

Docket No. AND-26-149

**IN THE SUPREME JUDICIAL COURT OF MAINE
SITTING AS THE LAW COURT**

JASON SMITH, *et al.*,

Plaintiff-Appellant

v.

LORELEI HILLIKER,

Defendant-Appellee

On Appeal from the Maine Superior Court
Docket No. ANDSC-CIV-2025-00081

BRIEF OF APPELLEE LORELEI HILLIKER

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Dated: July 15, 2026

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FACTS AND PROCEDURAL HISTORY

Appellant Jason Smith and Appellee Lorelei Hilliker are co-members and co-managers of Riverbend Investment Properties, LLC (“Riverbend”), a Maine limited liability company. (App. 83-84.) Each owns 50% of Riverbend. (App. 83.) Riverbend’s only asset is a commercial building located at 5 Canal Street in Lisbon, Falls, Maine (the “Property”). (App. 153.) For several years, Smith has operated a marijuana business named Lisbon Cannabis Company, Inc. (“LCC”) on the first floor of the Property, while Hilliker separately operates her own business making marijuana edibles in a kitchen on the second floor. (App. 18, 153.)

When the parties’ romantic relationship deteriorated, so too did their ability to jointly operate Riverbend. On March 28, 2025, Hilliker filed a demand for arbitration with the American Arbitration Association seeking “dissolution of the company and liquidation of its assets including its real estate” on the basis that “[a] member dispute ha[d] arisen between the members such that the company [could not] operate.” (App. 105-06.) On April 15, 2025, she amended her demand to request that, as an alternative remedy, Smith be dissociated from the company pursuant to Article 9 of the

Riverbend Limited Liability Company Operating Agreement (the “Riverbend Agreement”). (App. 107.)

On June 3, 2025, Smith and LCC filed a five-count verified derivative complaint in the Superior Court (Androscoggin County) against Hilliker and Riverbend (as a nominal defendant). (App. 5, 16-32.) The complaint sought a preliminary injunction (Count I) asserted claims alleging breach of fiduciary duty (Count II), waste of business assets (Count III), and equitable estoppel (Count IV), and a declaratory judgment (Count V).¹ (App. 26-32.)

On June 5, 2025, Hilliker filed a motion to stay and to compel arbitration based on the language of the Riverbend Agreement’s arbitration provision, which reads as follows:

If a deadlock or dispute arises between or among the Members relating to this Agreement or the Company’s Business or affairs (each such deadlock or dispute, a “Member Dispute”), then the Members shall use all reasonable efforts to resolve the Member Dispute on an amicable basis. If the Member Dispute is not resolved on such basis within sixty (60) days after a Member first brings the Member Dispute to the attention of the other Members, then any Member may serve upon such other Members a written demand for arbitration of the Member Dispute. The Member Dispute will thereafter be settled by arbitration before a single arbitrator in accordance with the Expedited Procedures under the Commercial

¹ Smith asserted all five counts against Hilliker. LCC joined in Counts I and IV.

Arbitration Rules of the American Arbitration Association, or such other rules and procedures upon the vote of the Members. Any such arbitration shall occur in Portland, Maine, or such other location upon the vote of the Members. Any award or decision obtained from any such arbitration proceeding will be final and binding upon the parties involved in the Member Dispute, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. To the fullest extent permitted by law, no action at law or in equity based upon any claim arising out of or relating to this Agreement will be instituted in any court by any Member except (a) an action to compel arbitration pursuant to this Section, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this Section.

(App. 68-69, 108-13.)

On September 15, 2025, the Superior Court issued an order on Hilliker's motion granting it in part and denying it in part,² reasoning that "it [was] readily apparent that each of Smith's claims (Counts I-V), whether asserted individually or derivatively, relate[d] to either the [Riverbend] Agreement, Riverbend's business, or both," and it was thus compelled to send those claims to arbitration because they fell within the scope of the Riverbend Agreement's arbitration clause.

² It was denied as to the claims asserted by LCC, which is not a member of Riverbend.

(App. 123-29.)³

In response to Hilliker’s arbitration demands, Smith filed an arbitration counterclaim which incorporated by reference his Superior Court complaint. (App. 105-07, 130-47.) The parties attended a two-day arbitration hearing in November 2025 with Attorney Duward Parkinson serving as the arbitrator. (App. 153.) On December 17, 2025, Attorney Parkinson (the “Arbitrator”) issued an award which, in relevant part, dissociated Smith as a member. (App. 153-55.) Two days later, Hilliker applied to confirm the arbitration award with the Superior Court, and on January 9, 2025, Smith filed an objection to that application alongside his own application to vacate, correct, and/or modify the award. (App. 56-63.)

On February 10, 2026, the Superior Court issued an order denying Smith’s motion, confirming the arbitration award, and granting judgment to Hilliker on all of Smith’s claims against her. (App. 9-15.) On February 26, 2026, Smith appealed the Superior

³ In its order, the Superior Court referenced 31 M.R.S. § 1637(3)(A), which provides that derivative actions “commenced by a member of a closely held limited liability company may be treated by a court as a direct action brought by a member for the member’s own benefit.” (App. 128.)

Court's order confirming the arbitration award to this Court. (App.
7.)

ISSUES PRESENTED FOR REVIEW

Whether the Superior Court correctly confirmed the arbitration award.

ARGUMENT

I. This Court should affirm the Superior Court's order confirming the arbitration award because the Arbitrator did not exceed his authority in dissociating Smith from Riverbend.

Appellate review of a Superior Court's confirmation of an arbitration award is confined to errors of law only, and the award will be upheld unless the court was compelled to vacate it. *Leete & Lemieux, P.A. v. Horowitz*, 2012 ME 115, ¶ 12, 53 A.3d 1106 (citations omitted). This Court's "review of the decision of an arbitrator is much more limited than a review of a court decision." *Xpress Nat. Gas, LLC v. Cate St. Cap., Inc.*, 2016 ME 111, ¶ 8, 144 A.3d 583. An arbitrator's award "will not be vacated even when there is an error of law or fact, unless the challenger demonstrates that the arbitration violated one of the grounds to vacate an award stated in 14 M.R.S. § 5938(1)." *Horowitz*, 2012 ME 115, ¶ 12, 53 A.3d 1106. Section 5938(1) "authorizes courts to vacate arbitration awards if 'arbitrators exceeded their powers,'" *Xpress Nat. Gas, LLC*, 2016 ME 111, ¶ 8, 144 A.3d 583 **Error! Bookmark not defined.** (quoting 14 M.R.S. § 5938(1)(C)), which occurs only when "no

rational construction of the agreement could support the award,” *id.* (citation omitted).

“The standard for determining whether an award exceeds an arbitrator’s power is an extremely narrow one.” *Id.* ¶ 9 (quoting *AFSCME, Council 93 v. City of Portland*, 675 A.2d 100, 102 (Me. 1996)). This Court has explained,

It is, after all, the arbitrator’s construction of the contract that was bargained for and only when there is manifest disregard of the contract will we disturb the award. We afford arbitrators a high degree of deference, with all doubts generally resolved in favor of the arbitrator’s authority. An arbitrator does not exceed his authority if the arbitrator’s interpretation, *even if erroneous*, nevertheless was rationally derived from the agreement. The arbitrator’s interpretation will be upheld if *any* rational construction of the agreement *could* support that interpretation.

Id. (cleaned up).

The thrust of Smith’s argument on appeal is that the Arbitrator lacked the authority to dissociate him from Riverbend, and the Superior Court’s order confirming the award should therefore be vacated, because the Riverbend Agreement provides that the *dissociation* of members, like the *dissolution* of the company itself, may be accomplished only by judicial order. This

position mischaracterizes the relevant provisions of the Riverbend Agreement.

Article 7.1 of the Riverbend Agreement states that Riverbend “shall exist perpetually until dissolved upon the happening of one or more of the following events: (a) the prior unanimous vote of the Members to terminate the Company; or (b) the entry of a decree of judicial dissolution of the Company.” (App. 73.) In contrast, Article 9.1 of the Riverbend Agreement reads as follows:

Upon the occurrence of any of the events specified in Section 1582 of the Act (including, without limitation, voluntary dissociation, death, adjudication of incompetency, bankruptcy, insolvency, or dissolution) (each of such events, an “Event of Dissociation”), the dissociated Member shall be deemed a Transferring Member and the rights and obligations of the withdrawing Member shall be as specified in Article 8. Until the dissociated Member’s Membership Interest is transferred to an Optionee during the Transfer Option Period or otherwise in accordance with Section 8.3, the dissociated Member’s rights with respect to his, her or its Membership Interest shall be in accordance with Section 1583 of the Act.

(App. 77.)

Contrary to Smith’s argument, these two provisions are not analogous because their plain language reflects that, unlike dissolution of the company, dissociation of a member does *not*

require a judicial order. While Article 7.1 conspicuously omits any reference to 31 M.R.S. § 1595, which sets forth events causing a company's dissolution, Article 9.1 expressly states that a member may be dissociated upon the occurrence of any of the events specified in 31 M.R.S. § 1582. (App. 73, 77.) The Arbitrator evidenced his appreciation for this distinction by stating, "I am not persuaded that under Maine law and the language of the Riverbend Agreement that Riverbend may be dissolved in arbitration—although [it] is a remedy which might be evaluated by the Superior Court." (App. 154.)

The Arbitrator ultimately dissociated Smith from Riverbend on the basis of an event specified in 31 M.R.S. § 1582(5). He wrote:

Dissociation. At the present time, the parties cannot work together and their dysfunctionality as business partners is profound. Under 31 M.R.S. §1582 (5), Hilliker seeks the dissociation (essentially expulsion) of Smith as a member of Riverbend. This is a strong remedy but is justified under the circumstances. It will result in Hilliker becoming the sole Manager of Riverbend. Smith will retain his economic interest in Riverbend. Smith's financial responsibilities to Riverbend also continue. As sole manager moving forward, Hilliker must always act prudently and with the utmost transparency. She should work closely with legal counsel, accountants, contractors, and financial consultants.

(App. 154.)

Section 1582(5) of the Maine Limited Liability Company Act provides that a person is dissociated when they are expelled as a member by judicial order because they (1) have “engaged, or [are] engaging in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the limited liability company’s activities”; (2) have “willfully and persistently committed, or [are] willfully and persistently committing, a material breach of the limited liability company agreement or the person’s duty or obligation under this chapter or other applicable law”; or (3) have “engaged, or [are] engaging, in conduct relating to the limited liability company’s activities that makes it not reasonably practicable to carry on the activities with the person as a member.” 31 M.R.S. § 1582(5)(A)-(C).

Smith contends the Arbitrator lacked the authority to dissociate him *pursuant to* section 1582(5) because that provision pertains only to a person’s expulsion by judicial order on application by a limited liability company. Again, this argument neglects to consider the stark contrast between the language of Article 7.1, which dictates that Riverbend can only be dissolved

“pursuant to” a unanimous member vote or judicial decree, and that of Article 9.1, which broadly permits dissolution “[u]pon the occurrence of any of the events specified in Section 1582.” (App. 73, 77.)

In sum, it was eminently reasonable for the Arbitrator to construe Article 9.1 of the Riverbend Agreement as empowering him to dissociate Smith based on *his* finding that an event specified in Section 1582 had occurred. This is especially so considering the comparably narrow scope of Article 7.1, as well as the overall breadth of the arbitration provision and its heavy-handed preclusion of any “action at law or in equity based upon any claim arising out of or relating to” the Riverbend Agreement. (A. 69.) The Arbitrator’s interpretation and resulting award must therefore be afforded deference and upheld. *See Xpress Nat. Gas, LLC*, 2016 ME 111, ¶ 9, 144 A.3d 583 (“An arbitrator does not exceed his authority if the arbitrator’s interpretation, *even if erroneous*, nevertheless was rationally derived from the agreement. The arbitrator’s interpretation will be upheld if *any* rational construction of the agreement *could* support that interpretation.” (cleaned up)).

II. Smith’s and Hilliker’s disputes, including the issue of dissociation, were subject to the Riverbend Agreement’s arbitration clause.

Smith next contends that the issue of his involuntary dissociation was not subject to arbitration because, pursuant to 31 M.R.S. § 1582(5), it is an action that belongs solely to Riverbend. But it is the Riverbend Agreement, not Maine’s Limited Liability Company Act, that determines which disputes are arbitrable.

“Maine’s Limited Liability Company Act seeks ‘to give maximum effect to the principles of freedom of contract and to the enforceability of limited liability company agreements.’” *Cianchette v. Cianchette*, 2019 ME 87, ¶ 34, 209 A.3d 745 (quoting 31 M.R.S. § 1507(1)). “To achieve this goal, the Act provides that the operating agreement of an LLC ‘governs relations among the members as members and between the members and the limited liability company,’” *id.* (quoting 31 M.R.S. § 1521(1)), and “[t]he default rules . . . within the Act work to backstop the agreement to the extent the agreement does not address a matter,” *id.* (cleaned up).

Article 2.2 of the Riverbend Agreement is an extremely broad arbitration provision that requires all member disputes relating to the Riverbend Agreement or Riverbend’s business or affairs to be

submitted to arbitration and prohibits nearly every form of lawsuit between members. (App. 68-69.) Maine's Uniform Arbitration Act provides that "[a] written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." 14 M.R.S. § 5927. Moreover, Article 9.1 of the Riverbend Agreement directly addresses dissociation, and indeed permits it "[u]pon the occurrence of any of the events specified in Section 1582." (App. 77.) As illustrated earlier, Article 9.1's broad language empowers an arbitrator to dissociate a member on the basis of the actions described in 31 M.R.S. § 1582(5).

None of the cases Smith cites in support of his position involve limited liability company agreements with either (1) an arbitration clause akin to Article 2.2 of the Riverbend Agreement or (2) specific provisions controlling dissociation. Rather, they are judicial decisions in lawsuits between members of limited liability companies in which the courts were required to review the dissociation provisions in the Maine Limited Liability Company Act.

See Marston v. Nappi, No. CV-21-0453, 2022 WL 17403419, at *5-6 (Me. Super. Ct. June 29, 2022) (denying Rule 12(b)(6) motion to dismiss counterclaim seeking dissociation); *Cianchette v. Cianchette*, No. BCD-CV-2019-042, 2019 WL 8589134, at *6 (Me. B.C.D. Dec. 16, 2019) (motion to dismiss dissociation claim of individual member of closely held company denied where claim could be deemed brought directly to avoid potential minority member oppression); *In re Tripp v. Hidden Lake Vill., LLC*, No. BCD-CIV-2025-00017, 2025 WL 2880408, at *2-4 (Me. B.C.D. Aug 22, 2025) (denying motion to dismiss where individual member of closely held company brought dissociation claim).

Accordingly, given (1) the Riverbend Agreement’s plain language, (2) the statutory mandate set forth in 31 M.R.S. § 1507 to give maximum effect to the principles of freedom of contract and to the enforceability of limited liability company agreements, and (3) Maine’s “broad presumption in favor of arbitration,” *Barrett v. McDonald Invs., Inc.*, 2005 ME 43, ¶ 15, 870 A.2d 146 (citation omitted), the Superior Court correctly determined that all of Smith’s and Hilliker’s disputes were arbitrable, and its subsequent confirmation of the arbitration award should be affirmed.

CONCLUSION

Smith has not met his burden of demonstrating that the Arbitrator exceeded the authority vested in him by the Riverbend Agreement. The Superior Court's Order dated February 10, 2026, which confirmed the arbitration award and denied Smith's motion to vacate, correct and/or modify it, should therefore be affirmed.

Dated at Portland, Maine this 15th day of July, 2026.

Respectfully submitted,

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