

Act 170 Act Case Law Developments

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In re Roche

582 B.R. 632 (Bankr W.D. Pa 2018)

This case interprets Section 8422 of the Uniform Partnership Act on the issue of whether a husband and wife had formed a general partnership

Commonwealth, as *parens patriae*, attempted to prove that husband and wife operated an unincorporated business as a general partnership, presumably to attach jointly owned assets

Debtors succeeded in showing that business was a sole proprietorship

In re Roche (cont.)

Important propositions for which the case could be cited:

- Existence of a general partnership is a question of fact;
- Existence may be proven by a writing, oral agreement or by implication;
- Act 170 codified general partnership common law by the italicized phrase in the following statement (court cited a Committee comment):
 - Except as provided in subsection (b) [specific rules for determining formation], the association of two or more persons to carry on as co-owners a business for profit forms a partnership, *whether or not the persons intend to form a partnership.* (15 Pa.C.S.A. 8842(a))
- It is appropriate to give deference to the opinions of "sister states" when interpreting Act 170, since it is derived from a uniform act

Lancaster County Investors Co v. Community Health Systems, Inc.

2019 WL 342714 (E.D. Pa. 2019)

This case stands for the proposition that a lawsuit by an LLC member which does not allege harm separate and apart from the harm inflicted on the LLC is properly characterized as a derivative suit.

Court interpreted sections 8881 (direct action by member) and 8882 (derivative action), in the context of breach of duty claims asserted by minority member against majority members who agrees to sell LLC's assets and did not distribute profits prior to the sale

Lancaster County Investors Co. v. Community Health Systems, Inc. (cont.)

Court quoted helpful Committee comment:

Although in ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract, within a limited liability company different circumstances typically exist. A member does not have a direct claim against a manager or another member merely because the manager or other member has breached the operating agreement. Likewise a member's violation of this chapter does not automatically create a direct claim for every other member. To have standing in his, her, or its own right, a member plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the company.

Lancaster County Investors Co. v. Community Health Systems, Inc. (cont.)

Finding that the claims were wholly derivative in nature, and because the LLC was a nominal defendant, court held that complete diversity did not exist and remanded the case to Lancaster County Court.

Case will be interesting to watch, because the substantive issues involve breach of duty claims and will involve interpretation of Act 170 provisions on duties of members.

Goldstein v. Roxborough Real Estate, LLC

- 741 Fed.Appx. 143 (3rd Cir. 2018)
- Analyzed the difference between a direct action by a partner in a limited partnership (15 Pa.C.S.A. 8691) and a derivative action (15 Pa.C.S.A. 8692)
- Court granted general partner's motion for judgment on pleadings, after holding the claims were derivative in nature
- This case and *Lancaster County Investors Co v. Community Health Systems, Inc.* evidence Act 170's adoption of uniform rules in derivative and direct actions for partnerships and LLCs