



ATTORNEYS AT LAW

November 5, 2010

NORTH CAROLINA BUSINESS COURT RECOGNIZES PROTECTIONS FOR LLC MANAGERS

The North Carolina Business Court recently recognized that the business judgment rule applies to managers of limited liability companies (“LLCs”) in *Mooring Capital Fund, LLC v. Comstock N.C., LLC, et. al.* The rule provides managers of LLCs with significant protections for decisions made in the course of business. In application, it establishes a presumption that managers acted with due care (i.e., on an informed basis), in good faith, and with an honest belief that their decision was in the best interest of the LLC. *See State ex rel. Long v. ILA Corp.*, 132 N.C. App. 587, 601 (1999). If this presumption is not rebutted, the court will not overturn a manager’s decision unless the decision cannot be attributed to any rational business purpose. *Id.* The business judgment rule has long applied to directors of corporations to shield their decisions from rigorous scrutiny by courts. The Business Court’s decision in *Mooring Capital Fund* marks the first occasion that a North Carolina court has recognized the application of the business judgment rule to managers of LLCs.

Mooring Capital Fund, LLC v. Comstock N.C., LLC et. al

In *Mooring Capital Fund, LLC v. Comstock N.C., LLC, et. al* (2007 CVS 20852, Wake Co., Business Ct.), 2006 WL 46447078, 2009 NCBC 26, a minority member of a LLC filed suit against the managers of the LLC. The minority member, complaining of unlawful distributions made by the managers, alleged claims for an accounting and inspection of corporate records, breaches of the fiduciary duties of good faith, loyalty and care, and dissolution. The managers filed a motion to dismiss the minority member’s complaint and contended that they had limited liability from the lawsuit because of their status as managers in the LLC.

The North Carolina Business Court denied the managers’ motion to dismiss. In its opinion, the court wrote that “managers of an LLC may also be entitled to the protections of the ‘business judgment rule.’” In a footnote, the court explained that the business judgment rule applies to LLCs as a matter of common law and also has support in the North Carolina Limited Liability Company Act. The court went on to explain that “while the business judgment rule limits the liability of member-managers when acting on behalf of an LLC, this liability is not limited when managers act outside of the scope of managing the LLC.”

The court reasoned that a motion to dismiss was not appropriate in the case because the complaint alleged that the managers acted outside the scope of managing the LLC by taking actions that were in conflict with the company's interests and entering into transactions where they gained improper personal benefits.

The Impact on North Carolina LLC Managers

The North Carolina Business Court's recent decision is good news for managers of LLCs. While most have assumed that the business judgment rule would apply in this context, the North Carolina Business Court's opinion confirms this assumption.

Please contact Brandy Mills [(336) 271-5212] or another attorney in the dispute resolution and litigation practice group if you have any questions concerning the business judgment rule or how it applies to your business.