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RECENT DEVELOPMENT

A GUY NAMED MOE, LLC V. CHIPOTLE MEXICAN GRILL OF COLO., LLC: A FOREIGN LIMITED LIABILITY COMPANY LACKING COMPLIANCE WITH STATE REGISTRATION REQUIREMENTS MAY MAINTAIN SUIT AFTER INFIRMITY IS CURED; THE COMPANY MUST ALSO MEET THE “PERSON AGGRIEVED” REQUIREMENTS OF STANDING.

By: Alicia M. Kuhns

The Court of Appeals of Maryland held that a foreign limited liability company, though unregistered at the time of filing, could resolve its lack of compliance and maintain its action for judicial review. *A Guy Named Moe, LLC v. Chipotle Mexican Grill of Colo., LLC*, 447 Md. 425, 447, 135 A.3d 492, 505 (2016). The court further held that one does not have standing as a “person aggrieved” based solely on the desire to eliminate business competition. *Id.* at 453, 135 A.3d at 508.

A Guy Named Moe, LLC (“Moe”) and Chipotle Mexican Grill of Colorado, LLC (“Chipotle”) are two foreign limited liability companies that operate separate chain restaurants. In 2012, Chipotle applied for a special exception to build a restaurant in Annapolis, Maryland. The proposed location was approximately 425 feet from one of Moe’s established restaurants. With approval from the Department of Planning and Zoning for the City of Annapolis, the City Board of Appeals (the “Board”) approved Chipotle’s application.

Moe filed a petition in the Circuit Court for Anne Arundel County seeking judicial review of the Board’s decision to approve Chipotle’s application. Subsequently, Chipotle filed a motion to dismiss, claiming Moe could not maintain suit under section 4A-1007(a) of the Corporations and Associations Article of Maryland Code. Despite the fact that the circuit court found that a foreign limited liability company (“FLLC”) could maintain an action upon renewal of its right to do business, the court granted Chipotle’s motion to dismiss. The court based this decision on the fact that Moe lacked standing, because the petition was brought as a matter of competition and Moe was not a taxpayer.

Moe filed an appeal with the Court of Special Appeals of Maryland, arguing that while it was not a “taxpayer,” it still had standing to petition for judicial review as a “person aggrieved.” The court affirmed the circuit court’s decision, but instead reasoned that the petition was void *ab initio*. At the time of filing, Moe had lost its right to do business in Maryland and failed to cure this forfeiture in the required timeframe. As such, the court determined that Moe had no right to maintain suit.

The Court of Appeals of Maryland began its analysis by stating the undisputed fact that before filing suit, Moe’s right to do business had been

forfeited by the State Department of Assessment and Taxation. *A Guy Named Moe*, 447 Md. at 435, 135 A.3d at 497 (citing MD. CODE ANN., CORPS & ASS'NS § 4A-1013(a)). This forfeiture prevented the FLLC from “doing business” in Maryland when it failed to comply with the requirements of the department. *A Guy Named Moe*, 447 Md. at 432-34, 135 A.3d at 496-97. The court of appeals noted that under section 4A-1009(a) of the Corporations and Associations Article, “doing business” does not include maintaining suit. *Id.* at 435, 135 A.3d at 498. In order to maintain suit, the FLLC must have demonstrated to the satisfaction of the court that it had complied and paid a penalty for its previous noncompliance. *Id.*

With this understanding of the statutory language established, the Court of Appeals of Maryland moved on to the main issue disputed. *A Guy Named Moe*, 447 Md. at 436, 135 A.3d at 498. The matter before the court was whether a FLLC could maintain the suit after it corrected its noncompliance. *Id.* Since there was ambiguity as to whether the prohibition of maintaining suit included the initial filing, the court tried to interpret the language with special focus on the use of the terms “maintain” and “unless”. *Id.* at 437, 135 A.3d at 498.

According to the court, the use of “maintain” meant “to continue something already in existence.” *A Guy Named Moe*, 447 Md. at 437, 135 A.3d at 498 (citing Black’s Law Dictionary 1097 (10th ed. 2014)). This definition, coupled with the language of section 4A-1007(a) stating, “unless the limited liability company shows to the satisfaction of the court,” signified the legislature’s intent to allow a FLLC the opportunity to fix its noncompliance. *A Guy Named Moe*, 447 Md. at 437, 135 A.3d at 498. The court noted that the use of the word “maintain” implied that a foreign corporation should not be allowed to proceed with an action until they have fully complied with the requirements. *A Guy Named Moe*, 447 Md. at 438, 135 A.3d at 499 (citing *Kendrick & Roberts v. Warren Bros. Co.*, 110 Md. 47, 72, 72 A. 461, 464 (1909)). Thus, if a suit is filed and the company subsequently complies, it can maintain its action. *A Guy Named Moe*, 447 Md. at 447, 135 A.3d at 505.

The court also mentioned that this definition aligned with the more lenient approach that other states have taken. *A Guy Named Moe*, 447 Md. at 440-46, 135 A.3d at 500-04. Rather than dismiss an action filed by an unqualified corporation, most states simply continued the action after the corporation cured its qualification. *Id.* The court concluded that Moe had successfully filed its petition for judicial review when it cured its registration; therefore, Moe was lawfully able to maintain the action. *A Guy Named Moe*, 447 Md. at 450, 135 A.3d at 507.

Having decided that the petition had been adequately filed for judicial review, the court addressed standing of a “person aggrieved” under section 4-401 of the Land Use Article of the Maryland Code. *A Guy Named Moe*, 447 Md. at 450, 135 A.3d at 507. The court stated that in order to be a “person aggrieved,” the zoning decision must not only effect the person’s specific interest or property right, but must also injure them in a way that is

different from the suffering of the general public. *Id.* The court declared that when standing to challenge a zoning board action was questioned, proximity was the most crucial factor for the court to consider. *A Guy Named Moe*, 447 Md. at 452, 135 A.3d at 508 (citing *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 82-85, 59 A.3d 545, 550-52 (2013)). Without adequate proximity, one must show an injury greater than that of the general public. *A Guy Named Moe*, 447 Md. at 452, 135 A.3d at 508. As a result, a person could still be considered aggrieved if they allege certain “plus factors” supporting a strong and precise injury. *Id.*

The Court of Appeals of Maryland ultimately held that Moe lacked proximity and his alleged injury was not a strong enough factor. *A Guy Named Moe*, 447 Md. at 452, 135 A.3d at 508. Specifically, Moe’s alleged injury, claiming harm from increased traffic, was not a sufficient “plus factor” giving rise to special and personal aggrievement. *Id.* at 453, 135 A.3d at 508 (citing *Ray*, 430 Md. at 96, 59 A.3d at 545). The court ruled that Moe’s purpose in objecting to the Board’s decision was purely a matter of competition and was thus invalid. *A Guy Named Moe*, 447 Md. 425 at 453, 135 A.3d 492 at 508.

In *A Guy Named Moe*, the Court of Appeals of Maryland demonstrated Maryland’s leniency in dealing with foreign corporations who have a desire to do business in Maryland. This was further demonstrated in the strict requirements for standing as a “person aggrieved.” Requiring companies to have proximity and factual injury could prevent companies from bringing frivolous lawsuits in an attempt to keep out the competition. As a result, more foreign corporations could expand in Maryland without fear of legal action from existing businesses that simply want to avoid competition.