



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF) C.A. No. 2023-0925-SEM
THE CES 2007 TRUST)

ORDER DISMISSING CASE

1. Can IV Packard Square, LLC (the “Lender”) brought an action in a Michigan court against Craig Schubiner for an unpaid loan to one of his companies. Schubiner had obtained the loan to finance a luxury retail and residential development project in Ann Arbor, Michigan. The Michigan court entered a \$14 million judgment in favor of the Lender and against Schubiner.

2. The Lender has been attempting to collect on the judgment. Schubiner claims he has no assets to pay the judgment. The Lender has responded by pursuing wide-ranging litigation against Schubiner and any entities that have some connection to him.

3. As part of that effort, the Lender filed this action against the CES 2007 Trust (the “Trust”). The Lender asserts that (i) the Trust should be invalidated, (ii) at a minimum a spendthrift provision in the trust agreement should be invalidated, and (iii) the assets of the Trust should subject to the Lender’s judgment. The Lender named as interested persons Schubiner, the beneficiaries of Trust, and its trustee.

4. Schubiner created the Trust in 2007 as an asset protection trust, also known as a qualified disposition trust. The purpose of such a trust is to enable a trustee to own and manage assets for the benefit of its beneficiaries without the beneficiaries’ creditors being able to levy on the assts of the trust or the beneficiaries’

interest in the trust. See 12 Del. C. §§ 3570–3576; *In re Raymond L. Hammond Irrevocable Tr. Agr.*, 2016 WL 359088, at *1 (Del. Ch. Jan 28, 2016).

5. The Trust is governed by a trust agreement (the “Agreement”). The Agreement names as the Trust’s beneficiaries Schubiner’s wife (if any), his parents, and any issue, if alive. The Agreement provides that Schubiner cannot serve as trustee, but the Agreement names Schubiner as the Advisor to the trustee and empowers the Advisor to direct the trustee regarding the investment and management of the Trust’s assets. The Agreement names Schubiner’s brother as the Trust Protector who has the power to remove the trustee and appoint a successor trustee. The Agreement named U.S. Trust Company as the initial trustee.

6. The Agreement gives the trustee sole and absolute discretion over distributions from the Trust. The Agreement contains a spendthrift provision that prevents any beneficiary from transferring (defined broadly) an interest in the Trust (the “Spendthrift Provision”).

7. The Trust assets consist of 90% member interests in three different Delaware limited liability companies (the “Companies”). Schubiner owns the remaining 10% member interest in each Company and serves as each Company’s manager.

8. The Companies own three parcels that are at the center of this case (the “Properties”). The so-called Aspen Property is a rental property. As the manager of the Company that owns the Aspen Property, Schubiner determines where the income goes. The so-called Birmingham Property was Schubiner personal

residence from 2001 through 2018. The so-called the Linden Property is vacant land adjacent to the Birmingham Property.

9. The Lender alleges that the Trust is a sham and should be declared void. To support that allegation, the Lender alleges that Schubiner has transferred the Properties back and forth between the Companies and himself. The Lender does not allege that the Companies or Schubiner have transferred any of the Properties to the Trust. The Lender also alleges that the Trust has always lacked a qualified trustee because Schubiner exercises de facto control over the Trust. To support that assertion, the Lender points to the structure of the Trust, which permits Schubiner to direct the trustee regarding Trust assets and gives Schubiner's brother the power to remove and replace the trustee. The Lender also seeks an inference that the trustee has not been managing the Trust's assets. The Lender contends that the initial trustee sought to resign due to a lack of communication from Schubiner. The initial trustee was later replaced by First State Trust Company. The Lender also points to correspondence in which Schubiner sought to lower the First State's fees on the theory that the trustee was not doing anything. First State ended up resigning. The Lender argues that because its trustee resigned, the trust lacks a qualified trustee and must dissolve. Schubiner claims that a new trustee has been appointed.

10. The case was assigned to the Senior Magistrate. The interested parties moved to dismiss the petition for failing to state a claim on which relief can be granted. The Senior Magistrate issued a report in which she recommended granting the motion. The Lender took exceptions.

11. This court applies de novo review when evaluating a magistrate's report. *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999). Based on a de novo review, this order affirms the dismissal.

12. The real problem with this case is the Lender's lack of standing to challenge the Trust's compliance with Delaware law. "This Court has an independent obligation to consider whether it can properly exercise jurisdiction over a matter, 'regardless of whether the issue has been raised by the parties.'" *In re Pantalone*, 2011 WL 6357794, at *2 (Del. Ch. Dec. 9, 2011) (quoting *IBM Corp v. Comdisco, Inc.*, 602 A.2d 74, 77 n.5 (Del. Ch. 1991)). "Standing is a threshold question, and, because standing is jurisdictional in nature, the Court may raise it *sua sponte*." *Thorton v. Bernard Techs., Inc.*, 2009 WL 426179, at *4 (Del. Ch. Feb. 20, 2009).

13. "[S]tate courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are 'mere intermeddlers.'" *Schoon v. Smith*, 953 A.2d 196, 200 (Del. 2008). For standing to exist, the party asserting a claim must have some interest in litigating it, typically because the party has suffered an injury in fact from the challenge conduct. *Dover Hist. Soc'y v. City of over Plan. Comm'n*, 838 A.2d 1103, 1110 (Del. 2003). The injury must be "concrete and particularized and [] actual or imminent, not nonconjectural or hypothetical." *Id.*


14. Here, the Lender lacks any type of injury that could support standing. The Lender did not loan money to the Trust; the Lender loaned money to one of Schubiner's entities. The Lender complains that Schubiner and the Companies

transferred properties back and forth, but that did not affect the Trust, and the Trust's assets did not change. There is no connection between the Trust and any injury that may have resulted from the transfers. Nor is there any connection between the Lender and any of the supposed problems with the Trust that the Lender identifies.

15. The Lender seems to acknowledge that it lacks standing. According to the Lender, it brought this case to bring facts to the trustee's attention that could cause the trustee to evaluate whether it had a fiduciary duty to exercise its rights as a majority owner of the Companies. Dkt. 85 at 3. When it comes to the Trust, the Lender is a classic intermeddler.

16. Rather than addressing jurisdiction, the Report analyzed the Lender's claims and concluded that they failed to pass muster under Rule 12(b)(6). The Report's analysis appears correct, but with the Lender lacking standing, there was no basis to reach the merits. The Report's conclusions are technically advisory opinions.

17. The Report properly recommended dismissal. The case is dismissed, albeit for lack of jurisdiction.



Vice Chancellor Laster
October 1, 2025