence suggests that the company’s founders expected it to complete development of an amusement park and turn a profit in that short period. Even if they had, a “court will not dissolve an LLC merely because the LLC has not experienced a smooth glide to profitability or because events have not turned out exactly as the LLC’s owners originally envisioned.” *In re Arrow Inv.*

*Advisors, LLC*, 2009 Del. Ch. LEXIS 66, at \*9 (Del. Ch. Apr. 23, 2009); *see also id.* at \*14 (“Hamman cannot state a claim for dissolution by simply alleging that a two-year-old LLC with a broad purpose clause has experienced some adversity and therefore ought to be dissolved.”).

19. McClure also contends that the company cannot pay its property taxes and other recurring costs because it has no cash on hand apart from a nominal bank account balance. This is unpersuasive. Historically, the company’s members have lent it money as needed or otherwise paid its costs. It is undisputed that Presley paid the property taxes before her death. (*See* 1st McClure Aff. ¶ 4.) Since then, both McClure and Coastal Development have paid various expenses, and both represent that they have the means to continue doing so. (*See* 2d McClure Aff. ¶ 5; Wood Aff. at 4; Wood Dep. v.2 21:19–22:15, 23:22–24:9, ECF No. 93.5.) The only reason that the 2022 and 2023 property taxes are overdue is that McClure and Coastal Development disagree about who should bear that expense.<sup>2</sup> That is an isolated dispute about member rights and obligations, not true financial adversity of the sort needed to merit the drastic remedy of involuntary dissolution. *See Brady*, 2017 NCBC LEXIS 61, at \*33 (“A claim for judicial dissolution is not intended to police disagreements among members.”); *see also Barkalow*, 959 N.W.2d at 423 (“Dissolution . . . is not a wide-ranging mechanism for doing equity, but a drastic

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<sup>2</sup> Coastal Development contends (without much support, it must be said) that Article II of the operating agreement obligates McClure to pay all property taxes owed by Ghost Town in the Sky but represents that it would pay them if she does not. McClure reasonably disputes that reading of the operating agreement. This is a dispute that the parties can and should resolve. There are many targeted ways to do so (such as mediation or an action for declaratory relief, for example); involuntary dissolution is not one of them.

remedy to be ordered when an LLC is truly in an unmovable logjam or cannot as a practical matter carry on its contracted purpose.”).

20. In her reply brief, McClure accuses Coastal Development of gross negligence in its management of Ghost Town in the Sky. Grossly negligent management could, in theory, support a claim for dissolution but only if the mismanagement makes it impracticable for the LLC to carry on its activities. For all the reasons discussed above, that isn't the case here. *See, e.g., Brady v. Van Vlaanderen*, 261 N.C. App. 1, 5 (2018) (concluding that complaining shareholder's assertion that “assets are being mismanaged” did not “support an order for dissolution”); *Jacobson*, 2014 NCBC LEXIS 2, at \*25 (granting summary judgment, in part, because of “insufficient evidence of mismanagement” that impaired feasibility of LLC's operations). To the extent McClure believes that Coastal Development has breached its fiduciary duties or that its actions have harmed Ghost Town in the Sky, she can seek relief through a derivative claim. *See, e.g., 1545 Ocean Ave.*, 72 A.D.3d at 132 (“Nevertheless, such remedy cannot serve as the basis for dissolution unless the wrongful acts of a managing member which give rise to the derivative claim are contrary to the contemplated functioning and purpose of the limited liability company.”).

21. In short, neither Ghost Town in the Sky's inability to obtain financing nor the frosty relationship between its members has kept it from fulfilling its contracted purposes. The evidence, even when viewed in the light most favorable to McClure, does not show that it is impracticable to conduct Ghost Town in the Sky's business in conformance with the operating agreement. *See, e.g., Comput. Design & Integration*,

2018 NCBC LEXIS 216, at \*75–76 (granting summary judgment when complaining member had shown “a disagreement” but “not that it is impracticable” to conduct LLC’s business); *Jacobson*, 2014 NCBC LEXIS 2, at \*25–26 (similar); *see also, e.g., Levine v. Beem*, 608 So.2d 373, 375 (Ala. 1992) (“The lease and maintenance of the real property is Malaga Properties’ only objective and none of the alleged ill will between Levine and Sinclair has prevented Malaga Properties from accomplishing its objectives.”); *Blue Equity Holdings Ky., LLC v. Cobalt Riverfront Props., LLC*, 2019 Ky. App. Unpub. LEXIS 616, at \*17 (Ky. Ct. App. Aug. 30, 2019) (unpublished) (concluding that dissolution would be inappropriate given that the manager “possesse[d] the discretion to utilize the real property in accordance with any of the stated purposes set forth in” the operating agreement and had “done so by operating a parking lot thereupon”).

22. Separately, McClure contends that liquidation is necessary to protect her rights and interests. As best the Court can tell, she offers two arguments. The first is that she reasonably expected to receive regular distributions from Ghost Town in the Sky but that her expectations have been frustrated by its failure to earn income. The second is that Coastal Development’s refusal to acknowledge her member rights following Presley’s death was an act of oppression.

23. Neither argument has merit. In corporate law, a minority shareholder claiming that liquidation is necessary to protect her rights must show, among other things, that she “had one or more substantial reasonable expectations known or assumed by the other participants” and that “the expectation has been frustrated.”

*Meiselman v. Meiselman*, 309 N.C. 279, 301 (1983). “[O]ur courts have not yet decided whether and to what extent the principles of *Meiselman* apply to actions” to dissolve an LLC. *Bennett v. Bennett*, 2019 NCBC LEXIS 19, at \*35 (N.C. Super. Ct. Mar. 15, 2019). Even if a member of an LLC could rely on *Meiselman*, though, McClure has not offered evidence to substantiate her expectation that she would receive dividends, to establish the reasonableness of that expectation in light of the bargained-for provisions of the operating agreement and the nature of the company, or to show that Coastal Development knew about and shared her expectation.

24. Likewise, McClure’s argument that Coastal Development suppressed her member rights is stale. Before this litigation began, Coastal Development took the position that McClure was an economic interest holder, not a member, and denied her demand for records on that basis. Ghost Town in the Sky then challenged McClure’s standing to seek its dissolution for the same reason. But the dispute over McClure’s membership status is a thing of the past. The Court resolved that dispute when it concluded that McClure is a member of Ghost Town in the Sky and denied the motion to dismiss. Missing is any evidence of present, ongoing oppression such that liquidation would be necessary to protect McClure’s rights. *See Comput. Design & Integration*, 2018 NCBC LEXIS 216, at \*77 (granting summary judgment when complaining member had not offered evidence that managing member “has violated his rights as an LLC member” or “operated [the LLC] in a manner resulting in harm to his interest”).

25. “Justifying liquidation as a tool for enforcing the rights or interests of a complaining shareholder . . . requires a strong showing.” *High Point Bank Tr. Co. v. Sapona Mfg. Co.*, 2010 NCBC LEXIS 14, at \*19 (N.C. Super. Ct. June 22, 2010). McClure has not presented sufficient evidence, even when viewed in the light most favorable to her, to show that liquidation is necessary to protect her rights and interests.

26. In sum, McClure has not forecasted evidence sufficient to create a genuine issues of material fact on either statutory ground for judicial dissolution of Ghost Town in the Sky. Accordingly, the Court denies her motion for summary judgment, enters summary judgment against her, and dismisses her claim with prejudice.

### III. MOTION TO STRIKE

27. After briefing was complete, McClure moved to strike some of Ghost Town in the Sky’s evidence: an affidavit of Matt Ferguson, an appraisal report of Lynwood B. Jackson, and limited portions of Wood’s affidavit. McClure contends that it is appropriate to strike these items because Ghost Town in the Sky never disclosed Ferguson as a person with relevant knowledge (failing also to produce an exhibit attached to his affidavit) and never designated Jackson as an expert witness. In ruling on the motion for summary judgment, though, the Court has not considered any of this evidence. Striking the affidavits and related documents would therefore have no effect. As a result, the Court denies McClure’s motion to strike as moot.

28. Even so, the Court does not condone Ghost Town in the Sky’s conduct during discovery. At the parties’ request, the Court extended various discovery deadlines

eight times, largely to accommodate Ghost Town in the Sky and its witnesses. Despite these extensions, it failed to identify Ferguson in response to McClure's discovery requests and to designate Jackson as an expert in keeping with the case management order. Ghost Town in the Sky's belated attempt to introduce evidence that it had not timely disclosed or that it had not produced at all is tantamount to litigation by ambush. Making matters worse, its counsel blamed McClure and her counsel for the oversight.<sup>3</sup> These tactics have no place in civil litigation, and the Court admonishes Ghost Town in the Sky and its counsel accordingly.

#### IV. CONCLUSION

29. For all these reasons, the Court **DENIES** McClure's motion for summary judgment and **GRANTS** summary judgment against her on her claim for dissolution of Ghost Town in the Sky. This claim is **DISMISSED** with prejudice.

30. The Court also **DENIES** McClure's motion to strike as moot.

31. No issues or claims remain for trial. Accordingly, this is a final order and judgment disposing of all issues in this action.

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<sup>3</sup> Ghost Town in the Sky apparently intended to seek a ninth extension of discovery that might have allowed it to cure some of these issues. Its counsel never moved for relief, though. Instead, he asked McClure's counsel to consent to the extension, which she did, and then let the matter drop. Inexplicably, Ghost Town in the Sky now contends that McClure should have prepared and filed the motion to extend the discovery deadline.

**SO ORDERED**, this the 16th day of May, 2024.

/s/ Adam M. Conrad  
Adam M. Conrad  
Special Superior Court Judge  
for Complex Business Cases