

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

OLWIDAS, LLC	:	March Term, 2011
<i>Plaintiff</i>	:	Case No. 03536
v.	:	
AMIT AZOULAY	:	Commerce Program
<i>Defendant</i>	:	
v.	:	
JONATHAN NADAV	:	
<i>Additional Defendant</i>	:	Control No. 11040610

OPINION

The Petition for Preliminary Injunction requires to Court to decide whether the member of a limited liability company must ratify an Agreement for the Sale of Property owned by that company. Since there is no threat of immediate and irreparable harm, the Petition for Preliminary Injunction is Denied.

Background

Plaintiff, Olwidas LLC (“Olwidas,”) is a limited liability company located in Philadelphia, Pennsylvania. The business of Olwidas is “the acquisition, construction and sale of [real] property.”¹ The sole asset of Olwidas is a single residential property located at 8614 Thomas Mill Terrace, Philadelphia, Pennsylvania (the “Property.”) Defendant, Amit Azoulay, (“Azoulay,”) is an individual residing in Philadelphia,

¹ Operating Agreement of Olwidas, LLC, Exhibit D-6, produced at a Hearing upon the Petition for Preliminary Injunction.

Pennsylvania. Azoulay is president and 1/3 owner of Olwidas. Additional Defendant Jonathan Nadav (“Nadav,”) is an individual residing in Pennsylvania. Nadav is 2/3 owner of Olwidas. Under the terms of an “Operating Agreement,” Azoulay and Nadav enjoy each 50% voting rights in the affairs of Olwidas. Although Olwidas acquired and developed the Property located at 8614 Thomas Mill Terrace, Nadav alone is financially responsible under a mortgage thereon, and is title owner to the Property pursuant to a deed, from Olwidas to Nadav, dated August 28, 2007.²

On March 24, 2011, Azoulay, as President of Olwidas, entered into an agreement for the sale of the Property in the amount of \$1,000,000 (the “Agreement”).³ Notwithstanding this Agreement, Olwidas, through its 2/3 owner Nadav, has refused to sign the Agreement.

On April 6, 2011, Azoulay filed a Petition for Preliminary Injunction. The Petition asks this Court to compel Nadav to confirm the Agreement and to close the sale of the Property. On April 18, 2001, Nadav, on behalf of Olwidas, filed a Response in Opposition to the Petition for Preliminary Injunction. On May 3, 2011, this Court held a Hearing upon the Petition, pursuant to Pa. R.C.P. 1531(a).

At the Hearing, Additional Defendant Nadav asserted that he has refused to agree to the sale because the selling price of \$1,000,000 is inadequate. Testimony offered at the hearing disclosed that Olwidas lacks the funds to maintain the unsold Property. However, Additional Defendant Nadav has indicated his willingness to carry all costs required to keep the Property until Olwidas receives a more attractive offer. At the Hearing, the parties stipulated to the authenticity of a document titled Operating

² Response in Opposition to the Petition for Preliminary Injunction, Exhibit A: “Indenture Made Between Olwidas, LLC and Jonathan Nadav ”; Exhibit B: “Short Form Home Equity Line of Credit Mortgage.”

³ Standard Agreement for the Sale of New Construction, Exhibit D-8 produced at a Hearing upon the Petition for Preliminary Injunction.

Agreement of Olwidas, LLC (the “Operating Agreement.”)⁴ The Operating Agreement contains a specific paragraph which states:

Both Members shall have equal voting rights.

* * *

- (e) Business Transactions. Notwithstanding any other provision of the Agreement, unless approved by Members holding 51% of the Voting Rights, the Company may not:

* * *

- (2) sell all or substantially all of its assets to any person or entity....⁵

Discussion

To obtain a preliminary injunction, a petitioner must establish that:

- (1) relief is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by money damages;
- (2) greater injury will occur from refusing to grant the injunction than from granting it;
- (3) the injunction will restore the parties to their status quo as it existed before the alleged wrongful conduct;
- (4) the petitioner is likely to prevail on the merits;
- (5) the injunction is reasonably suited to abate the offending activity; and
- (6) the public interest will not be harmed if the injunction is granted.⁶

⁴ Operating Agreement of Olwidas, LLC, Exhibit D-6 produced at the Hearing upon the Petition for Preliminary Injunction.

⁵ Operating Agreement of Olwidas, LLC, Exhibit D-6 produced at the Hearing upon the Petition for Preliminary Injunction.

⁵ Operating Agreement of Olwidas, LLC, Exhibit D-6 produced at the Hearing upon the Petition for Preliminary Injunction, ¶ 16(b)(2).

⁶ Brayman Constr. Corp. v. DOT, 13 A.3d 925, 935 (Pa. 2011).

The issue presented by the Petition for Preliminary Injunction is whether Nadav, holder of 50% of the voting rights in Olwidas and actual owner of the Property, should be directed by this Court to ratify the Agreement signed by Azoulay, holder of the remaining voting rights. As there was no testimony whatsoever regarding the real-estate market trend in the immediate area, and no predictive testimony as to whether the value of the property would increase or decrease in the future, this Court may not make such predictive decisions on behalf of Petitioner. In the face of no evidence of immediate and irreparable harm to Olwidas, and under the mandatory terms of the Operating Agreement which states that the Olwidas “may not sell all or substantially all of its assets” “unless approved by members holding 51% of the voting rights,” this Court will not issue an injunction requiring Nadav to ratify the Agreement for the Sale of the Property. The Petition for Preliminary Injunction seeking to compel Nadav to ratify the Agreement for the Sale of the Property is Denied.

However, evidence presented at the Hearing showed that Olwidas has little or no funds. Although Olwidas has little or no funds, it is nevertheless required to maintain the unsold Property in the uncertain expectation of a better offer. Since additional Defendant Nadav has agreed to pay the costs to maintain the Property until a better offer materializes, it is Ordered that Nadav shall pay all costs arising out of his refusal to ratify the Agreement for Sale. Plaintiff Olwidas shall submit all bills concerning the Property, immediately upon receipt, to Additional Defendant Nadav. If the Property should be sold in the future for any amount exceeding \$1,000,000, Nadav shall be entitled to set off his carrying costs only against any portion of the proceeds in excess of

\$1,000,000. Defendant Azoulay is directed to provide Additional Defendant Jonathan Nadav with all the books and records of Olwidas.

By the Court,

Dated: 8/2/11

Mark I. Bernstein, J.