

THE FPTR NEWS

“ . . . useful information for clients and prospective clients.”

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Fairness for You in the Chancery Division

Individuals and businesses are often confronted with legal problems that money damages alone will not resolve. The Chancery Division of the Superior Court of New Jersey was specifically created and empowered to provide equitable relief. In other words, the chancery courts can decide whether or not to enforce contracts for sale, to grant any form of temporary or permanent injunctions, to uphold non-competition or non-disclosure agreements, or to otherwise provide legal remedies based on principles of fairness. The Chancery Court is also empowered to resolve shareholder and partnership disputes, and it exclusively handles foreclosure proceedings.

The History of Chancery Courts

In ages long past, citizens would regularly appeal to the King of England's sovereign power to overturn unjust results in the courts of law. In response, the King empowered his chief advisor, the Lord Chancellor, to administer a separate court of equity. The key to the Chancellor's newly created power was that he could now grant injunctive relief, which is the ability to order a party to do or refrain from doing certain acts. In time, the Chancellor delegated these equitable powers to Vice-Chancellors, and eventually chancery judges. The Chancery Division of the Superior Court of New Jersey was born out of the old English chancery courts to provide focus, flexibility, and speed for some aspects of a case that requires quick resolution. There is also the benefit of having a judge with the expertise and experience on equity specific issues.

Corporate Disputes and LLC's

Courts of equity are called upon to resolve a broad spectrum of corporate shareholder disputes. Conflicts can and do occur between the majority and minority shareholders in companies that

render the company unable to function properly and may even cause loss of business and profits. Often, these disputes result in litigation in the form of oppressed minority and other derivative shareholder actions.

Today, the most prevalent corporate form among small to mid-size businesses is the Limited Liability Company ("LLC"). As with companies that elect alternative forms, disputes arise in LLC's regarding voting control, finances, and company direction. Although LLC's are statutorily regulated, Chancery courts have equitable jurisdiction to resolve many of the corporate disputes involving LLC's, including contractual interpretation of operating agreements, determining fiduciary duties, control, liquidation, dissolution, and to order other appropriate actions in relief. New Jersey's chancery courts also have the inherent ability, under certain circumstances and independent of statutory authority, to appoint special fiscal agents or receivers for a distressed corporate entity to run its operations in situations where its board of directors are hopelessly deadlocked.

Liquidation and Foreclosure Actions

When a company is failing, the Chancery courts can order it dissolved and liquidated if the nature of the deadlock requires it and all else fails. In such cases, the Court will appoint a trustee or receiver to wrap up the company's affairs and to gather its assets and distribute them to creditors and shareholders by priority.

In these troubling times, foreclosures are an unfortunate reality for many individuals and companies. Where a residential or commercial mortgage is in default, the Chancery Division will handle the case to judgment and schedule a foreclosure sale. There are few defenses in a foreclosure action, but the inefficient document-handling in the mortgage sub-market offers

opportunities to challenge the standing of those seeking to foreclose, especially if the original mortgage cannot be produced. These disputes, along with the debtor's equitable right of redemption, are heard in the Chancery Division.

Unfair Competition and Restrictive Covenants

Employers (and employees) must be aware that, absent fraud or breach of trust, individuals are generally free to compete with former employers, to disclose information acquired through a company, and even to solicit customers of former employers. On the other hand, businesses have long recognized their strong interests in preserving trade secrets, customer information, personnel, and other proprietary information from unfair competition by former employees. Businesses can protect themselves by drafting restrictive covenants through employment contracts, non-competition agreements, non-disclosure agreements, and other contractual devices that limit the ability of former employees to compete against former employers. Of course, employees are entitled to contest employment contracts that unreasonably limit their ability to practice their skill or trade. The Chancery Division is regularly called upon to resolve the conflict between the public policy that underscores each respective side in the dispute.

Restrictive covenants or "covenants not to compete" arise most often in contracts for employment and sale of a business. They will be enforced to the extent they are reasonable in light of all the facts. Thus, a court considers whether the restrictions protect a legitimate interest,

impose an undue hardship on the employee, or impairs the public interest. Equally critical will be the court's view of the scope of the restriction in terms of geographical area, duration, and activity proscribed. A New Jersey court can reform the restriction to meet "reasonableness" standards; courts in other States void the entire agreement.

Another common restrictive covenant is the non-disclosure agreement. Injunctions issued by courts of equity protect an employer's trade secrets and confidential customer information from disclosure by former employees. The chances of success in Chancery is greatly enhanced by non-disclosure agreements because courts recognize the former employee had notice (and a warning) not to "steal" the company's property.

Conclusion

The Chancery Division may be the forum of choice for your litigation needs. Competent legal counsel can give you guidance and further information regarding the these courts, contract drafting and negotiating, specific areas of law, and any other questions regarding you or your business.

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