

Steps to Interpreting NJ-RULLCA

By Gianfranco A. Pietrafesa

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More than a decade ago, New Jersey overhauled its limited liability company (LLC) statute. The New Jersey Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq. (NJ-RULLCA), adopted on Sept. 19, 2012, became effective on March 18, 2013, for newly formed LLCs and on March 1, 2014, for all LLCs. Since then, our courts have published only a handful of opinions interpreting the statute. See, e.g., *IE Test v. Carroll*, 226 N.J. 166 (2016), which is the seminal case on the judicial expulsion of an LLC member. With such sparse authority, how are we to understand NJ-RULLCA? Fortunately, there are many resources to aid our interpretation of the statute.

Legislative History

The New Jersey Legislature directs that when we interpret its statutes, “words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language.” N.J.S.A. 1:1-1. Often, more is needed. The legislative his-



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tory of NJ-RULLCA, found under bill A1443 on the Legislature’s website, is the first resource. Unfortunately, the legislative history is limited.

Uniform Law Commission’s Commentary

NJ-RULLCA was based on the Revised Uniform Limited Liability Company Act (RULLCA), drafted by the Uniform Law Commission (the commission) in 2006. The commission last amended RULLCA in 2013 and updated its commentary on Aug. 19, 2015. (The commission has drafted many uniform laws, including the Uniform Partnership Act, Uniform Limited Partnership Law, and Uniform Commercial Code, all of which

have been enacted in New Jersey. As a result, the Commission's commentary is well-respected.)

The New Jersey Supreme Court explained that legislative intent can be gleaned from the intent of the drafters of uniform and model acts: "Given that the New Jersey Legislature adopted the Model Act's language, we have no reason to believe that the Legislature intended a different interpretation of the provision than that commonly understood as having been intended by the drafters of the Model Act." See *Thomsen v. Mercer-Charles*, 187 N.J. 197, 210 (2006) (citation omitted). See also *Clymer v. Summit Bancorp*, 334 N.J. Super. 252, 254-255 (App. Div. 2000) (citation omitted) ("In the absence of a contrary design, clearly articulated, the Legislature is taken to have adopted the expressed intention of the uniform act drafters."). In fact, in *IE Test*, 226 N.J. at 180 n.5, the Supreme Court consulted the commission's commentary on RULLCA to ascertain whether the commission defined the term "not reasonably practicable," which was not defined in New Jersey's statute. See N.J.S.A. 42:2C-46(e)(3) & -48(a)(4)(b). See also N.J.S.A. 42:2C-2.

As a result, the commission's commentary should be the next step to understand and interpret the provisions of NJ-RULLCA.

Out-of-State Cases

Case law from other states also informs a legal analysis by providing insight to interpretation. The Supreme Court instructs: "When we apply a uniform act, we may consider the law of other jurisdictions that have enacted similar provisions." See *Motorworld v. Benkendorf*, 228 N.J. 311, 325 n.4 (2017). See also *Medical Society of New Jersey v. Bakke*, 383 N.J. Super. 498, 508 (App. Div. 2006) ("The decisions

in other jurisdictions interpreting uniform or model state legislation should be considered in interpreting New Jersey's version of such legislation."). Thus, another resource facilitating interpretation of NJ-RULLCA's provisions is case law from sister states.

NJ-RULLCA itself expresses the State's public policy to strive for uniformity when reviewing uniform laws: "In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it." N.J.S.A. 42:2C-88, addressing Uniformity of Application and Construction. (Note that similar language appears in other uniform laws adopted in New Jersey. See, e.g., N.J.S.A. 42:1A-55 (Uniform Partnership Act); N.J.S.A. 42:2A-2(b) (Uniform Limited Partnership Law); N.J.S.A. 12A:1-103(a)(3) (Uniform Commercial Code)).

In a recent case involving a different uniform act, the Uniform Partnership Act (UPA), the Appellate Division reinforced this principle:

Because the Revised Uniform Partnership Act (RUPA) was adopted and codified in New Jersey as the UPA, our courts may "consider the law of other jurisdictions that have enacted similar provisions" based on RUPA. Considering N.J.S.A. 42:1A-31(e)(3) nearly mirrors RUPA Section 601(5)(C), we examine how other states have applied the latter provision.

AC Ocean Walk v. Blue Ocean Waters, 478 N.J. Super. 515, 524 (App. Div. 2024) (citing *Motorworld*, 228 N.J. Super at 325 n.4).

Obviously, out-of-state case law remains persuasive, but not binding on a New Jersey court; however, it warrants serious consideration, as noted by the Appellate Division over 50 years ago:

While these opinions, by the highest tribunal of a sister state, are not binding upon this court, they are of signal import, and we are more or less imperatively obliged to recognize their value as a guiding precedent. A paramount objective of our uniform state laws is the standardization of particular subjects within the United States and, to that end, we should refer to and seriously consider the construction given to comparable statutes in other jurisdictions.

See *State v. Weissman*, 73 N.J. Super. 274, 281 (App. Div. 1962).

To date, RULLCA has been adopted by 20 states and the District of Columbia. Included among those states are Pennsylvania, Connecticut, California, Florida and Illinois. See <https://www.uniformlaws.org/committees/community-home?CommunityKey=bbea059c-6853-4f45-b69b-7ca2e49cf740>. The published opinions from the highest courts in these states prove instructive. One example is *Benjamin v. Island Management, LLC*, 267 A.3d 19 (Conn. 2021), where the Connecticut Supreme Court addressed a member's right to inspect books and records of a manager-managed LLC, an issue not yet addressed under NJ-RULLCA.

In this regard, our Supreme Court borrowed heavily from a Colorado appellate court opinion when formulating factors considered when determining whether a member should be expelled because it was "not reasonably practicable" for the LLC to continue its business with the person as a member. See *IE Test*, 226 N.J. at 183 n.7 (citing *Gagne v. Gagne*, 338 P.3d 1152, 1159-60 (Colo. App. 2014)). See also *All Saints University of Medical Aruba v. Chilana*, 2012 WL 6652510 at 16 (NJ App. Div. Dec. 24, 2012) (court reviewed

the "not reasonably practicable" standard under Delaware law).

Cases Law on Similar Statutory Provisions

Case law discussing comparable provisions in other New Jersey statutes also can be used to interpret NJ-RULLCA. For example, the term "not reasonably practicable" is used in NJ-RULLCA as well as other New Jersey statutes, including the UPA. With regard to judicial expulsion, NJ-RULLCA provides: "On application by the company, the person is expelled as a member by judicial order because the person ... has engaged, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member." The UPA contains nearly identical language: "On application by the partnership or another partner, the partner's expulsion by judicial determination because ... the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner." N.J.S.A. 42:1A-31(e)(3). Therefore, interpretative case law decided under the UPA can be helpful in understanding the same term or concepts used in NJ-RULLCA. See also *Care One v. Straus*, 2022 WL 17072371 at 15-16 (NJ App. Div. Nov. 18, 2022) (Appellate Division relied on the Delaware Limited Partnership Act in the absence of an applicable provision in the Delaware Limited Liability Company Act).

Likewise, case law interpreting the "not reasonably practicable" standard in other contexts serves as a rationale to explain the "not reasonably practicable" standard for judicial expulsion in NJ-RULLCA. This is exactly what the Supreme Court did in *IE Test*, 226 N.J. at 183 n.7, when it adapted a sister state's interpretation of the

“not reasonably practicable” standard for judicial *dissolution* when determining the standard for the “not reasonably practicable” standard for judicial expulsion.

As noted, *AC Ocean Walk* involved the judicial expulsion of a *partner* from a *general partnership* on “not reasonably practicable” grounds. The Appellate Division did not mention the Supreme Court’s decision in *IE Test*, which involved the judicial expulsion of a member of an LLC on “not reasonably practicable” grounds under New Jersey’s repealed LLC statute as well as under NJ-RULLCA. It is odd that it did not do so since the statutes have nearly identical language. Compare N.J.S.A. 42:1A-31(e)(3) with N.J.S.A. 42:2B-24(b)(3)(c) (repealed) and N.J.S.A. 42:2C-46(e)(3).

Case Law on Similar Repealed Statutory Provisions

Case law clarifying comparable provisions in New Jersey repealed statutes may also be used to understand NJ-RULLCA. The *IE Test* case was decided under New Jersey’s repealed New Jersey Limited Liability Act, but the court frequently referenced comparable provisions under NJ-RULLCA, noting the similarities in the statutes. Therefore, *IE Test* remains viable to understand NJ-RULLCA. Further, in *All Saints*, the Appellate Division relied upon case law decided

under New Jersey’s repealed general partnership statute, which was similar to the LLC statute. See *All Saints*, 2012 WL 6652510 at 15.

Unpublished Case Law

Unpublished opinions do not constitute precedent, are not binding on New Jersey courts, and generally, should not be cited by any court. However, unpublished opinions offer incite into how a legal decision was reached and thus may develop an understanding of the provisions of NJ-RULLCA. If used, the opinion along with any known contrary unpublished opinions must be provided to the court and other counsel.

These noted resources offer the means to better understand the provisions of NJ-RULLCA. Attorneys and judges should avail themselves of these available resources, along with books, law review articles, other published articles, and seminars, when required to unravel the meaning of the statute.

Gianfranco A. Pietrafesa is a partner in the firm of Archer & Greiner in Hackensack, New Jersey. He is a former chair of the Business Law Section of the New Jersey State Bar Association and served on the committee that drafted NJ-RULLCA. He thanks the Honorable Marie E. Lihotz, P.J.A.D. (retired), of counsel to the firm, for her comments, but takes full responsibility for any errors or omissions.