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In Narrow LLC Case, Delaware Court of Chancery Grants Dismissal of Advancement and Indemnification Action

Dan Cole

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Case: *Chodes v. Oasis Legal Finance Operating Company LLC*, C.A. No. 2020-0379-JTL (Del. Ch. Oct. 15, 2020)

Hearing: Motion to Dismiss Action for Advancement of Indemnification

Outcome: For the Defendants in Favor of Dismissal

Mr. Chodes was a member of Oasis Legal Finance Operating Company LLC and was sued by the company. In the action before the Delaware Court of Chancery on October 15th, Mr. Chodes sought advancement of legal defense funds from the LLC due to claimed indemnification, and the LLC sought dismissal. Vice Chancellor Laster noted that in preparation for the hearing he had examined the briefs of both parties and had completed his own legal research as the claims of both parties were not precisely correct. Given that the Court had not heard anything new during the hearing to change his mind, he provided his decision and opinion from the bench. The outcome came down to the contractual agreements.

Advancement is the norm wherever there is the slightest possibility of indemnification pursuant to a reasonable request and valid indemnification clauses. Here—in an LLC, which is a creature of contract—the possibility of indemnification was a question of law, and the Court was thus able to make a decision on a Motion to Dismiss. The contract provisions at issue appeared to cover Mr. Chodes, but the final sentence limited coverage to the “least” of the scopes provided by “all” of his agreements with the LLC. Based on this single provision, in this case the Court only needed to examine the most limited coverage agreement. Here, the least generous agreement limited indemnification to defense from claims of third parties, and excluded defense from claims of first parties (i.e., the LLC itself or other members). (The Court explained from the bench that it was previously standard to indemnify against all claims, but the modern approach is to only indemnify

against third party claims.) Because Mr. Chode was not indemnified against first party claims as a matter of law (by contract), no indemnification was possible (in this case), and therefore advancement was not possible. As a matter of law, the action was moot, and was dismissed.

In its bench opinion, the Court opined that advancement matters come before the Court of Chancery often, and the Court hoped that this decision would not lead to a precedent of litigants wastefully seeking to dismiss these actions. The indemnification outcome of *Chodes* was only due to a very narrow legal scenario, and is not broadly applicable. However, the outcome provides an opportunity or pitfall under the right facts, and might motivate practitioners to pay more attention to indemnification provisions within LLCs. It is not uncommon for LLC members to fight with each other and this common scenario should be addressed specifically to avoid future interpretation challenges, and ensure that indemnification is extended or limited where intended.

[Daniel Michael Cole, Delaware Bar Certified Limited Practice Licensee](#), Temple J.D./ LL.M '19
[The Williams Law Firm, P.A.](#), Wilmington, Delaware 19801

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