

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

The Ryan Family L.L.C., a Nebraska)	Doc. _____ Page No. _____
Limited Liability Company, Dr. Wayne L.)	
Ryan, Timothy Ryan, Stacy Ryan, Carol)	
Ryan, and Steven Ryan,)	
)	
Plaintiffs,)	COMPLAINT
)	
vs.)	
)	
Constance Ryan,)	
)	
Defendant.)	

Plaintiffs, the Ryan Family L.L.C. (the “Company”), Dr. Wayne L. Ryan, Timothy Ryan, Stacy Ryan, Carol Ryan, and Steven Ryan (collectively, the “Members”), by and through undersigned counsel, hereby allege the following against Defendant Constance Ryan (“Constance Ryan”) as follows:

THE PARTIES

1. Plaintiff Ryan Family, L.L.C. is a Nebraska limited liability company, with its principal place of business located at 7002 South 109th Street, La Vista, Sarpy County, Nebraska 68128.

2. Plaintiff Dr. Wayne L. Ryan (“Dr. Ryan”) is a resident of Omaha, Douglas County, Nebraska, and is a co-Manager and member of the Company.

3. Plaintiff Timothy Ryan (“Timothy Ryan”) is a resident of Colorado Springs, Colorado, and is a member of the Company.

4. Plaintiff Stacy Ryan (“Stacy Ryan”) is a resident of Omaha, Douglas County, Nebraska, and is a member of the Company.

5. Plaintiff Carol Ryan (“Carol Ryan”) is a resident of Chicago, Illinois, and is a member of the Company.

6. Plaintiff Steven Ryan (“Steven Ryan”) is a resident of Greenwood Village, Colorado, and is a member of the Company.

7. Defendant Constance Ryan is a resident of Omaha, Douglas County, Nebraska, and is a member and co-Manager of the Company. Constance Ryan is also the President, Chief Executive Officer (“CEO”), and Chairwoman of the Board of Directors of Streck, Inc. (“Streck”).

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to Neb. Rev. Stat. § 24-302.

9. This Court has specific personal jurisdiction over Defendant under Neb. Rev. Stat. § 25-536.

10. Venue is proper in this Court pursuant to Neb. Rev. Stat. § 25-403.01 because the Ryan Family LLC was formed in Sarpy County, Nebraska, and the transactions out of which the causes of action arose occurred in Sarpy County. Additionally, the Company’s principal place of business is in Sarpy County, Nebraska.

11. The Plaintiffs bring this Complaint both individually and as a derivative suit as authorized by Neb. Rev. Stat. §§ 21-165, 21-167. It is futile for the Plaintiffs to demand the Management Board bring, or to demand the Members vote to bring, an action to enforce the Company’s and Members’ rights against Constance Ryan because Constance Ryan will vote against any such action, as she has done since becoming CEO of Streck, Chairwoman of the Streck Board of Directors, and President of Streck.

FACTUAL ALLEGATIONS

The Company

12. On October 28, 2001, the Company was organized, and its articles of organization were filed with the Nebraska Secretary of State on December 31, 2001. The primary purpose of the Company is “[t]o manage and invest Company property for long-term growth and capital appreciation and to facilitate the retention of the Company property in the family of Wayne Ryan.”

13. There are six Members of the Company with the following percentage of ownership: (1) Dr. Wayne L. Ryan (1.0%); (2) Constance Ryan (19.8%); Carol Ryan (19.8%); Timothy Ryan (19.8%); Stacy Ryan (19.8%); and Steven Ryan (19.8%).

14. The management of the Company is vested in a Management Board.

15. The Operating Agreement provides that “[t]he Management Board shall be comprised of one or more Managers who shall serve until such Manager’s death, resignation, or removal.”

16. The Operating Agreement provides that “Wayne Ryan and Constance Ryan shall serve as the initial Managers. In the event that either Wayne Ryan or Constance Ryan is unable or unwilling to serve as a Manager, the other shall serve as the sole successor Manager.”

17. Dr. Wayne Ryan and Constance Ryan have and still serve as the only Managers on the Management Board, and have served as Managers since organization.

18. The Operating Agreement provides that the affirmative vote of a majority of the Managers constitute an act of the Management Board. There is no mechanism in the Operating Agreement to resolve a deadlock of the Management Board.

19. Section 10.4 of the Operating Agreement governs Amendments to the Operating agreement and states “This Operating Agreement may be amended only upon the affirmative vote of all of the Members of the Company. Any amendment to this Agreement or to the Articles of Organization which affects a Member’s right to vote or receive distributions must be approved by such Member.” There is no mechanism to resolve a management deadlock via a member vote without all members’ agreement.

20. Section 2.10 of the Operating Agreement governs removal of Managers and states:

This section shall not be applicable as long as either Wayne Ryan or Constance Ryan serve as Manager. At a meeting called expressly for that purpose, all or any lesser number of Managers may be removed at any time by (a) a vote of three-quarters majority in interest of all the Members, or (b) for gross negligence, fraud, deceit or intentional misconduct which had a material adverse effect on the Company, or if the Manager is adjudicated incompetent by a Court of competent jurisdiction, by the affirmative vote of Members holding a majority interest determined without regard to any voting interest held by the Manager. The removal of a Manager who is also a Member shall not affect the Manager’s rights as a Member and shall not constitute a withdrawal of a Member.

The Company’s Assets and Relationship with Streck, Inc.

21. In addition to the purpose set forth in the Operating Agreement, Dr. Wayne Ryan’s intent and purpose in creating the Company was to give a long-term gift to his children.

22. The Company property consists largely of real property located at 7002 South 109th Street, legal description: Lot 16 Brook Valley Business Park, being a replat of Lots 16, 17, 18B, 21B, 22 & 23, as surveyed, platted and recorded in La Vista, Sarpy County, Nebraska.

23. On this land, the Company’s predecessor in interest—Ryan Family Partnership, LTD—constructed a steel structure in 1995 (the “Building”). Subsequent additions were constructed in 2000, 2005, and 2012, and improvements have occurred periodically since that time.

24. The Building was designed, and is equipped, for specialized use by its tenant, Streck, a world-renowned innovator and manufacturer of cell stabilization techniques and control products. The construction, additions, and improvements required specific design features to facilitate the manufacturing of highly technical products.

25. Streck's lease of the Building is governed by a Lease with Purchase Option Agreement, entered into on December 15, 1999 by the Company and Streck, as amended on November 7, 2007 (the "Lease Agreement").

26. Under the Lease Agreement, the lease between the Company and Streck is set to expire on August 1, 2015.

27. Article XIV, Section 14.01, of the Lease Agreement details Events of Default which "shall constitute a breach of [the] Lease by Tenant." Pursuant to Section 14.01:

The occurrence of any one or more of the following events. . . shall constitute a breach of this Lease by Tenant...(e) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed

28. Section 14.02 of the Lease Agreement provides that upon an Event of Default, the Company may elect one or more remedies, including termination of the Lease Agreement, termination of Streck's right to possession of the premises, acceleration of the rent through expiration of the original term, and/or reletting of the premises.

Constance Ryan's Relationship with Streck

29. When the Company's Operating Agreement was signed, Dr. Wayne Ryan, as founder, was the majority shareholder of Streck, as well as its CEO.

30. In 2007, Constance Ryan purchased one-third of Streck's voting stock.

31. In 2013, upon the death of Dr. Ryan's wife, Eileen Ryan, Constance Ryan inherited additional shares of Streck's voting stock from Eileen Ryan, giving her a total of two-thirds of the voting stock of Streck, Inc.

32. The Members had no knowledge that there was any possibility that two-thirds of the voting stock of Streck would be transferred to Constance Ryan at the time the Members entered into and agreed to the Company Operating Agreement.

33. In the summer of 2013, Constance Ryan, who was then President of Streck, also became Streck's CEO.

34. In addition to serving as Streck's CEO, Constance Ryan is currently the President, Chairwoman of the Board of Directors, is an 8% equity owner of Streck, and holds 67% of the voting control of Streck.

35. Constance Ryan has also entered into an Executive Employment Agreement with Streck.

36. The Executive Employment Agreement provides, among other things, that Constance Ryan is *prohibited* from "engag[ing] in any activity competitive or materially adverse to [Streck's] business or welfare," even if she is acting as a shareholder or manager of another entity.

37. Among other things, Constance Ryan is eligible for an annual performance bonus from Streck, which is based in part on Streck's overall financial performance, not to exceed \$650,000.00.

38. The transfer of voting stock to Constance Ryan, her subsequent appointment as CEO, appointment as Chairwoman of the Streck Board of Directors, employment agreement with Streck, and other developments, has changed Constance Ryan's relationship to the

Company in a fundamental way. Such change was not in any way anticipated or expected by any of the Members at the time the Company's Operating Agreement was signed.

Potential Sale of Company Property to Streck

39. On or about September 2013, Constance Ryan began exploring the possible sale of Streck.

40. In or about March 2014, a process began wherein the Streck Board of Directors formed a committee to explore offers to purchase Streck ("Sales Committee").

41. Constance Ryan served on the Sales Committee. No other Company Member served on the Sales Committee.

42. Also in or about March 2014, Constance Ryan communicated to the Members the plan to sell Streck. At the same time, Constance Ryan informed the Company's Members that in order for the sale of Streck to go through, it was necessary for the Company to sell its real property to Streck.

43. The Company Members thereafter entered into a Memorandum of Understanding ("MOU") with Streck, under which the parties "agreed in principle that the [Company] will sell to Streck, and Streck will purchase from the [Company] that certain property located at 7002 South 109th St., Omaha, NE 68128, and all adjoining properties and buildings owned by the [Company] pursuant to" certain specified procedures.

44. The Members agreed to the terms of the MOU only because Streck was to be sold to a third party.

45. Before the appraisal process set forth in the MOU was complete, Constance Ryan violated a material term of the MOU by communicating with the Company's chosen appraiser prior to the completion of the appraisal in order to decrease the amount of the appraisal.

Constance Ryan did so despite the MOU's specific terms stating that only Dr. Ryan would represent the Company in the appraisal process.

46. As the result of Constance Ryan's acts and omissions, all three appraisals of the Company's property failed to include a "fair market value of use appraisal" as required by the current Lease Agreement. Thus, the appraisals, all of which were obtained at the direction and influence of Constance Ryan, substantially undervalued the Company property, with some appraisals undervaluing the Company property by more than 50% as compared to the current Lease Agreement.

47. During the appraisal process, Constance Ryan acted unilaterally as Manager of the Company to harm the Company by failing to share critical information regarding the appraisal process and potential sale of the Company property with co-Manager Dr. Wayne Ryan and the Company Members, and acting contrary to Dr. Wayne Ryan's consent and direction, as well as to that of the Company Members.

48. As a result of the acts and omissions of Constance Ryan, the Company and its Members were potentially bound to sell the Company property at a price well below its true value, with only Constance Ryan to personally benefit through her numerous positions at Streck.

49. Constance Ryan has since used this MOU process, and the Company's confidential information, for an ulterior purpose in her numerous Streck roles, and has advised the Company Members that based on the appraisals and on Streck's behalf, she intends to reduce Streck's monthly rent payments by approximately 50%.

September 5, 2014 Special Company Meeting

50. On August 11, 2014, Constance Ryan gave notice of a September 5, 2014 special Company meeting.

51. On August 25, 2014, Steven Ryan requested that the members also review and discuss the composition of Company's Management Board and potential changes to the Company's Operating Agreement during the September 5, 2014 special meeting.

52. On September 5, 2014, the Company held a special meeting.

53. During the September 5, 2014 meeting, the Members requested the resignation of Constance Ryan as a Company Manager due to the existing and ongoing conflicts of interest caused by her positions at, and duties owed to, Streck and the Company.

54. During the September 5, 2014 meeting, Constance Ryan communicated to Members that she was unwilling to step down as Manager because the building and property is critical to Streck's business and her continued management is necessary in order for her to "protect Streck's business."

September 24, 2014 Special Company Meeting

55. On September 24, 2014, the Company held another Special Meeting to review, discuss, and vote on proposed changes to the Operating Agreement that would cure the conflict of interest Constance Ryan has with the Company because of her position and employment arrangement with Streck.

56. Prior to the meeting, Plaintiff Steven Ryan circulated to the other Members proposed amendments to the Operating Agreement.

57. One of the expressed purposes of the attempt to amend the Operating Agreement was to change the structure of the Management Board so as to remove the conflicts of interest that arose when Constance Ryan became CEO, President, and Chairwoman of the Board of Directors of Streck, and entered into her Employment Agreement with Streck.

58. During the September 24 Meeting, Dr. Wayne Ryan expressed his desire that he would like the Company to amend its Operating Agreement to change the Management Board to himself along with two other Managers in order to alleviate Constance Ryan's conflicts of interest.

59. Based on Dr. Wayne Ryan's comments, Steven Ryan requested a vote to amend the Operating Agreement so that the Management Board would consist of Dr. Wayne Ryan and two other Managers.

60. All of the Members voted in favor of the Amendment. Constance Ryan was the sole vote against the amendment.

Lawsuit Against Streck Causes Event of Default Under the Lease Agreement

61. On October 30, 2014, a proceeding was commenced in the Sarpy County District Court against Streck pursuant to Nebraska statutes, laws, and regulations. *See Ryan, et. al. v. Streck, Inc., et al.*, Case No. CI-14-1684. The relief sought in that proceeding includes, among other things, "the dissolution of Streck," and "the sale of" Streck.

62. On January 30, 2015, Dr. Wayne Ryan, acting as Manager of the Company, sent a letter to Streck advising Streck that as of January 29, 2015, an event of default of the Lease Agreement existed, as set forth in Section 14.01(e), because case No.CI-14-1684 had not been dismissed within 90 days of commencement.

63. Dr. Ryan further explained in his letter that pursuant to Section 14.02 of the Lease Agreement, the Company could elect one or more remedies, including termination of the Lease Agreement, termination of Streck's right to possession of the premises, acceleration of the rent through expiration of the original term, reletting of the premises, and other actions under the Lease Agreement and under applicable law.

64. The January 30, 2015, Letter further advised Streck that the Company was willing to resolve the issues in relation to Streck's default under the Lease Agreement amicably and with minimal cost and disruption to either party, and requested a response from Streck by February 13, 2015.

65. On February 6, 2015, Constance Ryan, acting as Managing Member of the Company, sent a letter to Dr. Wayne Ryan and advised him that he could not make decisions on behalf of the Company without her agreement. Constance Ryan also stated that she is "in no position to make informed decisions on behalf of the Company" without additional legal counsel.

66. On February 12, 2015, Streck, through counsel, sent a letter to Dr. Ryan's attorneys regarding his January 30, 2015 letter. Streck denied it was in default and incorrectly stated that Dr. Ryan was not authorized to make demands on behalf of the Company without the agreement and participation of Constance Ryan.

February 15, 2015 Special Company Meeting

67. On February 5, 2015, Dr. Wayne Ryan gave notice of a February 16, 2015, special Company meeting to discuss current LLC issues.

68. Dr. Wayne Ryan began the meeting by bringing to the Members' attention Constance Ryan's February 6, 2015, letter and Streck's February 12, 2015, letter, and the assertion that he could not act without Constance Ryan's agreement even though she had both an actual and an apparent conflict of interest by virtue of her position as CEO of Streck, Chairwoman of the Streck Board of Directors, and President of Streck, and due to her Employment Agreement with Streck and her two-thirds voting control over Streck.

69. The Members then asked Constance Ryan to recuse herself from Management Board decisions involving Streck and the Lease Agreement and to permit Dr. Ryan to act as the

sole Manager on behalf of the Company due to her conflicts of interest, as had been the practice in the former MOU process.

70. Constance Ryan refused the Members' good-faith request. Despite Constance Ryan's admission that she was in no position to make decisions on behalf of the Company and her actual and apparent conflict of interests, Constance Ryan continued to assert that Dr. Ryan could not act unilaterally to protect the Company's interests.

71. Constance Ryan also refused to provide information critical to the purpose and intent of the Company to the Members, citing her position at Streck as the basis for her refusal.

72. Prior to the meeting, Steven Ryan circulated to the other Members two proposed amendments to the Operating Agreement. The first proposed amendment would have permitted the Members to prevent a Manager from participation as Manager in decisions that the Members determined constituted a conflict of interest (the "Proposed Conflict of Interest Amendment"). The second proposed amendment would have provided a process to resolve any potential Management Deadlock that prevented the Management Board from acting to accomplish the purposes of the Company (the "Proposed Management Deadlock Provision"). Such proposed amendments would have permitted the Company to resolve all current and future issues regarding Constance Ryan's multitude of conflicts of interests.

73. All Members voted in favor of both the Proposed Conflict of Interest Amendment and the Proposed Management Deadlock Provision. Constance Ryan voted against both proposed amendments, and was the only member of the Company to do so.

74. Constance Ryan has refused to offer or consider other changes to the Operating Agreement that would solve potential conflicts of interests to the satisfaction of the Members or that would resolve potential Management Deadlocks.

75. Instead, Constance Ryan stated that she does not wish to resolve any of the Company's issues regarding her actual conflicts of interest within the family. This is true despite Constance Ryan's previous contentions that such issues were "a family matter."

COUNT I
APPLICATION FOR EXPULSION AS A MEMBER

76. Plaintiffs incorporate the allegations contained in paragraphs 1 through 75 as though set forth here in full.

77. Pursuant to section 21-145 of the Nebraska Uniform Limited Liability Company, Plaintiffs are entitled to an order expelling Defendant Constance Ryan as a Member of the Company because she: (1) has engaged, and is engaging, in wrongful conduct that will adversely and materially affect the Company's activities; (2) has and is willfully and persistently committing a material breach of the Operating Agreement, as well as her fiduciary duties; and (3) has and is engaging in conduct relating to the Company's activities which makes it not reasonably practicable to carry on the activities of the Company with her as a Member.

78. As a direct and proximate result of the acts or omissions as described hereinabove, the Plaintiffs are entitled to an order expelling Constance Ryan from membership in the Company.

COUNT II
BREACH OF MANAGER'S FIDUCIARY DUTIES

79. Plaintiffs incorporate the allegations contained in paragraphs 1 through 78 as though set forth here in full.

80. Pursuant to Section 2.9 of the Operating Agreement and Nebraska law, Constance Ryan owes duties of loyalty, care, and good faith and fair dealing to the Company and its Members.

81. Constance Ryan has breached her fiduciary duties by engaging in the alleged conduct as described above, including, but not limited to the following actions: (a) manipulating the appraisal process to ensure Streck was able to purchase the Company property at a price much lower than its value; (b) withholding material information related to the Lease Agreement and potential sale of the Company's property from the other Members and from her co-Manager, Dr. Wayne Ryan; (c) refusing to communicate with her co-Manager, Dr. Wayne Ryan, and unilaterally acting on behalf of the Management Board in a manner contrary to Dr. Wayne Ryan's consent; (d) communicating the Company's protected and confidential information to Streck, its tenant; and (e) refusing to communicate with the Members by email or telephone.

82. Constance Ryan has repeatedly refused to take any steps to remove her conflict of interest to the satisfaction of the Company's Members.

83. The breaches of Constance Ryan's fiduciary duties have proximately caused harm to the Company and its Members and will continue to cause harm in the immediate future.

84. Constance Ryan's breaches of her fiduciary duties threaten immediate injury to the Company.

85. As a direct and proximate result of the acts or omissions as described hereinabove, the Plaintiffs are entitled to the relief requested below.

COUNT III
DECLARATION THAT COMPANY MEMBERS MAY REMOVE MANAGER
PURSUANT TO NEB. REV. STAT. §§ 21-136

86. Plaintiffs incorporate the allegations contained in paragraphs 1 through 85 as though set forth here in full.

87. Pursuant to Neb. Rev. Stat. § 21-110(a), the Nebraska Uniform Limited Liability Act governs matters not provided for in a limited liability company's Operating Agreement.

88. The Company's Operating Agreement does not provide for the removal of the Company's Initial Managers.

89. Section 21-136(c)(5) of the Nebraska Uniform Limited Liability Company Act provides that "[a] manager may be removed at any time by the consent of a majority of the Members without notice or cause."

90. Plaintiffs are entitled to a declaratory judgment that the Members of the Company are entitled to remove their Managers by majority vote of the Members pursuant to Neb. Rev. Stat. § 21-136(c)(5).

COUNT IV

DECLARATION THAT THE OPERATING AGREEMENT IS MANIFESTLY UNREASONABLE REGARDING REMOVAL OF THE INITIAL MANAGERS

91. Plaintiffs incorporate the allegations contained in paragraphs 1 through 90 as though set forth here in full.

92. Section 21-110 of the Nebraska Uniform Limited Liability Act provides that a court may invalidate a term of an operating agreement if that term is manifestly unreasonable.

93. Not permitting the Members to remove a Manager who engages in a breach of her fiduciary duties and the terms of the Operating Agreement is manifestly unreasonable.

94. Defendant Constance Ryan continues to operate as Manager and has communicated that the remaining Members cannot remove her as Manager and that she will stay in that position as long as she is alive, fully competent, and willing to serve in that role in order to protect Streck's business interests.

95. Defendant Constance Ryan has refused to modify the Operating Agreement so as to eliminate the threat of a direct conflict of interest on matters concerning Streck.

96. Alternatively to Count III, if the Court determines that sections 2.2 and 2.10 of the Operating Agreement control the removal of the Initial Managers and does not permit said removal, Plaintiffs are entitled to a declaration that these terms are manifestly unreasonable and thus invalid and that removal of the Initial Managers are governed by the default rule in Neb. Rev. Stat. § 21-136(c)(5), or by an alternate process the Court finds just and proper under the circumstances.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

(1) That the Court grant their application to expel Constance Ryan as a Member of the Company pursuant to Neb. Rev. Stat. §§ 21-145 and 21-147 ; and/or

(2) That the Court remove Constance Ryan as a Manager of the Company to remove the immediate threat of future harm caused by her actual and apparent conflicts of interest and continuing breaches of fiduciary duties; and/or

(3) That the Court issue a judgment in favor of Plaintiffs and issue a declaratory judgment pursuant to Neb. Rev. Stat. §§ 25-21,149 to 25-21,164 and/or Neb. Rev. Stat. § 21-110, finding and determining that the Company may remove Constance Ryan as a Manager by majority vote consistent or through other means the Court find just and proper; and /or

(4) That, pursuant to Neb. Rev. Stat. §§ 21-169(b), 25-1708, 25-21,158, the Court award Plaintiffs their appropriate costs, disbursements, and reasonable attorneys' fees incurred herein; and/or

(5) That the Court awards such other and further relief as it deems just and proper under the circumstances.

Dated this 2nd day of March, 2015.

The Ryan Family L.L.C., Dr. Wayne L.
Ryan, Timothy Ryan, Stacy Ryan, Carol
Ryan, and Steven Ryan, Plaintiffs

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