

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

LGB GROUP, LLC,

Plaintiff

v.

Case No: CAL 03-00088

JOHN BOOTY,

Defendant

Case No. CAE 02-00408

JOHN BOOTY,

Plaintiff

v.

Case No: CAL 03-08305

LGB GROUP, LLC, et al.,

Defendants

OPINION AND ORDER OF COURT

Having considered all claims, counterclaims and pending motions, the bench trial in this matter and the entire file, the Court hereby makes the following findings of fact and conclusions of law:

I. Introduction

Subsequent to a jury's finding that John Booty stole over \$99,000 from LGB,¹ he took actions that this Court has previously characterized as "highly unorthodox, if not illegal" to abscond with additional funds without authorization. *See* Court order of January 21, 2003.

¹ This figure included an unauthorized salary unauthorized "bonuses," taking "dividends" during periods when no dividend was issued to other members and the payment of numerous personal expenses with corporate funds, including, for instance, hundreds of dollars in one night at a "Gentleman's Club" in Las

This Court has already held that his actions in this regard (involving the creation of a fraudulent document purporting to be a “Corporate Resolution”) amounted to “remov[ing] funds in an unauthorized manner.” *See id.*

Faced with a situation in which Mr. Booty continued to abscond with corporate funds for his own benefit, LGB took action to do away with the office of the presidency and, later, to cause Mr. Booty’s shares to be forfeited to the company under the Limited Liability Company Act due to his failure to pay the judgement against him. As this Court has already found, these actions were taken by LGB during a time when:

absent Court intervention, the Defendant, John Booty (“Booty”), may continue to spend, pledge or otherwise encumber the assets of LGB Group, LLC (“LGB”) without appropriate authority or approval....

See Court order of January 21, 2003.² Thus, it was necessary for LGB to act, as it did, to protect its interests and the investments of its members.

Having been effectively removed as president and as a member due to his own misconduct, Mr. Booty now asks this Court to order his reinstatement. The Court hereby denies this relief because Mr. Booty has no interest in LGB for the following reasons:

1. LGB properly amended its Operating Agreement to do away with the office of the presidency;
2. Mr. Booty’s interest in LGB was properly forfeited to LGB under the Limited Liability Company Act;

Vegas where Mr. Booty ordered, among other things, a “champagne lap dance” on the company tab.

² On January 6, 2003 this Court ordered that all funds taken from LGB by John Booty since December 17, 2002 would be frozen pending further order of the Court. On January 21, 2003, after finding that Mr. Booty was abusing his power to convert LGB funds to his use without authorization, this Court ordered that “Defendant Booty be and hereby is restrained from making any payments or expenditures from the assets or funds of LGB Group, LLC, or incurring any debt or obligation for or on behalf of LGB Group, LLC.” *See* Court Order.

3. LGB has requested that Mr. Booty's interest in LGB be garnished and transferred to LGB to satisfy his debt through the usual garnishment process and Mr. Booty has not opposed this relief despite the fact that the time for doing so has long passed; and

4. by filing a complaint seeking "partition" of LGB, Mr. Booty has forfeited his membership in LGB pursuant to Section 4A-606 of the Corporations and Associations Article of the Maryland Code.

In addition, Mr. Booty has sought reimbursement for certain alleged expenses. These reimbursements will be denied for the following reasons:

1. None of the expenses which were allegedly not paid were previously submitted for reimbursement, which is a prerequisite to any right to recover;

2. Mr. Booty admitted that that he is not entitled to reimbursement for \$69,343.64 of his claim because the Operating Agreement does not permit reimbursement of capital contributions;

3. Mr. Booty admitted that he was previously reimbursed for \$8,216.61 worth of the expenses at issue; and

4. Mr. Booty admitted that he was not entitled to reimbursement for \$2,486.15 of the expenses at issue.

Finally, LGB has requested that judgement be entered against Mr. Booty for \$27,636.65 (\$28,636.65 less the \$1,000 already refunded) for funds Mr. Booty took from LGB without authorization and which this Court, via preliminary injunction, has already ordered to be returned. For the reasons which follow, judgement will be entered accordingly.

II. Findings of Fact

The present case has its genesis in events of over two years ago and involves LGB Group, LLC, a limited liability company which owns and operates a World Gym. At that point in time, the members of LGB were nine husband and wife teams in which the husband and wife each held an equal share in the business, but some families held a greater interest

than other families.

Fellow members of this LLC discovered that John Booty, the former president of the LLC, was stealing company assets through a variety of schemes including paying personal expenses with company funds without authorization and taking an unauthorized salary which was hidden from the other members. Upon making this discovery, the members sought to remove Mr. Booty as president *without the aid of counsel*.

Mr. Booty ultimately sued LGB allegedly for improperly removing him and LGB counterclaimed for the money Mr. Booty had embezzled. The jury found that LGB had not followed the technicalities of the Operating Agreement in removing Mr. Booty, but awarded Mr. Booty no damages as a result. The jury also found that Mr. Booty had in fact misappropriated a substantial sum of money, \$99,789.96. In essence, the jury found that Mr. Booty had stolen this money, but that LGB had not crossed the "t's" and dotted the "i's" in its rush to prevent him from absconding with more money. As a result, the Court reinstated Mr. Booty as president on December 17, 2002 and entered judgment against him and in favor of LGB for \$99,789.96.

The very day judgment was entered, Mr. Booty requested that LGB's office manager provide him with two blank checks. Mr. Booty told LGB's office manager that he needed the checks to write a \$14,000 check to trial counsel Peter Maignan for outstanding legal fees incurred in his suit against LGB and that he intended to write a \$14,000 check *to himself* as reimbursement for legal fees paid to Mr. Maignan to date in connection with his suit against LGB. Mr. Booty admitted as follows under cross examination:

Q. Did you also request checks from Marie Johnson that day?

A. Yes, I did. I requested it because I'm the president of the company and I requested it and it was denied.

Q. Did you tell her anything about what those checks were for?

A. Yes.
Q. And what did you tell Marie Johnson?
A. I told Marie Johnson I wanted to get those books and records and those checks for reimbursement for my attorney's fees and -- my attorney's fees.
Q. And why was it necessary to have two checks?
A. Because it was reimbursement for a third of what I won on.
Q. And what are the checks to be made out for?
A. My reimbursement for John Booty and Peter Maignan.
Q. You asked for one check for yourself and one check for Mr. Maignan?
A. Yes.
Q. The check for yourself. How much did you want it to be? What amount?
A. I think it's \$14,000.
Q. Fourteen thousand dollars. What about Mr. Maignan?
A. It's roughly \$14,000.

See Trial Transcript, Volume II (pages 20-21):

Marie Johnson, LGB's Office Manager described the interaction this way:

Q You were working on the 17th. Could you tell the Court what, if anything, occurred that day?
A On December 17th, that was the day that John actually came into the gym and asked me to cut two checks, one for himself and one for Mr. Maignan. He also had a court document stating that he had been reinstated as president. At that time, I expressed to John, just because of everything that was going on, that I would like to call one of the executive committee, Nadine or someone else, just to make sure that everything was okay because, you know, we had been going through a lot of legal things. And at that time he had told me no, no, don't worry about it, I'll take care of it.
Q Okay. Now, do you remember the amounts that he asked you to cut the checks for?
A Yes. It was somewhere around 14,000 for John and 14,000 for Peter.
THE COURT: I'm sorry, 14,000 for John and what?
THE WITNESS: There were two checks he requested.
THE COURT: Right.
THE WITNESS: 14,000 for himself, and 14,000 he also said for Peter for legal fees.
THE COURT: Okay. Peter being who?
BY MR. PAYLOR:
Q Mr. Maignan?
A Mr. Maignan, I'm sorry.

See Trial Transcript, Volume III (pages 121-122).

LGB's office manager refused to give Mr. Booty the checks he requested. This was

proper as this Court has already determined that Mr. Booty was not entitled to these funds. *See* Court Order of January 21, 2003. Moreover, LGB's Executive Committee had not authorized the payment and Mr. Booty knew this prior to directing the bank to pay him these funds. Referring to Executive Committee, Mr. Booty testified as follows:

Q. You also knew they didn't want you to have the money?

MR. MAIGNAN: Objection, Your Honor, asked answered several times.

BY MR. HANSEL:

Q. Correct?

A. Correct.

See Trial Transcript, Volume II (pages 22-3).

On January 2, 2003, two LGB owners went with the office manager to Columbia Bank where they learned that Mr. Booty had withdrawn \$28,636.65 via cashier's check, that Mr. Booty had added himself as a signatory on the account and that other owners were removed from the account. In this regard, Nadine Varella, a member of LGB's Executive Committee testified as follows:

Q Now, I want to refer you back to December 17th, 2002, the date Mr. Booty was reinstated. To your knowledge, did Mr. Booty do anything to obtain funds from LGB?

MR. MAIGNAN: Objection, Your Honor. Leading.

THE COURT: Overruled.

BY MR. HANSEL:

Q On that date?

A Yes.

Q And was he authorized to do so?

A No.

See Trial Transcript, Volume III (pages 61-62).

In addition, Marie Johnson, LGB's Office Manager testified as follows:

Q Did you have the opportunity to review documents at that time?

A Yes.

Q And what did you learn while reviewing the documents?

A That Greg Young and Nadine had been removed, and that 28,000 was taken from the account.

See Trial transcript, Volume III (pages 123).

Mr. Booty was able to accomplish the forgoing result by providing the bank with a fraudulent document purporting to be a "Resolution of LGB Group LLC." Mr. Booty admitted that the bank required a resolution before it would provide LGB funds to him:

Q. Did the bank tell you that they needed the resolution before they would make any changes?

A. Yes, they did.

See Trial Transcript, Volume II (page 24). With respect to the resolution, Mr. Booty further admitted having it created and giving it to the bank pursuant to their request:

Q What is Plaintiff's Exhibit No. 7?

A It's a resolution of LGB Group, LLC.

Q And who prepared that resolution?

A I had it prepared, sir.

* * *

Q Whom did you pass it out to?

A I gave it to, again, our accountant, Chuck Davis, Intranuity. I had it passed to Intranuity, World Gym International. I gave it to the Prince George's Financial Service Corporation, I believe. I gave it to the bank. What was the name of the bank?

Q Columbia Bank?

A Columbia Bank. I gave it to Intranuity. I mean, all the people that I needed to reestablish myself.

See Trial Transcript, Volume I (page 121).

When they became aware of Mr. Booty's attempts to obtain funds, members of the Executive Committee went to the bank to ascertain whether he had obtained access to LGB funds. With respect to this visit, Ms. Varella testified as follows:

BY MR. HANSEL:

Q At the end of 2002 or the beginning of 2003, did you have occasion to go to Columbia Bank?

A Yes.

Q And why did you go to Columbia Bank?

* * *

THE DEFENDANT: We went to Columbia Bank because Mr. Booty had made attempts to get money from our accounts, and we went to check our accounts.

* * *

Q And do you recall the date when you went to Columbia Bank?

A It was right after the 1st of the year. It was around January the 2nd.

Q Did you ever make a determination as to whether or not Mr. Booty had had access to the corporate accounts?

A I don't understand the question. Did I make a --

Q Did you make a determination as to whether Mr. Booty had had access to LGB's bank accounts?

A He did not have access to LGB's bank accounts.

Q Prior to being reinstated?

A Prior to being reinstated, he did not.

Q Okay. And thereafter, did you determine that he had gotten access?

A Right.

* * *

Q During your visit at the bank, did you review any documents?

A Yes.

Q And what documents did you review?

A The bank statements.

* * *

Q Ma'am, I show you what has already been admitted as Defendant's Exhibit No. 3. Can you identify that document?

A This is the Columbia Bank statement.

Q Is that one of the documents that you reviewed at the bank?

A Yes.

* * *

Q Let me ask it this way. Looking at Exhibit No. 3, is there a debit in the amount of \$28,636.65?

A Yes.

Q You are a member of the executive committee, aren't you?

A Yes.

Q Was that debit authorized by the executive committee?

A No.

* * *

Q Well, let me ask you this. Did the bank show you any documents?

A Yes.

Q Okay. And did they show you this bank statement, for instance?

A Yes.

Q And what other documents did they show you?

A They showed us a resolution that Mr. Booty brought them.

Q Okay. And did you have an opportunity to look at the signature card at the bank?

A Yes.

Q And what did you observe when you saw the signature card?
A That my name, Greg's name, Marie's name had been removed, and John's name put on.

* * *

Q The three of you had previously been signatories?
A Yes.
Q And you had been removed?
A Yes.
Q And you said Mr. Booty's name had been added as a signatory?
A That's correct.
Q And you mentioned a resolution that the bank showed you. Was that a resolution that had been prepared by LGB?
A No.
Q Let me show you what is already in evidence as Plaintiff's Exhibit No. 7 and ask if you can identify that document.
A A resolution of LGB Group, LLC is what it says at the top.
Q And was that resolution ever submitted through the invoicing process?
A No.
Q And you testified earlier that you are on the executive committee, correct?
A That's correct.
Q Was that expenditure ever approved by the executive committee?
A No.

See Trial Transcript, Volume III (pages 62-68).

The "Resolution" Mr. Booty provided to the bank states that: 1) a meeting was called on December 20, 2002; 2) Mr. Booty is to be a signatory on "all accounts;" 3) all other signatories are to be removed; and 4) "all further communication regarding said accounts shall be directly made to President John Booty." The document further provides that the forgoing items "are all approved and adopted...by the Company." This document was signed only by John Booty.

Despite Mr. Booty's representation in the purported "Resolution" that he signed, there was no meeting of LGB on December 20, 2002. There are 18 members of LGB Group, LLC and at least 16 of those members received no notice whatsoever of any proposed meeting;

nor were these 16 members present. As proper notice was not given, and a quorum was not reached, there was not a meeting and the actions purportedly taken by Mr. Booty are null and void. Worse still, Mr. Booty's representation to the bank that there was such a meeting is fraudulent. Ms. Varella, a member of LGB's Executive Committee testified as follows:

BY MR. HANSEL:

Q Was that resolution ever approved by the executive committee?

A No.

Q Are you ever aware of any authorization for that resolution other than from Mr. Booty himself?

MR. MAIGNAN: Objection, Your Honor.

THE COURT: Overruled.

THE DEFENDANT: No.

* * *

BY MR. HANSEL:

Q Do you see that the resolution refers to a meeting?

A Yes. It says it.

Q And it says that a meeting with LGB took place to pass that resolution.

A That's what it says.

Q Did that meeting ever take place?

A Not that I -- I didn't go to any meeting.

Q Did you ever receive notice of a meeting?

A No.

Q To your knowledge did any other member of LGB receive notice of the meeting?

A Not to my knowledge.

Q Was Mr. Booty authorized in any way by anyone at LGB to your knowledge to make this representation to the bank in that resolution?

A No.

See Trial Transcript, Volume III (pages 69-70).

As this Court has already found, "Booty removed funds in an unauthorized manner...after his reinstatement as President," and the "method by which Booty acquired access to the Bank Accounts in question" was "highly unorthodox, if not illegal." *See* Court Order of January 21, 2003. Mr. Booty admitted taking a total of \$28,318.33 from LGB accounts:

Q. Mr. Booty, ultimately the bank does make a check to yourself for

\$14,000; correct?

A. Correct.

Q. And you ultimately directed the bank to write a check on LGB's account so to speak for \$14,318.33?

A. Correct.

See Trial transcript, Volume II (page 31); *see also* Affidavit of John Booty in opposition to LGB Group, LLC's Request for Injunctive Relief (filed in CAE03-00088, wherein Mr. Booty affirms under oath that he was allegedly "entitled to a reimbursement of my attorneys' Fees [and] [a]ccordingly, I directed that payments be drafted from LGB's account for this purpose.").

Faced with Mr. Booty's continuing pattern of misbehavior, LGB did away with the office of the presidency, this time with the advice of counsel and in perfect keeping with its Operating Agreement and applicable law. *See* analysis, *infra*. In addition, given Mr. Booty's continuing misconduct, LGB exercised its option to forfeit his interest in LGB as a result of the unpaid judgement. *See* analysis, *infra*.

LGB also obtained a Writ of Garnishment in connection with Mr. Booty's interest in the company and has moved for judgement in connection therewith. Any opposition to LGB's August 15, 2003 Motion for Judgement in connection with the garnishment was due on September 2, 2003, *over four months ago*. No opposition was filed, and, therefore, the garnishment is unopposed and will be granted.

Finally, lest there be any doubt as to whether Mr. Booty is still a member of LGB, his own actions in seeking to partition the company statutorily extinguish his membership in the LLC under Maryland's Limited Liability Company Act.

III. Conclusions of Law

- A. The position of “President” of LGB was eliminated properly pursuant to LGB’s operating agreement.

In light of the fact that Mr. Booty was attempting to convert company assets as early as the day judgement was entered against him for over \$99,000, LGB amended its Operating Agreement. The original Operating Agreement provides that the agreement “may be altered [or] amended...by a vote of seventy-five percent (75%) of the Members at such time...by the Members acting by written consent in lieu of a meeting.” *See* Operating Agreement, page 10.

In lieu of a meeting, 16 of the members acted through written consent on December 19, 2002 to adopt the amendments to the operating agreement. These 16 members constitute 88.89% of the total membership of 18. In fact, every member except Mr. Booty and his wife consented to the amendments in writing. Thus, these amendments were validly adopted as the then-existing Operating Agreement provided for amendment through written consent of 75% of the members.

The amendments of December 19, 2002 reflect a number of changes in the Operating Agreement. Among these changes, LGB did away with the office of “president,” providing for these functions to be performed by the Executive Committee.³ Thus, as of December 19, 2002, there is no “president” of LGB and Mr. Booty no longer holds this office despite the fact that he had been reinstated prior to that date (and prior to his conversion of an additional \$28,318.33) in compliance with this Court’s order.

³ In addition, while the original agreement provided for some votes to be taken according to the capital interest owned by each party, the new agreement provides for all decisions to be made by a vote of

individual members, allowing each member a single co-equal vote.

Mr. Booty has asserted during hearings in this matter that there are allegedly certain inconsistencies in the operating agreement and that his consent to the changes in the agreement was required despite the plain language of page 10 quoted above. In making this argument, Mr. Booty relies on paragraph 6.6 found at page 7, which provides as follows:

Any action required or permitted to be taken at any meeting of members may be taken without a meeting, if all the members consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Members.

The foregoing provision is broad and general. It does not refer to any specific circumstance. On the other hand, Paragraph 12.1 provides specific language with respect to how the Operating Agreement may be amended:

This Agreement may be altered, amended or appealed...by a vote of seventy-five percent (75%) of the Members at such time...by the Members acting by written consent in lieu of a meeting.

As the Court of Appeals has held, “[w]here two clauses or parts of a written agreement are apparently in conflict, and one is general in character and the other is specific, the specific stipulation will take precedence over the general, and control it.” *Federal Ins. Co. v. Allstate Ins. Co.*, 275 Md. 460, 472 (1975). Thus, the specific language in Paragraph 12.1 regarding how to amend the Operating Agreement will control and it is applicable to the present situation without regard to the general language in Paragraph 6.6. *See id.*; *see also Young v. Anne Arundel Co.*, 146 Md. App. 526; 807 A.2d 651 (2002) (applying the same principle to statutory construction) (“When two provisions, one general and the other specific, appear to cover the same subject but seem to conflict, the specific provision is controlling and prevails over the general enactment.”).

In addition to being the only interpretation which appears reasonable under *Federal Ins. Co. v. Allstate Ins. Co.*, 275 Md. 460, 472 (1975), this interpretation of the contract makes sense given the overall structure of the document. The document requires the consent of a majority of the ownership interest for most actions. Paragraph 12.1 is one of the few exceptions to this rule. Paragraph 12.1 merely requires the majority of the members (*i.e.*, the individuals) whether acting in person or via written consent. This provides a check against the exact type of situation in which the members found themselves here. In other words, should an owner and officer with a relatively large percentage of the LLC act unlawfully, for instance by embezzling money from the company as the jury found Mr. Booty had done, then the members had recourse. Paragraph 12.1 is an enforcement mechanism to provide the members with the power to do exactly what they did here: prevent further theft and fraud by amending the operating agreement with a majority vote of the members.

B. Mr. Booty’s interest in LGB was forfeited under Section 4A-502(c) of the Maryland Limited Liability Act.

Not only is Mr. Booty no longer the president of LGB, he no longer has an

interest in the company. LGB is authorized to divest Mr. Booty of his interest in LGB as a remedy for Mr. Booty's failure to pay the judgment against him under Section 4A-502(c) of the Maryland Limited Liability Act, which provides that:

[A] member who fails to make any...payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure....The remedy or consequence may take the form of...[f]orfeiture of the defaulting member's interest in the limited liability company....; or...[a]ny other remedy or consequences.

Mr. Booty owed LGB a judgment in the amount of \$99,789.96 and there has been a clear failure to make this required payment to LGB. Moreover, the jury found in the prior litigation that Mr. Booty received inappropriate refunds of the capital contributions he was required to make. As a result, LGB has adopted a resolution reducing John Booty's interest in LGB to zero and forfeiting his interest in LGB.

Before adopting the resolution at issue, LGB had Mr. Booty's interest in LGB valued by the independent accounting firm of Saggar, Lippman & Rosenberg, P.C. LGB took this step despite the fact that a valuation is *not* required by the statute at issue; nor does the statute require a correlation between the value of the interest forfeited and the amount due the limited liability company. *See* Section 4A-502, *supra*.

The accounting firm of Saggar, Lippman & Rosenberg, P.C. valued Mr. Booty's interest in LGB at \$87,000 applying three different valuation techniques and using, not the highest number, but an average. *See* Expert's Report (in evidence).⁴ The judgement against

⁴ The primary author of this report was Sandeep Sagar, an accountant licensed in Maryland who is a name partner in the firm. Mr. Sagar testified that he heads the accounting and audit practice of his firm, that he has been trained in business valuation and that he has been practicing for over ten years who has had extensive experience performing business valuations as well as helping to operate a number of businesses for a venture capital group.

Mr. Booty was \$99,789.90. Now that Mr. Booty's interest in LGB has been forfeited, LGB shall treat \$87,000 of the judgment as having been collected in accordance with the valuation provided by Saggar, Lippman & Rosenberg, P.C. Thus, only \$12,789.90 of the prior judgment against Mr. Booty remains.

Other than his own subjective, self-serving, non-scientific⁵ supposition that LGB is worth \$1.7 million, Mr. Booty provided *no alternative expert valuation* to the 30-page report applying three different valuation techniques which formed the basis of the request for garnishment. Moreover, the Court finds Mr. Booty's testimony inherently lacking in veracity and credibility for reasons detailed herein.

Mr. Booty did testify, over objection, that Martin Mayhew had once offered to sell his 14% interest in LGB back to the rest of the group for \$192,000. However, this is not a measure of the true value of 14% of the LLC given that the offer was turned down by LGB because Mr. Mayhew was asking for too much money for his 14%:

Q Okay. Now, you heard testimony that Martin Mayhew offered to sell his interest in LGB to the group. Do you recall that testimony earlier?

A Right. Yes.

Q And did the group accept that offer from Mr. Mayhew?

A No.

* * *

Q What is your understanding of why the group rejected that offer?

A It was too much.

See Trial Transcript, Volume III (testimony of Nadine Varella, page 75). Thus, the alleged unconsummated offer is no measure of the fair market value of any portion of LGB.

As LGB's accounting expert testified, an unconsummated offer to sell an interest in LGB does not reflect fair market value. *See* testimony of Sandeep Sagar. as fair market value is, by definition, what a willing buyer would pay a willing seller. *See id.* Mr. Mayhew's offer was rejected for want of a willing buyer and, thus, it is no measure of fair market value.

⁵ Mr. Booty has no accounting degree, no professional licenses, no education or training in business valuation and could not define key concepts which LGB's expert testified were necessary to perform a proper valuation.

Even though Section 4A-502(c) of the Maryland Limited Liability Act does not require such a valuation, the evidence supports a finding that Mr. Booty's 25% interest in LGB is worth \$87,000 and the Court so finds. Thus, LGB has caused Mr. Booty's interest to be lawfully forfeited as a result of the unpaid judgment from the prior litigation and Mr. Booty has no interest in LGB despite his unsupported supposition that his 25% is worth more than \$87,000. Of course, because no valuation *or correlation between the interest forfeited and the judgement due* is required in the first instance, even if the Court were to find that Mr. Booty's interest is worth more, LGB's actions would still be affirmed. This is particularly true given the operation of the business judgement rule (discussed *infra.*) and the fact that the outstanding judgement against Mr. Booty is for more than \$99,000 (*before* adding the additional \$28,318.33 sought here).

- C. Given Mr. Booty's theft, the Members of LGB had a common law right to remove him as a member and officer irrespective of the Operating Agreement.

"The law is settled that a corporation possess the power to remove a member, officer, or director for cause, regardless of the existence of a provision in the charter or bylaws providing for such removal." *Chisholm v. Hyattstown Vol. Fir Dep't*, 115 Md. App. 58, 691 A.2d 776 (1997) (*quoting* 18A Am. Jur. 2d Corporations §§ 935-37)). The foregoing power is most important in circumstances such as those presented by this case. Here, a jury and this Court have found that Mr. Booty has abused his prior position with the LLC to abscond with funds belonging to the LLC without proper authority. Moreover, this Court has found that "absent Court intervention, the Defendant, John Booty ("Booty"), may continue to spend, pledge or otherwise encumber the assets of LGB Group, LLC ("LGB") without appropriate

authority or approval..." See Court order of January 21, 2003. The LLC found itself in a dire situation and acted within its common law powers to defend itself from further theft.

D. Mr. Booty's interest in LGB shall be forfeited as a result of pending garnishment proceedings.

As demonstrated above, LGB has a judgement against Mr. Booty which exceeds the value of his interest in LGB. The judgement is for \$99,789.96 and Mr. Booty's interest in LGB has been valued by an independent appraiser at \$87,000. See discussion, *supra*.

As a result of the outstanding and unpaid judgement, LGB filed a request for garnishment of Mr. Booty's interest in LGB pursuant to Maryland Rule 2-645.⁶ This request was filed on July 3, 2003 and the resulting garnishment was personally served on Mr. Booty, as required by the rules, on July 26, 2003.

On August 15, 2003, LGB moved for judgement in connection with the garnishment pursuant to Maryland Rule 2-645(g), mailing a copy of the motion to counsel for Mr. Booty on the same date. Any response to the motion for judgement by Mr. Booty was due on or before September 2, 2003. More than four months after this deadline passed, no response has been filed; nor is there any defense. As a result, the pending Motion for Judgement in connection with the garnishment should be granted without even reaching the merits because the issue is uncontested.

Moreover, LGB presented, at trial, expert testimony regarding the value of Mr. Booty's 25% interest in LGB. This testimony established that the fair market value of Mr. Booty's 25% interest in LGB is \$87,000. Thus, on the merits, LGB is entitled to judgement on this issue.

⁶ According to Mr. Booty's testimony during the punitive damages phase of his trial, this is his only significant asset.

Even if there were some merit to Mr. Booty's suggestion that his interest was undervalued (it was not), then he would *still* not be entitled to the relief he seeks. First, the valuation done returned a value of \$87,000, which is \$12,789.90 less than the judgement. As a result, even if the valuation were increased by as much as \$12,000, Mr. Booty's entire interest in LGB would still be subject to forfeiture in the garnishment and/or declaratory judgement proceedings.

Finally, even if Mr. Booty had produced some *credible* astronomical valuation of his interest, at least whatever portion of his interest was equal to the value of the judgement would still be subject to forfeiture in the garnishment proceeding. As the members of LGB opposed to Mr. Booty control 50% of the company, if they wrest any small percentage from him whatsoever, they have majority control. Thus, the issue of valuation is, in large part, moot. Irrespective of the proper valuation, \$99,789.96 worth of Mr. Booty's interest in LGB should be transferred to LGB to satisfy his debt, thus giving the other owners majority control.

E. Mr. Booty forfeited his membership in LGB by seeking the "partition" of LGB.

Section 4A-606 of the Corporations and Associations Article of the Maryland Code provides as follows:

A person ceases to be a member of a limited liability company upon the occurrence of any of the following events...the person...[f]iles⁷ a petition or answer seeking for that person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.

⁷ It is important to note that it is the mere filing of such a claim that divests an individual of his membership in an LLC irrespective of how far the claim is pursued or whether the claim is successful.

In the present case, on February 11, 2003, John Booty filed a “Counterclaim for Partition,” seeking, among other relief, that “LGB Group, LLC...be sold and the ample proceeds divided among the members according to their respective interest and shareholdings.” *See* Booty’s Counterclaim for Partition at 3. Mr. Booty also requested that this Court order the “sale of LGB Group, LLC” and appoint “an administrator to manage the daily function of the business pending sale and [sic] facilitate the sale of the business.” *See* Booty’s Counterclaim for Partition at 6. In addition, Mr. Booty testified regarding this claim at trial as follows:

Q Sir, in your complaint for declaratory judgment, you asked for the appointment of an administrator, correct?

A Correct.

Q Why do you ask this Court to appoint an administrator to run the company?

A I’m asking that to happen until that we get, you know, a clear-cut view of how much the company is worth, and almost like a neutral party to run the company.

See Trial Transcript, Volume 1 (page 129)

Obviously, in requesting the sale of the business and the appointment of an administrator, Mr. Booty has filed a petition seeking “liquidation, dissolution, or similar relief.” *See* Maryland Code, Corp. & Assoc., § 4A-606. As such, John Booty “cease[d] to be a member of [this] limited liability company upon the” filing of his Counterclaim for Partition. *See id.* Thus, Mr. Booty is no longer a member of LGB.

F. LGB’s actions are due significant deference under the business judgment rule, which requires a showing of “bad faith” before they should be rescinded.

After Mr. Booty was reinstated as a result of this Court’s order of December 17, 2002,

LGB and its members were free to exercise their rights under the Operating Agreement to govern LGB from that point forward. In doing so, they made the legitimate decision to eliminate the office of the presidency and their decision is protected by the “business judgment rule.”⁸

In Maryland, a corporate control group is presumed to act in good faith, *Zimmerman v. Bell*, 800 F.2d 386, 392 (4th Cir.1986) (interpreting Maryland law), and the court will not substitute its business judgment for that of the managers of a company. *Devereux v. Berger*, 264 Md. 20, 32, 284 A.2d 605 (1972). This doctrine is know as the “business judgment rule.”

The appellate Courts of Maryland have held that:

The "business judgment" rule...precludes judicial review of a legitimate business decision of an organization, absent fraud or bad faith.

Black v. Fox Hills, 90 Md. App. 75, 81, 599 A.2d 1228, 1231 (1992) *cert. denied*, 326 Md. 177,604 A.2d 444 (1992); *see also NAACP v. Golding*, 342 Md. 663, 679 A.2d 554 (1996)(“The business judgment rule insulates business decisions from judicial review absent a showing that the officers acted fraudulently or in bad faith.”).

Those authorized to act on behalf of a corporate entity:

enjoy the benefit and protection of the business judgment rule, and their control of corporate affairs should not be impinged based on non-specific or speculative allegations of wrongdoing. Nor should they, or the corporation, be put unnecessarily at risk by minority shareholders bent simply on mischief,

who file derivative actions not to correct abuse as much to coerce nuisance settlements.

⁸ Interestingly, there is no requirement that a Maryland limited liability company have a “president.” *See* Maryland Code, Corporations and Associations Article, Title 4A (Maryland Limited Liability Company Act).

See Werbowsky v. Collomb, 362 Md. 581, 618-619, 766 A.2d 123, 144 (2001); *see also NCR Corp. v. AT & T Co.*, 761 F.Supp. 475, 491 (1991) (applying Maryland law).

Finally, both the Court of Special Appeals and the Court of Appeals have consistently held that:

If the organization is incorporated in Maryland, "the business judgment rule applies to decisions regarding the corporation's management." This rule "insulates business decisions from judicial review absent a showing" of fraud or bad faith. In this context, "fraud" has been interpreted broadly "to include 'action unsupported by facts or otherwise arbitrary.'"

Chisholm v. Hyattstown Vol. Fir Dep't, 115 Md. App. 58, 691 A.2d 776 (1997)(citations omitted)(quoting *NAACP v. Golding*, 342 Md. 663, 679 A.2d 554 (1996); *Martin v. United Slate Etc. Ass'n*, 196 Md. 428, 441, 77 A.2d 136 (1950)).

Unless Mr. Booty can demonstrate "fraud or bad faith," his request to rescind the amendments to the operating agreement should be denied under the business judgment rule. *See Black v. Fox Hills*, 90 Md. App. 75, 81, 599 A.2d 1228, 1231 (1992) *cert. denied*, 326 Md. 177,604 A.2d 444 (1992); *NAACP v. Golding*, 342 Md. 663, 679 A.2d 554 (1996). Mr. Booty has not even alleged, let alone demonstrated, fraud. *See* Booty's Complaint; trial testimony.

Moreover, there was more than sufficient cause for LGB to take the measures it took because, as the Court has already found, "absent Court intervention, the Defendant, John Booty ("Booty"), may continue to spend, pledge or otherwise encumber the assets of LGB Group, LLC ("LGB") without appropriate authority or approval...[and] Booty removed funds in an unauthorized manner...after his reinstatement as President..." *See* Court order of January 21, 2003 (emphasis added). Thus, Mr. Booty will not be awarded any relief and the

Court will allow the actions of the LLC to stand.

G. LGB will be awarded \$27,318.33.

Mr. Booty admitted taking an additional \$28,318.33 from LGB despite the near-six-figure verdict against him and LGB filed the present suit in part to recover these funds. The sole authority asserted by Mr. Booty for his unauthorized and unilateral post-trial withdrawal of an additional \$28,318.33 from LGB accounts is Article 10 of LGB's Operating Agreement. In issuing a preliminary injunction that the funds be returned at once, the Court correctly found as follows:

It is evident that absent Court intervention, the Defendant, John Booty ("Booty"), may continue to spend, pledge or otherwise encumber the assets of LGB Group, LLC ("LGB"), without appropriate authority or approval. It is equally evident that Booty removed funds in an unauthorized manner before the January 6th hearing but after his reinstatement as President in the CAE02-00408 proceeding on December 17, 2002. The Court ordered all funds removed by Booty to be held by him or any other entity presently in possession of the same on January 6, 2003. Booty's sole argument is that pursuant to Article 10, Indemnification, he is entitled to make a unilateral determination as to his own indemnification. Setting aside the highly unorthodox, if not illegal, method by which Booty acquired access to the Bank Accounts in question, the provisions of Article 10 do not provide authority for his actions. Article 10 in relevant part provides that LGB may indemnify any Member who was a Party Defendant if the action is resolved in

the Member's favor and if the Members determine that the individual acted in good faith and reasonably believed that he acted in the best interests of the company. Expressly excluded is an action by the Company against a Member, as was the case in CAE02-00408. The Jury's Verdict in CAE02-00408, *inter alia*, was to the effect that Booty breached a Contract benefiting LGB and failed to act with care, skill and diligence, for the benefit of LGB, coupled with his knowing acceptance of improper benefits. The Jury Verdict in the amount of \$99,789.96 was against him and in favor of LGB. This finding belies any thought that his actions were in the best interests of LGB. Setting aside the procedural matter, that he failed to submit his claim to LGB and to this date has failed to submit any bills to support the expenditure of \$28,636.65 in legal fees, it is clear that the Court must act for the benefit of LGB and its other constituent members.

See Court Order of January 21, 2003 (following a full hearing on the matter).

No further explanation is necessary, but out of an abundance of caution, the following is provided:

Article 10 provides, in relevant part, that LGB “shall indemnify any person who was or is a *party defendant*...in any...action...(other than an action by or in the right of the Company) by reason of the fact that he/she is or was a Member, Manager, officer, employee or agent of the Company...against expenses (including attorney’s fees)...if the Members determine that he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Company.” See Exhibit 1 (emphasis added).

Mr. Booty is not entitled to his attorney’s fees because the only action in which he was a “party defendant” was brought “by or in the right of the Company,” thus precluding recovery under the plain language of the agreement. Conversely, the claims Mr. Booty brought were in his own right, but he was not a “party defendant” as to these claims.

Moreover, under the plain language of Article 10, LGB will only indemnify a Manager against expenses, including attorney’s fees, provided that “the Members determine that he/she acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Company.” No such determination has been made; nor could it be made in good faith given the facts of this case. There has been no Members meeting and no finding that Mr. Booty acted in good faith in helping himself to tens of thousands of dollars of LGB’s money. Thus, irrespective of any other issue, this prerequisite for the repayment of Mr. Booty’s attorney’s fees has not been met and Mr. Booty is not entitled to the \$28,318.33 he admits taking.

Finally, there is an outstanding judgment against Mr. Booty and in favor of LGB for

almost \$100,000. Even if Mr. Booty was properly due some monies from LGB (*he is not*), any such alleged debts would constitute, *at best*, a set-off against the money Mr. Booty now owes LGB. Under no conceivable circumstances could LGB properly owe the John Booty \$28,318.33 he took.

In response to the Court order that the funds at issue be returned, Mr. Booty's counsel returned \$1,000 of the \$28,318.33 taken. As such, \$27, 318.33 is due and owing to LGB and judgement will be entered accordingly.

H. Mr. Booty's claim for \$86,525.56 should be denied.

The LGB Operating Agreement permits reimbursement of legitimate business expenses incurred by members on behalf of the business. Mr. Booty claimed reimbursement for \$86,525.56 worth of such expenditures. As LGB witnesses explained, there is a claims process through which the expenditure is submitted with an appropriate form and attaching the receipts at issue to obtain reimbursement. Nadine Varella described this process as follows:

Q Now, I want to ask you at LGB about the process for being reimbursed. Is there an invoicing process?

A Yes, there is.

Q And what is the purpose of that process?

A To reimburse the person for expenses that they may have incurred.

Q And can you explain that process, just walk us through step-by-step?

A When the expense occurs, the person is to go to our office manager, who we have what's called an invoicing processing form. And that form is to be filled out and then submitted to the office manager, who signs it. The general manager who signs it.

It then gets submitted to our accounting company, who then signs it and books it accordingly so that our accounting records are correct. And then the check is then cut from the accounting company back to the gym. And then the gym calls the person, says the check is ready.

* * *

Q In addition to the form, is there anything else that is required?

A Receipts are required.

Q And what about large or unusual expenditures? Do they have any additional process?

A Right. If they are large, then they have to go to the executive committee.

See Trial Transcript, Volume III (pages 60-61). LGB Office Manager Marie Johnson confirmed the procedure as follows:

Q Now, could you briefly describe to the Court the invoice processing system?

A Yes. Our invoice processing system is, what we do is we have an invoice processing form. That form is a form when someone actually has an expense or any type of bills that go through the club. They submit the bills. The bills are -- at first what I do is I actually fill out an invoice processing form. And then from there, there is an approval. I first approve the bill, make sure it is a valid bill. Then it goes to the general manager, and then he'll actually approve and validate the bill. And then from there, it goes to our accounting.

Q When you said bill, would that be the same as a receipt?

A Bill, receipts, anything that requires a payment.

See Trial Transcript, Volume III (pages 120-121).

Under cross examination, Mr. Booty virtually admitted that he had not followed this process with respect to any of his claim. First, with respect to large expenditures which would have required Executive Committee approval, Mr. Booty testified as follows:

Q And were those expenses authorized? Were they pre-authorized before they were spent?

A Those expenses were authorized through me, the president of the company, to get the company up and running.

Q I'm sorry. Were they authorized by the executive committee?

A No.

See Trial Transcript, Volume I (page 114). Next, with respect to other expenditures for which he seeks reimbursement, Mr. Booty testified:

Q. Did you submit them as part of the invoicing process to the company?

A. I believe I did.

Q. Can you tell us which ones were submitted?

MR. MAIGNAN: Objection, Your Honor.

THE WITNESS: I cannot.
THE COURT: Overruled.
THE WITNESS: I cannot.

* * *

Q. Do you have any documentation to show these were previously submitted other than your claim in the lawsuit?

A. I don't have any with me.

See Trial Transcript, Volume II (pages 70-1). Mr. Booty went on to confirm that he had no receipts for these alleged expenditures:

In connection with whatever amounts you are still seeking do you have receipts for those expenditures here today?

A. Receipts? It all comes from the Salomon, Smith Barney. Receipts. I don't have anything with me here today, no. I don't have anything.

See Trial transcript, Volume II (pages 69-70).

Thus, despite the claim that he “*believes*” he submitted requests for reimbursements for the funds sought, Mr. Booty could not specify which expenses for which he alleges that he submitted forms. Moreover, Mr. Booty could offer no receipts, no reimbursement forms and no other documentation whatsoever to support this specious claim.

With respect to his claim that he “believes” he submitted reimbursement forms for the expenses sought, it is important to note that Mr. Booty gave testimony at trial which can charitably be described as “inconsistent,” as it often evidences a willingness to change his sworn testimony after not-so-subtle cues from his counsel. In addition to the fact that he is suing LGB for funds to which he has admitted he is not entitled and for which he was already paid, the following examples of Mr. Booty’s testimony are indicative of his lack of veracity:

BY MR. MAIGNAN:

Q. Mr. Booty, did you have an opportunity to review the documents that were produced to your counsel pursuant to the document request?

A. No.

* * *

BY MR. MAIGNAN: Q. Mr. Booty, did you ever come to my office and review the documents produced by LGB?

A. Yes.

MR. HANSEL: Objection; asked and answered.

THE COURT: Overruled.

BY MR. MAIGNAN:

Q. Now, Mr. Booty, listen to my question. Do you recall coming to your counsel's office and reviewing several boxes of documents to LGB's response to discovery requests?

A. Yes.

See Trial Transcript, Volume II (page 82-83).

Q. And, in fact, your attorney's fees came out to be something closer to approximately \$70,000; correct?

A. Yes.

See Trial Transcript, Volume II (page 89).

Q Sir, how much was the legal fees attributed to the lawsuit where you sued LGB Group?

A \$120,000.

See Trial Transcript, Volume I (page 143).

Q Did you seek reimbursement for any of your attorneys fees related to the case of LGB versus yourself?

A Yes. Correct. Yes.

* * *

Q Okay. Let's go through it again.

THE COURT: No, I've heard it already. You don't need to go through it again.

* * *

MR. MAIGNAN: I don't believe that he truly understood.

THE COURT: You mean he said something you didn't want him to say? All right. Mr. Booty, do you want to clarify anything you've said?

THE PLAINTIFF: We can clarify it, yes.

THE COURT: Okay. What did you tell me that you think I might be confused about?

THE PLAINTIFF: On the second question he asked me.

THE COURT: Yes, which was?

THE PLAINTIFF: Was did I seek reimbursement of LGB Group against me.

THE COURT: Right. And your answer to that?

THE PLAINTIFF: I said yes.

THE COURT: Okay. You did, did you not?

THE PLAINTIFF: No. I was going what I did against LGB Group.

THE COURT: Okay. Go ahead and clarify. Go ahead.

BY MR. MAIGNAN:

Q Okay. Did you seek reimbursement for the portion related to LGB's suit against you?

A No.

See Trial transcript, Volume I (pages 141-143).

Q. I want to ask you about the meeting in which you allege you gained authorization to do those things. When did that meeting take place?

A. The meeting took place on the 19th.

Q. This was the 19th of December?

A. Yes.

Q. Of what year?

A. 2002.

Q. And who attended that meeting?

A. I attended and my wife attended via proxy. I had her proxy.

Q. She wasn't physically there?

A. No.

Q. I show you what's been previously admitted into evidence as Defendant's exhibit number six, Mr. Booty. You recognize that as an affidavit you filed in that matter?

A. Yes.

Q. And you swore under oath that the statements made in that affidavit were true and correct?

A. Yes.

Q. And may I refer your attention to page two, item number six. You testified a moment ago that the meeting took place on December 19. On that statement it says the meeting took place on December 20; correct?

A. It does.

Q. You testified a minute ago that your wife was only there via proxy. On that page it says I called a meeting of myself and my wife; correct?

A. Correct.

Q. It doesn't say anything about a proxy, does it?

A. No, it doesn't.

See Trial Transcript, Volume II (page 31-2)(Booty cross examination).

Mr. Booty cannot support his claim that any of these items were submitted for reimbursement except by his own self-serving testimony that he "believes" he submitted them, which testimony is called into question given the inconsistencies outlined above. After

searching the relevant records, Nadine Varella, a member of LGB's Executive Committee, testified as follows:

Q Did he ever go through the invoicing process in connection with those other payments that he is seeking?

MR. MAIGNAN: Objection, Your Honor.

THE COURT: Overruled.

THE DEFENDANT: No.

See Trial Transcript, Volume III (page 87).

Q Other than the things for which Mr. Booty was actually reimbursed that we have already gone through, are there any other items in his claim for which he submitted a reimbursement form?

A No.

Q Are there any other items in his claim for which he submitted any receipts?

A No.

See Trial transcript, Volume III (page 88). As such, the claim will be denied because submitting appropriate validation and receipts is a prerequisite to the right to recover any funds.

Moreover, Mr. Booty admitted during cross examination that of the \$86,525.56 he seeks, he was not entitled to \$69,343.64 because this amount represented his initial capital contribution, which was not to be refunded under the Operating Agreement:

Q. Are you aware of the condition in the operating agreement that members are not entitled to reimbursement of capital contributions?

MR. MAIGNAN: Objection, Your Honor.

MR. HANSEL: Just whether he's aware or not.

THE COURT: Overruled.

THE WITNESS: I'm aware no capital contributions could be reimbursed.

BY MR. HANSEL:

Q. Based on that do you withdraw your claims for those amounts?

A. Based on that I have to.

Q. So you withdraw your claim for those amounts?

A. Yes.

Q. Do you also withdraw your claim for the amounts that you have already

been reimbursed?

A. Yes.

Q. Would you agree with me that the amounts withdrawn for capitol contributions totals \$69,343.64?

A. I agree with you.

See Trial Transcript, Volume II (page 68).

Mr. Booty made these admissions based on Paragraph 2.4 of the Operating Agreement, which provides (with exceptions not implicated here), that “no member shall have the right to receive the return of any capital contribution.” *See* Operating Agreement (in evidence). Mr. Booty admitted that amounts totaling \$69,343.64 were part of his capital contribution and there was a stipulation to this effect:

MR. HANSEL: And Your Honor, to avoid a dispute on another document, we have reached a stipulation. I will do my best to state it and hope that counsel will correct me if I misstate it. But the stipulation is that Mr. Booty's capital contribution at least included the following. A bank vest down payment of \$2,693 --

THE COURT: I'm sorry. Stop because I am going to have to take it down, unless you have it written out. Mr. Booty's capital contribution.

MR. HANSEL: Included at least the following.

MR. MAIGNAN: And Your Honor, we want to make it clear that this is not the total contribution, but it is --

THE COURT: All right. So that's why you are saying included at least the following.

MR. MAIGNAN: Correct, Your Honor.

THE COURT: Which means that it includes these for sure. It may or may not be more than that.

MR. MAIGNAN: Correct, Your Honor.

THE COURT: Okay. Go ahead.

MR. HANSEL: There are a list of five items that are included. The five items, Your Honor, are, No. 1, a bank vest down payment.

THE COURT: A bank vest down payment?

MR. HANSEL: That's correct, Your Honor.

THE COURT: Okay.

MR. HANSEL: Of \$2,693.66. No. 2, an Imperial Business Credit Incorporated payment of \$16,149.98. No. 3, a payment to Cybex Leasing of \$33,000.

THE COURT: S-E-I-B-E-C-K?

MR. HANSEL: No, Your Honor, C-Y-B-E-X.

THE COURT: C-Y-B -- I should have known that. Cybex what?
MR. HANSEL: Cybex Leasing, Your Honor. It was for equipment lease.
THE COURT: Okay. And how much is that?
MR. HANSEL: \$10,000.
MR. MAIGNAN: \$33,000.
MR. HANSEL: I apologize, Your Honor. \$33,000.
THE COURT: Thirty-three even?
MR. MAIGNAN: Yes, Your Honor. Correct.
THE COURT: Go ahead.
MR. HANSEL: And a build out at the gym, \$10,000. And an implementation fee in 1997 to ACS of \$7,500.
THE COURT: Implementation fee to who?
MR. HANSEL: To ACS.
THE COURT: Okay. And that is how much?
MR. HANSEL: For 7,500.
THE COURT: Okay.
MR. HANSEL: And that the total of those figures is \$69,343.64.
MR. MAIGNAN: Well, you can do the math.
THE COURT: Okay.
MR. HANSEL: By way of stipulation.
THE COURT: All right.
MR. HANSEL: And I understand from counsel that that was stipulated to.
THE COURT: Except for the total. He wants me to do the math, which I understand. Let me see if, so it's clear what we are talking about.
MR. HANSEL: I have a calculator, Your Honor, if it is of any assistance.
THE COURT: It appears the math is correct. Okay.

See Trial Transcript, Volume III (pages 140-43).

Thus, it is clear (and it has been admitted) that Paragraph 2.4 of the Operating Agreement precludes reimbursement for amounts sought by Mr. Booty totaling \$69,343.64. There can be no award for this amount and, in fact, Mr. Booty withdrew his claim on the stand and under oath.

In addition, Mr. Booty has already been reimbursed for \$8,216.61 of his claim. Mr. Booty's own testimony in this regard was as follows:

Q. Mr. Booty, you have made claims for reimbursement in this case of approximately \$85,000; is that correct?

A. Yes, I have.

Q. And your testimony was that none of those were paid, is that accurate?

A. I can't remember if all of them have been paid. I don't remember.

Q. You wouldn't request this court to award you money that you have already received, would you?

A. If I have received it, I wouldn't ask the court to award it to me if I received it.

Q. And you recall providing an exhibit that was your Salomon and Smith Barney statement?

A. Yes.

Q. As well as the quick zoom part attached to it?

A. Yes.

Q. Plaintiff's exhibit number 11?

A. Yes.

Q. And you testified that the numbers with the little asterisk by them are the ones that make up your claim for reimbursement?

A. Correct.

Q. One of those asterisks is for \$1,280...Mr. Booty, I'll refer you to page six of thirteen of your Salomon and Smith Barney account.

* * *

Q. \$1,280. You see that, sir?

A. Yes.

Q. And your testimony is that you have never been reimbursed for that amount?

A. My testimony was I can't remember if I have.

Q. These are the amounts you are seeking; correct?

A. These are the amounts that I presented.

* * *

Q. The \$1,280 on the Salomon and Smith Barney account does have a star by it; right, Mr. Booty?

A. Yes, it does.

Q. You put a star by it?

A. Yes.

* * *

Q. Let me show you what's been marked as exhibit number ten, Mr. Booty.

* * *

Q. Do you see there that you were, in fact, reimbursed for that \$1,280?

A. Yes.

Q. So you're not claiming \$1,280 from this court?

A. No.

* * *

Q. Mr. Booty, I'll show you what's already in evidence as Defendant's exhibit number nine. That's your counter claim for partition in this case?

A. Yes.

Q. Does that include the numbers you are seeking reimbursement for?

A. Yes.

Q. And that's at pages four and five?

A. Yes.

Q. That's what you have claimed and you have asked the court to reimburse you; correct?

A. Correct.

Q. Do you know whether or not you have received reimbursement for those numbers already?

A. Not totally.

Q. Okay. And, in fact, we talked about the \$1,280 which you've now said you have received reimbursement for that's on that list; correct? On page five?

A. Yes. It's in evidence.

* * *

Q. You also see on that list the figure of \$1,500?

A. Yes.

* * *

Q. I show you what's been marked as Defendant's exhibit number 11. Will you take a moment to review that, sir?

A. (Witness complied) Yes. I see it.

Q. I'll ask you now have you been reimbursed for that \$1,500.

A. Yes.

* * *

Q. I'll show you what's been marked as Defendant's exhibit 13. Well, before I do. Let me refer you back to what you're claiming. Is there a claim for \$1,669.45?

A. Yes.

Q. And that's included in with what you're claiming from this court?

A. Yes.

Q. Let me show you what's marked as Defendant's exhibit 13. And I'll ask you if you been reimbursed for that \$1,669.45 previously?

A. Yes.

* * *

Q. Now, Mr. Booty, referring you back to your claim in this matter. Are you claiming a figure of \$1,073?

A. Yes.

Q. And that's included in the amount of money you are seeking from this court?

A. Yes.

Q. I'll show you what's marked as Defendant's exhibit number 14. I'll give you an opportunity to review that document. Now I'll ask you if you were repaid that amount as well?

A. Yes, I was.

Q. Okay. Mr. Booty, is there also a claim for reimbursement that you have made to this court for an amount or in the amount of \$2,693.66?

A. \$2,600?

Q. \$2,693.66?

A. Yes.
Q. You see that, sir?
A. Uh-huh.
Q. You have asked this court to reimburse you for that amount?
A. Yes.

* * *

Q. I'll show you what's been marked as Defendant's exhibit number fifteen and I'll ask you, sir, if you have already been reimbursed for that \$2,693.66?
A. Yes.
Q. Yes, you have?
A. Yes, I have.

See Trial Transcript, Volume II (pages 45-62).

With respect to any other expenses, Mr. Booty admitted as follows:

Q. You sure you haven't been reimbursed for those 12 expenses?
A. Can I ask you a question, Mr. Hansel?
Q. Mr. Booty, let me ask you the question.
THE COURT: The question is are you sure?
THE WITNESS: I'm not sure.

See Trial Transcript, Volume II (page 63).

Nadine Varella clarified that Mr. Booty had already been reimbursed for a total of \$8,216.61 of his claim:

Q You are aware, are you not, that Mr. Booty has sought reimbursements for certain alleged expenses from LGB?
A Yes.
Q And did you have an opportunity to review the list of reimbursements Mr. Booty was seeking?
A Yes.

Q And I show you what's been marked as Defendant's Exhibit No. 10. Can you identify that document?

A This is the invoicing processing form for reimbursements.

Q And you testified about that process earlier. That's the form that gets filled out when someone wants to be reimbursed from the company?

A Yes.

Q And I will show you what's been marked as Defendant's Exhibit No. 12, which categorizes Mr. Booty's claim....How much is being sought in Exhibit 10, according to the company's form?

A \$1,280.

Q And was that reimbursement made?

A Yes.

* * *

Q Did you have an opportunity to review Mr. Booty's claim in this matter, reflected in Exhibit 12?

A Yes.

Q And did you then compare his claim in this matter to the records of LGB?

A Yes.

Q And in making that comparison, did you review the business records of LGB?

A Yes.

Q Among those business records, did you review the exhibit in front of you, Exhibit No. 10?

A Yes.

Q And what did you determine in your review of Exhibit No. 10?

A That this 1,280 had already been reimbursed.

* * *

Q I show you Exhibit No. 11. Can you identify that document?

A Invoicing processing form.

Q Okay. And did you also review that document in reviewing Mr. Booty's claim?

A Yes.

Q And what did you determine from your review of that document?

A It had already been reimbursed.

Q And in what amount?

A \$1,500.

Q I show you what has been marked as Defendant's Exhibit No. 13. I will ask you have you had an opportunity to review that document in reviewing Mr. Booty's claim?

A Yes.

Q And with respect to Mr. Booty's claim, what did you determine in connection with that form?

A That this had already been reimbursed. It was \$1,669.45.

Q And attached to each of these forms is a page at the back. Can you describe it for the Court what that page depicts?

A That is the receipt portion of our checks that lists the invoice number, who the check, or what the check was made for, and the amount.

Q And so that would be physically attached to the check as it is printed?

A Right.

Q I refer you to Defendant's Exhibit No. 14. What is that document?

A Invoicing processing form.

Q Did you have an opportunity to also review that document in connection with Mr. Booty's claim?

A Yes.

Q And what did you determine?
A That this had also been paid, reimbursed to Mr. Booty.
Q And it also has a check stub attached to it to reflect that?
A That's correct.
Q In what amount had that been reimbursed?
A \$1,073.50.
Q And I show you Defendant's Exhibit No. 15. Did you have an opportunity to review Exhibit No. 15 in connection with Mr. Booty's claim?
A Yes.
Q And what is Exhibit No. 15?
A It's an invoicing processing form.
Q And what did you determine with respect to -- well, let me ask it this way. In what amount?
A \$2,693.66.
Q And what did you determine with respect to whether or not that had been reimbursed?
A It had been reimbursed.
Q And is the check stub attached to that exhibit?
A The check stub is attached.

See Trial Transcript, Volume III (pages 76-90) (Varella testimony); Trial Exhibits 10-15.

Mr. Booty's claim also includes \$2,486.15 which he is not entitled to recover because the expenses at issue were not business expenses related to LGB business. In this regard, Mr. Booty testified as follows:

Q. My question is since your training for the NFL, are you seeking reimbursement for \$2,400 –
A. No. I'm not seeking reimbursement for training for the NFL. That note right there you pointed out training for the National Football League.
Q. Let's take a couple of these amounts. This \$2,694.15 includes your Kung Fu lessons, does it not?
A. That total? Yes, it does.
Q. Why should LGB pay for your Kung Fu lessons?
A. LGB is not paying for my Kung Fu lessons.
Q. So there's no reason why LGB should pay for your Kung Fu lessons? Mr. Booty?
A. No reason at all.
Q. It includes a Bowie Racket and Fitness Club membership. Is there any reason why LGB should pay for Bowie Racket and Fitness club membership?
A. No, Mr. Hansel. No, it shouldn't. And that's where I got the idea when I was working out at Bowie....
Q. It includes the purchase of a personal heart monitor, does it not, Mr.

Booty?

A. It's for my wife.

Q. For your wife. Why should LGB pay for your wife's heart monitor?

A. She became an aerobics manager for LGB Group where she did not get paid.

Q. Is it your testimony that LGB has a policy to provide all the aerobic instructors heart monitors?

A. We don't have a policy at all. No, it's no policy.

Q. Given that's what makes up those things we went over, is what makes up this \$2,486.15, is there any reason why you should be reimbursed for that amount? In accordance with the claim you have made to this court?

A. Given you're -- as you just explained, no.

* * *

Q. Will you agree with me these are not payments for LGB since you identify them in your handwriting as travel for another business, Mr. Booty?

A. And also there's in my travel for other business I did some travel for LGB, too. I may not put it on here, but in looking at this documentation, my handwriting, you're correct.

Q. And the exhibit only says travel for Excel?

A. And training. Yes, it does.

Q. Mr. Booty, Ed Lee's your physical therapist?

A. Yes, he's my physical therapist.

* * *

Is there any reason why LGB should reimburse you for your physical therapy payments to Ed Lee, Mr. Booty?

A. Well, I don't use --

Q. Let me ask you this in fairness. Can you remember what that payment was for?

A. Well, I didn't have any physical therapy back in 1999. I had physical therapy back in 1996 and '97, I believe. So I can't remember. He comes to my promotional work.

Q. I don't want you to guess. Can you remember?

A. I don't remember.

Q. But it's included in your claim?

A. It's included.

See Trial Transcript, Volume II (pages 72-9).

Ms. Varella clarified LGB policy in connection with a number of the reimbursements

Mr. Booty seeks:

Q Are you on the executive committee, ma'am?

A Yes.

* * *

Q Are you aware of the policy for what is appropriate and what isn't an appropriate reimbursement?

A Right.

Q Okay. Let me ask you if a member's Kung Fu lessons at another gym would be an appropriate reimbursement?

A No.

* * *

Q Is there any policy of LGB that would allow Mr. Booty to be reimbursed for his membership in Bowie Racket and Fitness Club, another gym?

A No.

Q Is there any policy at LGB that would allow Mr. Booty to be reimbursed for a heart monitor for his wife?

A No.

See Trial transcript, Volume III (pages 84-86). Thus, there is no basis whatsoever to recover these sums.

The trial testimony regarding Mr. Booty's monetary claim can be distilled as follows:

Of the \$86,525.56 Mr. Booty seeks, he was not entitled to \$69,343.64 because this amount represented his initial capital contribution, which was not to be refunded under the Operating Agreement. Mr. Booty had previously been reimbursed for \$8,216.61. Finally, Mr. Booty was not entitled to reimbursement for \$2,486.15 of the claim because this sum represented amounts which were not reimbursable under existing LGB policies or the Operating Agreement (i.e., they were not business expenses associated with LGB). Thus, of the \$86,525.56 claimed, LGB was able to *affirmatively* show no entitlement to \$80,046.40.⁹ This leaves a mere \$6,479.16.

⁹ $\$69,343.64 + \$8,216.61 + \$2,486.15 = \$80,046.40$

Mr. Booty is not entitled to the remaining \$6,479.16 either. Simply put, Mr. Booty did not meet his burden of proof with respect to any of his claim, including the remaining \$6,479.16 for a number of reasons. First, as noted above, Mr. Booty is not entitled to any funds because a prerequisite to his entitlement is to submit proper receipts (which were never produced, even at trial) with a reimbursement form to LGB. This was simply never done. Moreover, Mr. Booty's only evidence that he is due these amounts is his own discredited testimony and stars he placed on an account record he provided which does not itself demonstrate whether the expenditures evidenced were made on behalf of LGB, or, in many cases, even to whom the money was paid. In fact, Mr. Booty could not even state for certain whether he had already been reimbursed for the expenses listed, including those making up the remaining \$6,479.16 claimed. Thus, Mr. Booty is not entitled to a monetary award.¹⁰ Of course, even if he were, it would be a mere set-off against the claims against him in this matter and the remainder of the prior judgement against him.

Finally, in the first trial between the parties, through a post-trial motion to alter or amend, Mr. Booty sought reimbursement for the same expenses he seeks here. This relief was denied by the Court.

IV. Conclusion

¹⁰ For the first time at trial, Mr. Booty asserted claims to salary and dividends for 2003. These claims will be stricken because there were not pleaded. Moreover, with respect to his claim for salary, it is precluded by the doctrine of *res judicata* as it was at issue in the prior case and the jury found that Mr. Booty was not entitled to a salary and awarded the salary he had taken to LGB. *See also* Operating Agreement, Paragraph 7.1 ("No Manager rendering services to the Company shall be entitled to compensation for such services."). With respect to the claim for dividends for the year 2003, there were no dividends distributed, and, thus, Mr. Booty is not entitled to any. In this regard, Ms. Varella testified as follows:

Q You are aware, are you not, that Mr. Booty has made some argument that he is entitled to dividends in 2002 and 2003?

A Right.

Q During that time period, did any member of LGB receive dividends?

A No.

See Trial transcript, Volume III (page 75-6)

For the forgoing reasons, the Court will grant LGB judgement on all claims and counterclaims in this matter.

Accordingly, it is this 28th day of January, 2004, by the Circuit Court for Prince George's County, Maryland

ORDERED, that pursuant to the declaratory judgments sought in this matter, the rights and obligations of the parties are as reflected in the Court's Conclusions of Fact and Findings of Law and a declaratory judgement is and hereby shall be entered accordingly; and it is further

ORDERED, that pursuant to the Court's Findings of Fact and Conclusions of Law in this matter, judgement is hereby entered in favor of LGB Group, LLC and against John Booty for \$28,318.33; and it is further

ORDERED, that LGB Group, LLC's Motion for Judgment on Writ of Garnishment is and hereby shall be, GRANTED; and it is further

ORDERED, that all right, title and ownership of any and all interest John Booty holds or held in LGB Group, LLC is and hereby shall be transferred to and the property of LGB Group, LLC in partial satisfaction of the judgement against John Booty and in favor of LGB Group, LLC in this matter; and it is further

ORDERED, that \$87,000.00 of the judgment against John Booty, representing the fair market value of his former interest in LGB Group, LLC, is hereby satisfied; and it is further

ORDERED, that all claims asserted by John Booty are and hereby shall be, DENIED and judgement is entered for the Defendants with respect to such claims in all respects; and it is further

