

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
17 CVS 14515

DAVID FINKEL; HD FUNDING,  
INC.; and HORIZON FUNDING,  
LLC,

Plaintiffs,

v.

PALM PARK, INC.; NATHAN  
BYELICK; MARGARET BYELICK;  
OAK CREST PROPERTY  
MANAGEMENT, INC. and THE  
OAKS AT NORTHGATE, LLC,

Defendants.

**ORDER ON MOTION TO BIFURCATE**

THIS MATTER is before the Court on Defendants' Motion to Bifurcate. ("Motion to Bifurcate," ECF No. 103.) Defendants simultaneously filed a Brief in Support. (ECF No. 104.) Plaintiffs filed a Brief in Opposition to Defendants' Motion to Bifurcate (ECF No. 105), and Defendants filed a Reply Brief (ECF No. 106). Pursuant to Business Court Rule 7.4, the Court rules on the Motion to Bifurcate without a hearing, and it is ripe for decision.

THE COURT has thoroughly reviewed the Motion to Bifurcate, the briefs filed in support of and in opposition to the Motion to Bifurcate, the applicable law, and other appropriate matters of record and CONCLUDES, in its discretion, that the Motion to Bifurcate should be DENIED for the reasons discussed below.

This case is scheduled for trial by jury commencing on January 13, 2020. The claims potentially remaining for trial include Horizon Funding, LLC's ("Horizon")

claims for judicial dissolution of Defendant The Oaks at Northgate, LLC (“TONG”) and Horizon’s claim for breach of fiduciary duty by Nathan Byelick and Margaret Byelick (“the Byelicks”). Defendants move the Court, pursuant to Rule 42(b), for an order “bifurcat[ing] the claims in this action into two separate trials: (1) a dissolution action of The Oaks at Northgate LLC and valuation of the company to be tried to the Court, and (2) breach of fiduciary duty tried to a jury.” (ECF No. 103, at p. 1.) Defendants contend that the Court should order bifurcation because (1) the facts underlying the dissolution claim are factually distinct from those underlying the breach of fiduciary duty and other claims, (2) there is no right to a jury trial for a claim for judicial dissolution under N.C.G.S. § 57D-6-02, and (3) it would be more efficient for the Court to determine the claims separately. (ECF No. 104, at pp. 2–7.) Plaintiffs oppose the request for separate trials.

Defendants seek bifurcation of the issues for trial under Rule 42(b) of the North Carolina Rules of Civil Procedure (the “Rules”). “The severance of issues for separate trials is in the trial court’s discretion . . . .” *Clarke v. Mikhail*, 243 N.C. App. 677, 694, 779 S.E.2d 150, 163 (2015); *see also Marshall v. Williams*, 153 N.C. App. 128, 132, 574 S.E.2d 1, 7 (2002) (“The discretion reposed in the trial judge by [Rule 42(b)] is extremely broad.”) (citation omitted).

The Motion to Bifurcate merits only brief discussion. Defendants are correct that the question of whether TONG should be dissolved is for determination by the Court, and not by the jury, and the Court has no intention of asking the jury to determine whether TONG should be dissolved. However, there is no reason that the

facts necessary for the Court to determine whether dissolution is appropriate cannot, and should not, be elicited during a trial in front of a jury. To the contrary, the Court believes it would be more efficient to have the facts presented at trial from which the Court could make its determination as to whether to dissolve TONG. For example, as Plaintiffs argue, the facts surrounding whether the Byelicks' breached fiduciary duties to Horizon may be important to determining whether liquidation of TONG is necessary to protect the rights and interests of Horizon. In fact, the Court may find it appropriate to submit special interrogatories to the jury to determine fact issues from which the Court will decide whether the Plaintiffs have established that it is not practicable to conduct the LLC's business in conformance with the operating agreement and the LLC Act, or that liquidation of the LLC is necessary to protect the rights and interests of the member. *Phillips v. Phillips*, 73 N.C. App. 68, 70, 326 S.E.2d 57, 59 (1985) (Under Rule 39(c), "the trial judge, in his discretion, may use an advisory jury in actions where no right to jury trial exists . . . [to] try issues of fact.").

The Court also will not conduct a trial in front of the jury regarding the value of TONG. If the Court determines that dissolution is necessary on grounds that invoke the majority member's right to repurchase under N.C.G.S. § 57D-6-03(d), it will then determine the procedures for determination of a fair market value for such repurchase consistent with the statute.

Trying the facts of this case to a jury creates no danger of prejudice to Defendants or confusion by the jury with regard to the questions that the jury will be asked to determine, and it will be a much more efficient means of conducting the trial

in this case. Accordingly, THE COURT, in its discretion, CONCLUDES that the Motion to Bifurcate should be DENIED.

THEREFORE, IT IS ORDERED that the Motion to Bifurcate is DENIED.

SO ORDERED, this the 20th day of November, 2019.

/s/ Gregory P. McGuire  
Gregory P. McGuire  
Special Superior Court Judge  
for Complex Business Cases