Delaware Chancery Court Finds Porzio's Clients To Be The Prevailing Party In A Complex Real Estate Dispute

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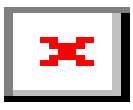
The Delaware Chancery Court recently issued a decision in favor of Porzio's clients after a three-day trial in Wilmington, Delaware in 2009 *Caiola Family Trust v. PWA and Ward Katz*, CA No. 8028-VCP (October 14, 2015). Gary M. Fellner, Esq. was the lead trial attorney for plaintiffs. He was assisted at trial and throughout this three-year litigation by Michael J. Naporano, Esq., and local Delaware counsel, Patricia L. Enerio, Esq.

The center of the case concerned a limited liability company that owned a multi-family apartment complex in Kansas. The LLC was formed in Delaware, so Delaware law controlled. Porzio's clients were the company's 90% majority owner and the "non-managing members" under the LLC operating agreement. Defendants PWA, LLC and Ward Katz from Kansas held the remaining 10% interest. Though PWA held the minority stake, PWA was the LLC's "managing member" under the operating agreement. The Court wrote that, unlike a corporation, the non-managing member of an LLC, even though it may be the majority owner, "does not get to call the shots." The managing member does. But the Court also wrote that the managing member can be removed "if it fails to pay attention to the requirements of the LLC's operating agreement." In other words, if it does not follow the agreement, it can be replaced by someone that the non-managing member controls.

After PWA refused to step down as managing member, plaintiffs filed suit and asked the Chancery Court to order PWA removed and replaced with a company controlled by plaintiffs. After a three-day trial, the Chancery Court issued a 91-page opinion agreeing with plaintiffs that grounds for PWA's removal were proven at trial, including the wrongful payment of asset management fees to a non-party. The Court also granted plaintiffs' request to an award of legal expenses incurred as prevailing parties. The Opinion can be viewed here.