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Frederick Business Bar Newsletter

Welcome to the first addition of the Frederick Business Bar Newsletter. These last few years have been extremely difficult and have meant that the Frederick Business Bar has not been meeting regularly and staying connected. In addition, with Frank Goldstein stepping down as the chair, we no longer have our long-time leader and have lost some continuity. In an effort to try and maintain the connection of the Frederick Business Bar community, we are jumpstarting this newsletter. The newsletter will be an opportunity to highlight recent cases and other news and updates from the members of the Frederick Business Bar.

The Frederick Business Bar ended 2021 with a meeting that discussed recent case law as well as some of the new legislation that went into effect in October 2021. Those in attendance learned that Maryland now allows SDAT to serve as the resident agent¹ for select business, and that a business operating agreement may not overcome the intentions of a decedent's will.^{2 3}

As the laws continue to change, and new cases are published, the Frederick Business Bar will provide updates, discussions, and guest speakers to give members of the Frederick Bar an opportunity to expand their knowledge on Maryland business matters. We look forward to seeing you at our next meeting on April 21, 2022 at 12pm.

¹ Md. Corp & Assns, Section 7-203

² Potter v. Potter.

³ This is not complete summary of the law. For additional information regarding these new regulations, please contact Rebekah D. Lusk, Esq. at rlusk@lusk-law.com.

Prior Case Law: Potter v. Potter

This case was last discussed at the Frederick Business Bar Meeting. This past year, the Court of Special Appeals heard *Potter v. Potter*, Md. App. 569 (2021). The Court of Special Appeals addressed a dispute on whether a decedent's interest in an LLC was determined by the company documents or by the decedent's estate. The Court of Special Appeals ruled that the decedent's company documents did not

“The Proper function of the courts in a case such as this is to decide what Maryland law is and then to apply. Ruby’s policy arguments should be directed to the legislature.”

meet the requirements of Maryland Estates and Trusts Section 4-102, to validate the transfer of his membership interest.

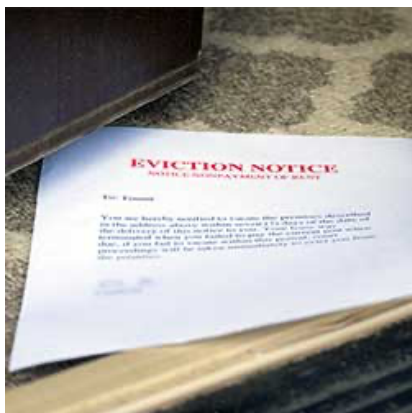
This case has created a new presumption that an individual's estate documents will control over any company documents in determining the disbursement of a decedent's membership interest, as long as the company documents do not meet the requirement of Maryland Estates and Trusts Section 4-102. Since the last meeting, the Court granted a Petition for Writ of Certiorari, thereby transferring the case to the regular docket. However, this matter was settled before it could reach the Court of Special Appeals.



Currently, a new bill is before the Maryland Senate. Senate Bill 261: Corporations and Associations- Limited Liability Companies and Partnerships-Operating Agreements and Partnership Agreement. The Purpose of the bill is to “*authoriz[e] the operating agreement of a limited liability company to provide for the transfer or assignment of an interest in the company to a certain person on the occurrence of certain events regardless of whether the person is a member; authorizing a member of a limited liability company to retain the member’s noneconomic interest in the company on assignment of all of the member’s economic interest in the company under certain circumstances; authorizing a partnership agreement to provide for the transfer or assignment of an interest in the partnership to a certain person on the occurrence of certain events regardless of whether the person is a partner; establishing that transfers on death pursuant to an operating agreement or a partnership agreement are not testamentary; and generally relating to operating agreements of limited liability companies and partnership agreements.*”

7222 Ambassador Road, LLC v. National Center on Institutions and Alternatives, Inc. In *7222 Ambassador Road, LLC v. National Center on Institutions and Alternatives, Inc.*, 470 Md. 66 (2020) the Plaintiff appealed and lost, and then filed a writ of

certiorari. However, between time of appellant’s loss on appeal and filing a writ of certiorari, appellant was forfeited. As a result of the appellant’s forfeiture of their right to do business in Maryland, the Court held that appellant also lost their ability to prosecute an action, including the filing of a timely petition for a writ of certiorari. The court addressed whether a business who forfeits before their appeal, is not permitted by law to appeal a case.



Please contact Rebekah D. Lusk, Esq. if you would like additional information on the cases discussed above, or would like information on other cases that were discussed at the last Frederick Business Bar meeting.

New Case Law: **Velicky v. Copycat Building, LLC**

The court in *Velicky v. Copycat Building, LLC*, 476 Md. 435 (2021) addressed whether a landlord had the right to file a Tenant Holding Over (“THO”) without a rental license. The tenants in this action filed a petition for Writ of Certiorari asking the Court to hold that based on principles of public policy, that the tenant holding over statute is unavailable to an unlicensed landlord seeking a writ of possession of the landlord’s property after the expiration of the tenancy.

The court declined to adopt such a holding, but rather held that a landlord has the right to proceed with a THO after the expiration of his/her license.⁴

There is pending legislation, [House Bill 174](#), which was introduced in the 2022 session of the Maryland General Assembly, that would require a landlord, at the time of filing a certain complaint in an action for repossession for failure to pay rent, to show compliance with certain local license requirements and certain lead-based paint abatement laws.

Playmark Inc. v. Perret

The Court in *Playmark Inc. v. Perret*, No. 0091, September Term 2020, evaluated whether Playmark and Pro Rec are corporate “successors”, and if so, would they be liable for payment of a former employee under the Executive Management Agreement.

As a general rule in Maryland “a corporation that quires all or part of the assets of another corporation is not liable for the debts and liabilities of the predecessor. A corporation can however, be held liable for its predecessor’s obligations if two criteria are met. *First*, the corporation must be a ‘successor,’ which is defined by statute... *Second*, the transfer must meet one of the four common law exceptions to the general rule of non-liability.”

⁴ See *Velicky v. Copycat Building, LLC*, 476 Md. 435 (2021) for a full explanation of the court’s holding.

The court affirmed the Circuit Court's breach of contract judgment against Playmark and Pro Rec for the overdue payments as well as the Circuit Court's declaratory judgment that Perret has a right to receive the remaining future payments from Playmark and Pro Rec. The Court also held, however, that the Circuit Court erred in dismissing Perret's claim under the Wage Act and, thus, reverse and remand for additional proceedings.⁵

Upcoming Meetings: April 2022

The next meeting of the Frederick Business Bar will take place April 21st, 2022 at 12pm. This will be the first meeting the Business Bar will be holding in 2022. As always, the meeting will be held in person, at Lusk Law, LLC, 113 E. Church Street, Frederick, or via Zoom.

The Frederick Business Bar will also be holding a special presentation titled Mind Your Business: Coordinating Business and Estate Plans to Preserve Value. This presentation is tentatively scheduled for September 15, 2022. More information to follow.

The April segment for the Business Bar meeting is “Fiduciary Duty”. We will address the *Plank v. Cherneski* Case, that addressed whether there can be a stand-alone breach of fiduciary claim. In addition, we will discuss what language is required in an operating agreement to protect or litigate against a director’s actions.



Those in attendance at the meeting will have a chance to be entered into a drawing to receive a **prize**. At the conclusion of every meeting, there will be a short quiz directly related to what is discussed. Those with correct answers will be entered into a drawing in which one winner will be selected. Good luck!

⁵ See *Playmark Inc. v. Perret*, No. 0091, September Term 2020 for a full explanation of the court’s holding.

If you have any ideas about future speakers or events, please reach out to Rebekah Lusk at rlusk@lusk-law.com

I hope to see everyone at our next Frederick Business Bar meeting on **April 21, 2022 at 12:00pm.**