



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JANE H. GOLDMAN,

Defendant Below–Appellant,

v.

STEVEN GURNEY-GOLDMAN, as
Executor for the Estate of Allan H.
Goldman, and

AMY GOLDMAN FOWLER,

Plaintiffs Below–Appellees,

and

SG WINDSOR, LLC, a Delaware
Limited Liability Company,

Nominal Party Below–Appellee.

No. 166, 2025

Case Below:

Court of Chancery of the
State of Delaware

C.A. No. 2023-1124-JTL

APPELLANT’S REPLY BRIEF

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INTRODUCTION

Plaintiff-Appellee Steven Gurney-Goldman does not dispute, and therefore concedes, the trial court's ruling that when Allan Goldman died, neither the estate nor Steven as its executor succeeded to Allan's role as a member of SG Windsor. *See* OP20-30. There is no dispute, therefore, that with respect to SG Windsor, Steven's rights as executor of his father's estate are not those of a member of the company but rather those of an assignee, and are governed by Section 18-705 of the Delaware Limited Liability Company Act, which identifies a single purpose for which an executor may exercise the deceased member's rights on behalf of the estate as assignee: "settling the member's estate." 6 *Del. C.* § 18-705. This is clear from a plain reading of the statute, informed by the distributive-phrasing canon and longstanding principles of Delaware business and commercial law. Nothing in Steven's answering brief justifies his contrary interpretation.

ARGUMENT

I. Section 18-705 Authorizes an Executor of a Non-Member Estate to Exercise the Decedent's Member Rights Solely for the Circumscribed Purpose of Settling the Member's Estate

A. The Distributive-Phrasing Canon Applies and Makes Section 18-705's Meaning Unmistakably Clear

As set out in the opening brief (at 1-2, 12-13), the distributive-phrasing canon provides that when a statute contains multiple phrases, each phrase should be applied to its respective referent. For example, in the sentence, “The vegetarian and nonvegetarian meal options are tofu and chicken,” the reader understands that tofu is the vegetarian option, and chicken is the nonvegetarian option. As applied to the language of Section 18-705, which contains both an “Executor Scenario” and a “Disability Scenario,” the statute’s distributive phrasing makes clear that when “a member who is an individual dies,” the member’s personal representative may exercise the member’s rights solely for the purpose of “settling the member’s estate.”

As part of his strained attempt to resist the distributive-phrasing canon, Steven tellingly reveals the unreasonableness of his position by arguing (at 24-25 n.3) that the distributive-phrasing cannon “may not apply” even in the chicken-and-tofu example above, which he attributes to Jane. But Jane did not invent that illustrative example—it is an example *provided by the Ohio Supreme Court specifically for the purpose of illustrating the distributive-phrasing canon.*

Opening Br. at 2. Desperate to avoid the consequences of distributive phrasing, Steven remarkably fights against even this *judicial exemplar of the canon* by remarking, “it would seem that a nonvegetarian could also choose tofu.” In his errant quest to construe Section 18-705 in a manner contrary to its natural, distributive-phrasing structure, Steven has lost the plot: The distributive-phrasing canon facilitates courts’ interpretation of statutes such as Section 18-705 consistent with English usage. Moreover, Steven’s caviling is wrong: A treatise on the Delaware LLC Act directly confirms Jane’s distributive-phrasing interpretation and refutes Steven’s. *See* Bishop & Kleinberger, *Limited Liability Companies* § 14.40 (2023) (A744). Steven, for his part, has *no* direct support for his position.

Steven’s other scattershot arguments against applying the distributive-phrasing canon all lack merit. Steven’s nonsensical argument (at 22) that the distributive-phrasing canon somehow “does not apply” to interpreting Section 18-705 ignores that the canon squarely accords with Delaware’s rule that statutes are “read with their context and shall be construed according to the common and approved usage of the English language.” 1 *Del. C.* § 303. Steven points to *no* Delaware authority rejecting the distributive-phrasing canon at all, much less in the context of Section 18-705—and the U.S. Supreme Court has repeatedly endorsed it as a principle of statutory interpretation. *See, e.g., Facebook, Inc. v. Duguid*, 592

U.S. 395, 407-08 (2021); *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018).

Steven claims (at 1) that his own preferred reading of the language of Section 18-705 is somehow the “most natural.” But in his unavailing attempt to create that illusion, he tellingly resorts to excerpting and emphasizing an isolated sentence fragment, rather than giving due weight to all elements of the full sentence as the legislature structured it.

Trying compensate for the fact that there is nothing “natural” about his preferred reading, Steven alternatively contends (at 13) that his interpretation “achieves a commonsense result,” based on his own (unsupported) assertion that “it would be practically impossible” to settle an estate without also administering the property in the estate. Even if accepted as true, however, Steven’s reasoning *undermines* rather than supports his position because there is *no dispute* that the executor may exercise the deceased member’s rights in Section 18-705’s Executor Scenario for the statutorily authorized purpose of “settling the member’s estate.” Thus, to whatever extent Steven is correct that “it would be practically impossible” to settle the estate without exercising the decedent’s member rights, such exercise is expressly *permitted* in Section 18-705’s authorization for an executor to exercise the decedent’s member rights for the purpose of “settling the member’s estate.”

Of course, Section 18-705 permits an executor to exercise a deceased member's rights for the purpose of "settling the member's estate," including when that exercise could *also* be characterized as administering property. Jane does not contend otherwise. And Steven's answering brief provides no support for the notion that an executor is (or should be) permitted to exercise a deceased member's rights for the purpose of "administering the member's property" when it does not *also* serve the purpose of "settling the member's estate." Instead, Steven contends (at 13), "as a matter of both language and common understanding," that at least *some* acts that could be described as "administering property" are necessary to settle an estate. But neither "language" nor "common understanding" (nor any legal authority in Steven's answering brief) supports the notion that *every* act that could be described as "administering property" is necessary to settling an estate—and Steven offers no basis for an executor to exercise a deceased member's rights for any purposes beyond settling the member's estate.

Thus, Steven critically fails to identify any respect in which the Executor Scenario's sole statutorily authorized purpose of "settling the member's estate," standing alone, is insufficient to empower executors to accomplish their duties—underscoring the prudence and soundness of the legislature's distributive-phrasing framework.

Instead, Steven resorts (at 14-15) to citing inapposite cases that do not even apply Section 18-705, much less address the question of when an executor may exercise a decedent member's rights. *See Dixon v. Joyner*, 2014 WL 3495904, at *3 (Del. Ch. July 14, 2014) (addressing allegations that estate administrator breached duties; statutory scope of executor authority not at issue); *In re Est. of Brenneman*, 2021 WL 4060389, at *2 & n.8 (Del. Ch. May 28, 2021) (no issue of executor exercise of deceased member's rights; executor "continued in her management role," which she had held prior to the member's death); *In re Est. of Hedge*, 1984 WL 136921, at *3-4 (Del. Ch. Feb. 8, 1984) (addressing scope of executor's power with respect to estate assets, involving neither an LLC nor an exercise of an LLC member's rights).

Steven's cited cases from other jurisdictions (at 19-21) likewise do not support his position: None of them permit an executor to exercise a deceased member's rights for a purpose that goes beyond settling the member's estate. Indeed, the Ohio court discussing Ohio's then-analog to Section 18-705 specifically states, *twice*, that the statute permits an executor to exercise the deceased member's rights *for the purpose of settling the estate*:

R.C. 1705.21(A) expressly grants the executor of an estate the right to exercise "*all of [the decedent's] rights as a member for the purposes of settling his estate.*"

Holdeman v. Epperson, 857 N.E.2d 583, 586-87 (Ohio 2006) (alteration in original; bold emphasis added).

In enacting R.C. 1705.21(A), the General Assembly ensured that the legal representative of a decedent's estate has the ability to carry out an executor's fiduciary obligations to the estate's beneficiaries. The membership rights granted are **limited in time and in purpose for settlement of the estate**.

Id. at 588 (bold emphasis added). Steven quotes a line elsewhere in the Ohio court's decision that also references administering property as a permitted purpose, but that reference had no effect on the court's ruling, which did not permit the executor to exercise a deceased member's rights for a purpose beyond "settlement of the estate." *Id.* (affirming declaratory judgment that executor was not limited to rights of assignee of economic interests but "could exercise her member rights only during the period of administration of the estate, for purposes of settling the estate").

Similarly, the Virginia court discussing that state's analog to Section 18-705 likewise explained that the permitted purpose for which an executor may exercise a deceased member's rights is "settling the estate":

The import of this provision is clear. Upon qualification, the executor of a deceased limited partner assumes *all* powers previously held by the limited partner and may exercise these powers throughout the period of administration, **for the purpose of settling the estate**.

Friedberg v. Hague Park Apartments Ltd. P'ship, 2001 WL 34157592, at *6 (Va. Cir. Ct. Dec. 3, 2001) (bold emphasis added). Steven similarly quotes a line elsewhere in the court's decision that references administering property, but again the court's ruling did not permit the executor to exercise a deceased member's rights for a purpose beyond "settling the estate" *Id.* (upholding executor's exercise of rights to refuse a 25-year extension of partnership, where general partner had engaged in "self-dealing of the most obvious kind" and "simply cannot be trusted to conduct the affairs of the partnership without supervision by the court").

Steven's cited New York court decisions, too, explain that New York's analog to Section 18-705 permits executors to exercise deceased member's rights for the purpose of *settling the decedent's estate*:

Limited Liability Company Law § 608 provides that the executor of a deceased member "may exercise *all* of the member's rights **for the purpose of settling his or her estate.**"

Crabapple Corp. v. Elberg, 153 A.D.3d 434, 435 (N.Y. App. Div. 2017) (bold emphasis added; italic emphasis in original); *see also Andris v. 1376 Forest Realty, LLC*, 213 A.D.3d 923, 924 (N.Y. App. Div. 2023) (same, citing *Crabapple*). As in all the other jurisdictions he references, not a single one of Steven's cited New York cases permits an executor to exercise a deceased member's rights for a purpose beyond "settling his or her estate." *Id.*; *see also Est. of Lindenberg v.*

Winiarsky, 2021 WL 1794560 (NY Sup. Ct. May 5, 2021); *Pachter v. Winiarski*, 2021 WL 1794565 (N.Y. Sup. Ct. May 5, 2021).

Lacking authority (in Delaware or elsewhere) to extend the permitted purpose in Section 18-705's Executor Scenario beyond "settling the member's estate," Steven urges (at 25) that because the statute uses the word "all," it "bespeaks breadth." That gauzy argument fails because it ignores that the word "all" refers only to the *rights* an executor may exercise ("all of the member's rights"), not to the *purposes* for which those rights may be used, which are expressly *limited*. Steven's "bespeaks breadth" argument is also beside the point: Broad or narrow, the issue presented on this appeal is that Section 18-705 sets out two distinct purposes, separately applicable to two distinct scenarios: (i) an Executor Scenario, in which the executor may exercise the deceased member's rights for the purpose of "settling the member's estate," and (ii) a Disability Scenario, in which the member's representative may exercise the disabled member's rights for the purpose of "administering the member's property."

Steven *concedes* (at 23) that "the distributive-phrasing canon 'has the most force' when 'the statute allows for one-to-one matching' between antecedents and consequents" (quoting *Encino Motorcars*, 584 U.S. at 87-88). And while Steven ham-handedly strains (at 23-24) to pretend otherwise, Section 18-705 contains just such a "one-to-one matching": two different scenarios matched with two distinct

respective permissible purposes (however broad or narrow they may be) for exercising member rights:

FIGURE 1: ONE-TO-ONE MATCHING IN SECTION 18-705

	SCENARIO	PURPOSE
EXECUTOR SCENARIO	“a member who is an individual dies”	“settling the member’s estate”
DISABILITY SCENARIO	“a court of competent jurisdiction adjudges the member to be incompetent to manage the member’s person or property”	“administering the member’s property”

The statute’s use of the singular “purpose” (“for the purpose of”) reinforces this one-to-one matching: If the legislature intended for *both purposes* to apply to *both scenarios* (which would be incongruous for the reasons discussed in the next section below), it should have used the plural “purposes.”

Finally, Steven laments (at 26) that Section 18-705’s distributive-phrasing framework means that “guardians of incompetent members would seemingly possess broader authority than executors of deceased members.” That may well be true—and if so, it makes *perfect sense*: Disabled members are living, admitted *members* of the LLC, with ongoing *member rights*. See, e.g., A744, Bishop & Kleinberger § 14.40 (“The incompetent member remains a member, and the management rights continue to belong to the incompetent.”); Answering Br. at 16 (“a member determined to be incompetent does not lose status as an LLC

member”). In the Disability Scenario, the disabled members’ representatives exercise those living members’ rights by proxy.

Estates and their beneficiaries, by stark contrast, decidedly *are not members of the LLC*—they are assignees. They do not have member rights. Indeed, that was the central issue in dispute in this case: Steven erroneously alleged that the Estate of Allan Goldman was a member of SG Windsor, and the Court of Chancery disagreed and held that the Estate “has the status of an assignee.” OP31. As such, the Estate “does not receive any of the governance rights associated with the interest.” OP20-21; *see also, e.g., 6 Del. C. § 18-702(a)* (assignee “shall have no right to participate in the management of the business and affairs” except as provided by LLC agreement or members’ unanimous consent); *id.* § 18-702(b)(1) (unless LLC agreement provides otherwise, assignment “does not entitle the assignee to become or to exercise any rights or powers of a member”); *Hawkins v. Daniel*, 273 A.3d 792, 826-27 (Del. Ch.) (“The assignee does not receive the full bundle of property rights associated with ownership and hence is called an ‘assignee.’”), *aff’d*, 289 A.3d 631 (Del. 2023).

Thus, in Section 18-705’s Executor Scenario, the statute carves out an exception to the estate’s *lack of member rights* by permitting executors to provisionally exercise certain rights that the estate as an assignee otherwise *does not hold*—so long as the executor uses those rights for the specified purpose of

“settling the member’s estate.” The Executor Scenario thus fundamentally differs from the Disability Scenario in this significant respect, and it is thus eminently sensible that the two different scenarios involve two different purposes for which a representative may exercise member rights.

B. Section 18-705’s Express Terms Further Establish That It Does Not Empower an Executor to Exercise a Deceased Member’s Rights to Administer Property

As discussed in Jane’s opening brief (at 15-16), the words of Section 18-705 squarely confirm and reinforce its distributive-phrasing structure and meaning: The permitted purpose for exercising rights in the Executor Scenario fits with the Executor Scenario and *only* the Executor Scenario, while the permitted purpose for Disability Scenario fits with the Disability Scenario and *only* the Disability Scenario. There is a “member’s estate” to settle in the Executor Scenario but not in the Disability Scenario because in the Disability Scenario, the member is *still living* and has no estate to settle. And conversely, there is “member’s property” to administer in the Disability Scenario (for the purpose of “administering the member’s property”) but not in the Executor Scenario because in the Executor Scenario, the member’s property has *passed to the estate*.

Steven provides no good answer to either point. Instead, he flails, observing (at 25 n.3) that “an incompetent member could of course die.” That observation does nothing to support Steven’s position. Instead, it underscores the statute’s dual-

scenario, dual-purpose framework. Under Section 18-705, an incompetent member's death would trigger a transition from the Disability Scenario to the Executor Scenario, and a change in the permissible purpose for exercising the member's rights. And as noted, the statutory language bears this out: The member would no longer have *property to administer* but would have an *estate to settle*.

Steven's strained effort to parse the statute differently only serves to further underscore the unnatural contortions of his misinterpretation. In a series of illogical leaps, Steven argues (at 15-17) that the "most natural reading" of the statute's phrase "including any power under a limited liability company agreement of an assignee to become a member" is that it modifies its "immediate prior antecedent"—which Steven incorrectly identifies as the phrase "administering the member's property," and thereby erroneously asserts that "administering the member's property" must pertain to the Executor Scenario.

Far from the "most natural reading," Steven's reading is pointedly unnatural. The statute's "including any power" clause plainly modifies "all of the member's rights," *not* "administering the member's property." Steven's odd contention to the contrary makes no sense: A contractual "power" is sensibly included within a set of "rights"; by contrast, a "power" is not sensibly included within the *purpose* of "administering the member's property." Indeed, Steven offers no explanation of what it would even mean for the *purpose* of "administering the member's

property” to include “any power under a limited liability company agreement of an assignee to become a member.” By contrast, it is immediately clear what it means for the set of “rights” that a representative may exercise to include such power.

As Steven’s own cited authority explains, the “rule of the last antecedent” is “context dependent.” *Facebook*, 592 U.S. at 404. Here, the context makes clear that the applicable antecedent is “the member’s rights,” because *rights* and *powers* correlate in a way that *purposes* and *powers* do not. Steven’s unnatural attempt to interpret a *power* as included within a *purpose* is a clear “category error” and further underscores his flawed interpretive approach.

Steven’s vague invocation (at 17) of “broader statutory context” likewise falls flat. Nothing in Section 18-705’s “broader statutory context” undercuts its plain statutory meaning, as recognized in the only treatise on the LLC Act that addresses this issue:

The Delaware LLC Act makes only a very narrow grant of management rights to the decedent’s personal representative; the grant is “for the purpose of settling the member’s estate.” In contrast, the “personal representative” of an incompetent member “may exercise all of the member’s rights for the purpose of... administering the member’s property.”

A744, Bishop & Kleinberger § 14.40 (footnotes omitted). Steven suggests that this scholarly analysis is somehow conjured “from thin air”—not so. Rather, it reflects the reasoned analysis of the statute’s text and structure. And Steven’s two cited

Delaware cases (at 19) are squarely in accord. One case stands for the unremarkable observation that Section 18-705 contemplates “some universe of member’s rights that the administrator gets to exercise.” *Llamas v. Titus*, C.A. No. 2018-0516-JTL, at 31 (Del. Ch. Feb. 19, 2019) (TRANSCRIPT). No dispute there. In the other case, the Court of Chancery held that a decedent’s representative could exercise membership powers not because of Section 18-705, but because (unlike here) all parties *agreed* that she had become an LLC member. *Gill v. Regency Hldgs., LLC*, 2023 WL 4607070, at *12 (Del. Ch. June 26, 2023), *adopted*, 2023 WL 4761810 (Del. Ch. July 25, 2023).

C. Section 18-705 Should Be Construed To Accord with the “Pick-Your-Partner Principle”

Even if there were two reasonable interpretations of Section 18-705, such ambiguity should be resolved to construe the scope of executors’ rights narrowly, consistent with Delaware LLC law’s well-established “pick-your-partner principle,” which generally limits membership rights solely to those to whom the other members have agreed to extend such rights. *See* Opening Br. at 16-20.

Steven’s argument (at 27-29) that the “pick-your-partner” principle “is a guideline, not a rule” misses the mark. First, this principle is *statutorily codified*:

The assignee of a member’s limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in a limited liability company agreement or, unless otherwise provided in the

limited liability company agreement, upon the vote or consent of all of the members of the limited liability company.

6 *Del. C.* § 18-702(a). This principle squarely applies where, as here, a court has found that there is no limited liability company agreement. And critically as it pertains to the issue in this appeal, a very strong piece of evidence for the natural, distributive reading of Section 18-705 is that it is in fact *entirely consistent* with the statutory pick-your-partner principle. And one very strong piece of evidence that evading the natural distributive reading is a mistake is that it would *erode* this well-established principle of Delaware law.

Steven’s argument that the legislature has historically authorized a “broadening” of powers afforded to personal representatives and therefore evidences the legislature’s intent “to grant executors broad authority to exercise a member’s rights” is unpersuasive. Steven cites (at 29 n.4) the Court of Chancery’s recitation of the legislative history of the Delaware LLC Act and Delaware Limited Partnership Act, noting that early limited partnership statutes generally provided for dissolution upon a limited partner’s death, and over time began conferring special rights for executors and limiting circumstances of automatic dissolution. Steven argues (at 30-31) that following that general shift, the drafters of legislation in 2001 and 2006 proposed certain restrictions on the powers of an executor of a deceased partner or member, and the legislature did not incorporate those

restrictions—including limiting a member’s executor to information rights only—into Delaware law, thereby “evidencing its intent to grant executors broad authority to exercise a member’s rights.”

In other words, Steven essentially argues that because the legislature has conferred some rights on executors over time, this Court should shun any interpretation that limits power granted to an executor under Section 18-705. That theory is untenable. To the contrary, the legislature’s decision not to adopt a law restricting executors to “information only” cannot remotely be construed as authorizing executors to exercise the rights of deceased members for expansive *purposes*. It simply means executors’ rights are not limited to information only. Indeed, Section 18-705 provides just that: The executor “may exercise *all* of the member’s rights” (emphasis added)—but only “for the purpose of settling the member’s estate.” The evidence of the legislature’s intent is in the text of the statute itself.

Steven also argues (at 31) that even Jane’s interpretation runs afoul of the pick-your-partner principle because it allows a personal representative of an incompetent to exercise the member’s rights. Once again, Steven’s misguided argument ignores the fact that Section 18-705’s two distinct scenarios, the Disability Scenario and the Executor Scenario, are fundamentally different in a very important respect: Disabled members are living, admitted *members* of the

LLC, with ongoing *member rights*. *E.g.*, A744, Bishop & Kleinberger § 14.40; Answering Br. at 16. An estate, by contrast, *is not a member at all*—as the Court of Chancery held when it rejected Steven’s core claim in this case. OP20-31. The Estate “has the status of an assignee.” OP31. Permitting a *non-member assignee’s* representative to exercise a member’s rights in the Executor Scenario thus stands in meaningful contrast to the Disability Scenario, which permits a disabled member’s representative to exercise that living *member’s* rights, for that living *member’s* benefit. This distinction again illustrates the sound basis for the legislature’s articulation of two separate and distinct permitted *purposes* for representatives to exercise rights, corresponding to two separate and distinct scenarios: one purpose applicable in the Executor Scenario and one purpose applicable in the Disability Scenario.

Thus, while Section 18-705 provides for limited exceptions to the general pick-your-partner principle under both scenarios, death and disability carry different consequences and are treated differently under the LLC Act—including in Section 18-705, as the statute’s express language makes unmistakably clear. And the pick-your-partner principle counsels that those limited exceptions should be construed narrowly.

CONCLUSION

For the foregoing reasons, and those set out in Jane's opening brief, the Court of Chancery's Post-Trial Opinion should be modified with respect to its interpretation of the permitted purpose for which an executor may exercise a deceased member's rights.

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