

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV001348-590

THAO PHUONG BUI,

Plaintiff,

v.

KHANH NGOC PHAN and GOLDEN
ROOSTER, LLC,

Defendants.

**ORDER AND OPINION ON
DEFENDANT PHAN'S MOTION TO
DISMISS AMENDED COMPLAINT**

*Villmer Caudill, PLLC, by Bo Caudill and Megan Cobb, for Plaintiff
Thao Phuong Bui.*

*Norman Legal PLLC, by Jason G. Norman, for Defendant Khanh Ngoc
Phan.*

Conrad, Judge.

1. This case arises out of a dispute between Golden Rooster, LLC's members—Plaintiff Thao Phuong Bui and Defendant Khanh Ngoc Phan. Pending is Phan's motion to dismiss the amended complaint. (ECF No. 54.) The motion is fully briefed, and the Court held a hearing on 18 October 2024. For the following reasons, the Court **DENIES** the motion.

2. The key allegations are these. Golden Rooster is a two-person real estate company. Its only members and managers are Bui and Phan, with each holding a fifty-percent interest. As coequal managers, neither can act alone. In February 2023, the pair became estranged (Bui says that Phan's infidelity ended their seventeen-year romantic relationship) and agreed to part ways. Although they decided that it would be best for Phan to buy Bui's interest in Golden Rooster, their negotiations stalled.

In the interim and without Bui's consent, Phan distributed company cash to herself, hired a lawyer to represent not only herself but also Golden Rooster in the buyout negotiations, and transferred \$250,000 from a company bank account to a new account that Bui could not access. (See Am. Compl. ¶¶ 12, 15–21, 25, 29, 30, 39, ECF No. 51; Op. Agrmt. ¶ 17, ECF No. 51.2.)

3. Bui's amended complaint includes two claims. One is for breach of Golden Rooster's operating agreement based on allegations that Phan made managerial decisions without Bui's consent. The other is for a declaratory judgment that Phan "is subject to expulsion from membership" because of these acts, leaving Bui as "the sole member-manager of Golden Rooster." (Am. Compl. ¶¶ 42, 45.)

4. In her motion to dismiss, Phan contends that Bui lacks standing to assert these claims. (See ECF No. 54.) This is so, according to Phan, because both claims are claims accruing to Golden Rooster. She argues that Bui ought to have asserted them derivatively on the company's behalf and that Bui has not alleged any special circumstances that might support an individual claim, such as a personal injury distinct from the company's injury.

5. The Court disagrees. Members of an LLC have standing to sue individually to enforce contractual rights granted to them by the LLC's operating agreement. See, e.g., *Emrich Enters., LLC, v. Hornwood, Inc.*, 2020 NCBC LEXIS 45, at *27 (N.C. Super. Ct. Apr. 8, 2020). This includes the right "to participate in management decisions." *Gruber v. Wright*, 2022 NCBC LEXIS 15, at *9 (N.C. Super. Ct. Feb. 17, 2022); see also *759 Ventures, LLC v. GCP Apt. Investors, LLC*, 2018 NCBC LEXIS 82,

at *9–11 (N.C. Super. Ct. Aug. 13, 2018) (concluding that a claim to enforce a contractual right to “exert management authority” is a direct claim).

6. Enforcing a personal right is exactly what Bui aims to do here. Golden Rooster’s operating agreement names Bui and Phan as managers, (*see* Op. Agrmt. ¶¶ 17, 23), subject to the default rule that “[e]ach manager has equal rights to participate in the management of the LLC and its business,” N.C.G.S. § 57D-3-20(b). As alleged, Phan deprived Bui of that right by making a distribution without Bui’s consent, unilaterally hiring an attorney to represent Golden Rooster, and moving company funds to a new account that Bui could not access. Thus, in claiming that Phan breached the operating agreement, Bui seeks to enforce *her* rights and remedy *her* injuries, not those of *Golden Rooster*. *See 759 Ventures*, 2018 NCBC LEXIS 82, at *9.

7. Phan suggests that Bui cannot show any monetary damages from any alleged breach and that, as a result, her injury isn’t real. That’s incorrect. Phan’s one-way distribution to herself may well have caused monetary harm to Bui, who did not receive a matching distribution. (*See* Op. Agrmt. ¶ 8 (“Each Member will receive an equal share of any Distribution.”).) And, in any event, not all injuries are financial: the loss of managerial rights is itself an injury recognized by law. Proving that Phan breached the operating agreement “would entitle [Bui] to nominal damages at least,” even without evidence of compensatory damages. *Bowen v. Fidelity Bank*, 209 N.C. 140, 144 (1936). In sum, Bui has alleged a breach of her contractual rights, and she

has standing to sue directly to remedy that alleged breach. *See Emrich Enters.*, 2020 NCBC LEXIS 45, at *27; *759 Ventures*, 2018 NCBC LEXIS 82, at *9.

8. Bui also has standing to seek declaratory relief. Golden Rooster's operating agreement permits the "[e]xpulsion of a Member . . . on application by . . . another Member" in a few circumstances, including "where it has been judicially determined that the Member" has materially breached the agreement or a duty owed to the other members. (Op. Agrmt. ¶ 29.) Bui claims that Phan crossed that line, and became subject to expulsion, when she began managing Golden Rooster without Bui's consent. Phan denies having done anything worthy of expulsion. Plus, Phan disputes Bui's interpretation of the operating agreement, arguing that one member may not seek another's involuntary withdrawal by judicial decree but must instead do so by way of an internal vote of all the members.

9. This dispute between contracting parties about the meaning and effect of their contract is just the sort of actual, genuine controversy that is suited to a declaratory-judgment action. *See, e.g., Nationwide Mut. Ins. Co. v. Roberts*, 261 N.C. 285, 287 (1964). By statute, a contracting party may seek to "have determined any question of construction or validity arising under" the contract. N.C.G.S. § 1-254. This does not necessarily mean that Bui will prevail. She may not. But she surely has standing to ask the Court to end the uncertainty and resolve disagreements about the correct construction of the operating agreement, the existence or nonexistence of her perceived contractual right to expel Phan, and any resulting effect on the makeup of Golden Rooster's membership. *See Epic Chophouse, LLC v. Morasso*, 2019 NCBC

LEXIS 55, at *13 (N.C. Super. Ct. Sept. 3, 2019) (concluding that LLC member had standing to seek declaration as to company's membership and meaning of its operating agreement).

10. Finally, Phan's motion includes one additional ground for dismissal: that the operating agreement shields members from liability for anything less than "intentional wrongdoing." (Op. Agrmt. ¶ 62.) Because Phan did not address this argument in her brief, the Court declines to consider it. *See* BCR 7.2 ("A party should . . . brief each issue and argument that the party desires the Court to rule upon and that the party intends to raise at a hearing.").

11. The Court **DENIES** Phan's motion.

SO ORDERED, this the 22nd day of October, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases