

Corporate & Financial Weekly Digest

August 12, 2011 by [Steven Shiffman](#)

Delaware Court Upholds Transfer of Voting Interests to an Existing LLC Member

Co-authored by [Elizabeth D. Langdale](#)

The Delaware Court of Chancery has upheld the assignment of a Delaware limited liability company membership interest, including the voting rights associated with that interest, to an existing member of the LLC. Omniglow LLC had three members: (i) plaintiff Achaian, Inc., which owned 20% of Omniglow; (ii) defendant Leemon Family LLC, which owned 50% of Omniglow; and (iii) Randy M. Holland, who had owned a 30% membership interest in Omniglow. In January 2010, Holland purported to transfer and assign its entire 30% interest to Achaian. Achaian then filed suit seeking an order of dissolution of Omniglow, asserting that it and Leemon were deadlocked with respect to the management of the company. Leemon opposed the motion, arguing, among other things, that Holland could not assign his voting rights in the LLC without Leemon's consent.

The court noted that pursuant to the Delaware LLC Act, the transfer of a member's interest transfers only the economic interest, but no voting rights, unless the operating agreement of the LLC provides otherwise. However, reading Omniglow's operating agreement as a whole, the court determined that it allowed for a member to transfer its entire membership interest, including voting rights, to another existing member without obtaining the unanimous consent of all members.

The court's decision was based primarily on its interpretation of two clauses in Omniglow's operating agreement. First, the operating agreement provided that a member was permitted to transfer all or any portion of its "Interest," a term defined as the "entire ownership interest" of the member. The court held that it was preferable to construe the term "entire ownership interest" as including the voting rights associated with an interest.

Second, the court rejected Leemon's argument that the operating agreement's provision requiring the approval of each existing member before a new member could be admitted required unanimous consent before a member could increase its share of voting interests. In so holding, the court noted that the plain language of the provision did not support its application to existing members and pointed out that its interpretation

did not conflict with the traditional purpose behind such a provision, ensuring that “one gets to choose one’s own business partners.”

Achaian, Inc. v. Leemon Family LLC, No. 6261-CS (Del. Ch. Aug. 9, 2011).

Katten Muchin Rosenman LLP

Charlotte Chicago Irving London Los Angeles New York Washington, DC