VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Kristopher Knepper,

Plaintiff,

v. Civil Case No.: CL24-224

The Lawson Companies, Inc., *et al.*,

Defendants.

FINAL ORDER

For the reasons set out in its July 3, 2025, letter opinion, the Court finds that Knepper is not in violation of the Second Operating Agreement ("OA") and has not triggered the forfeiture provisions therein. Furthermore, the Court finds for Knepper on Counts VI and VIII and declares that the restrictive covenants in the "Restrictive Covenants" agreement and the OA are unenforceable.

Endorsements are waived pursuant to Rule 1:13 of the *Rules of Supreme Court of Virginia*. Any objections shall be filed within fourteen days. The Clerk shall send a copy of this Order to Randy C. Sparks, Esquire; Sharon K. Reyes, Esquire; and Anne G. Bibeau, Esquire.

Enter: July 3, 2025

David W. Lannetti, Judge

FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

DAVID W. LANNETTI
JUDGE

150 ST. PAUL'S BOULEVARD
NORFOLK, VIRGINIA 23510

July 3, 2025

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Re: Kristopher Knepper v. The Lawson Companies, Inc., *et al.*
Civil Docket No. CL24-224

Dear Counsel,

Today the Court provides its post-trial ruling on the issues to be resolved by the Court, as opposed to the jury, in the matter of Plaintiff Kristopher Knepper against Defendants The Lawson Companies, Inc. and TLC Holding Company, LLC. Knepper's seeks via his complaint (the "Complaint") declarations as to multiple claims alleged against Defendants. The Court previously awarded partial summary judgment to Knepper on Count VII of the Complaint—declaring that Knepper is a Finalized Deal Member pursuant to the Second Operating Agreement ("OA")[1]—and Count IX—declaring that Knepper has the right, upon reasonable demand, to inspect TLC's books and records as allowed by section 13.1-1028 of the *Code of Virginia*. In making this ruling, the Court found that one of Defendants' defenses to Count VII—that Knepper forfeited his membership interest under the OA—was not suitable for summary judgment. Based on the evidence presented at trial, the Court now provides its ruling.

The Court also rules on Counts VI and VIII of the Complaint, in which Knepper seeks declarations that the restrictive covenants in the Restrictive Covenants agreement and in the OA, respectively, are unenforceable.

For the following reasons, the Court finds that Knepper did not forfeit his membership interests under the OA. The Court also grants judgment for Knepper on Counts VI and VIII.

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[1] Under the OA, the term "Finalized Deal Member" refers to a Member of TLC Holding Company, LLC, who holds specific membership units tied to particular projects or "deals" in Defendants' project pipeline. Pl.'s Ex. 10, at 6.

Background

The Lawson Companies, Inc. ("TLC, Inc.") is a Virginia corporation in the business of developing affordable housing projects under the Low-Income Housing Tax Credit ("LIHTC") program—a federal program that awards Internal Revenue System ("IRS") tax credits administered in the Commonwealth via the Virginia Housing Development Authority. TLC, Inc. formed TLC Holding Company, LLC ("TLC Holding"), a Virginia limited liability company, to control interests in multiple subsidiaries created for LIHTC projects. Defendants TLC, Inc. and TLC Holding (collectively, "TLC") are controlled by the same individuals.

In August 2016, Knepper entered into employment negotiations with TLC, Inc.'s president and Chief Executive Officer, Carl Hardee. On October 25, 2016, Knepper began work as TLC, Inc.'s Director of Development and Acquisitions, where he was responsible for planning, developing, and overseeing various LIHTC construction projects.

On October 26, 2016, Knepper and TLC executed a document entitled "Restrictive Covenants" (the "RC").[2] The RC includes the following non-compete clause:

> To protect [TLC's] critical interest in its confidential information, relationships, and investment, during Employee's employment and for a period of two years following the last day of the Employee's employment with [TLC] . . . Employee covenants as follows:
>
> (a) Employee will not engage in any Competitive Services for any entity or individual in the metropolitan areas of Hampton Roads, Virginia, Richmond, Virginia, or Charleston, South Carolina or any other metropolitan area in which [TLC] is engaged in business at the time of the termination of Employee's employment. Competitive Services means identifying or pursuing, or providing assistance in identifying or pursuing, low income housing tax credit (LIHTC) development in the Commonwealth of Virginia.
>
> (b) For any project, deal or opportunity on which Employee worked or sought on behalf of [TLC] during the last two years of Employee's employment with [TLC], Employee will not pursue, provide assistance to anyone pursuing, or provide any services to any individual or entity other than [TLC, Inc.] for that project, deal, or opportunity.
>
> (c) Employee will not solicit, induce, recruit or encourage any of the employees of [TLC] to leave [TLC], take away such employees, attempt to solicit, induce, recruit, encourage or take away employees of [TLC], or provide information to

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[2] The RC provides that it is between "[TLC, Inc.], its wholly owned subsidiaries, and any majority-owned entity . . . and [Knepper]." Pl.'s Ex. 3. Accordingly, the Court understands that the RC governs not only the relationship between Knepper and TLC, Inc., but also the relationship between Knepper and the rest of the TLC entity group.

> another person or entity to facilitate [such] . . . either on behalf of himself or any other person or entity.

Pl.'s Ex. 3.

On September 5, 2018, Knepper was promoted to Vice President and Director of Development and Acquisitions. On January 1, 2020, TLC Holding presented Knepper with an "Award Agreement" that awarded Knepper 11.83 "Class B Units" in TLC Holding. However, TLC Holding did not sign the Award Agreement until 2022. "Units" represent membership and equity interest in TLC Holding, and the holders of Units are "Members" of TLC Holding. Hence, when Knepper obtained Class B Units through the Award Agreement, he became a "Class B Member" of TLC Holding, entitling him to certain distribution rights. TLC alleged that this award was contingent on Knepper executing the OA. Despite Knepper never executing the OA while employed,[3] the parties stipulated that after January 2020, they operated consistent with the OA, including TLC treating Knepper as a Class B Member and providing Knepper distributions from TLC Holding attributable to his Class B Units.

The OA also contains certain provisions pertaining to a Member's use and disclosure of TLC's confidential information. Section 10.02(d)(i) of the OA states that TLC Holding "shall immediately and automatically have no further obligation to make any distributions, Class B LOC Retirement Amount payments, or other payments to any Member that at any time breaches the terms of Section 10.11." Pl.'s Ex. 10, at 51. Section 10.11(c) of the OA provides as follows:

> "Trade secrets and other proprietary and confidential information" consist of, without limitation, information concerning any matters relating to the business of [TLC], any of its franchisers, licensers, customers, vendors, consultants, partners, suppliers, employees, customer contracts, licenses, technology, sales, marketing, pricing, costs, profits, strategies, finances, client or customer lists, or any other information concerning the business of [TLC]. . . . No Class B Member shall disclose or use in any manner, directly or indirectly, any such trade secrets and other proprietary and confidential information, during the term of [TLC Holding] or at any time thereafter and while the Member is a Member of [TLC Holding] or after the Member ceases to be a Member of [TLC Holding], except as required to conduct, or in furtherance of, [TLC's] business or with the unanimous written consent of [TLC Holding's] Board of Directors. Each Class B Member agrees that, at any time on request of [TLC Holding's] Board of Directors, he shall turn over to [TLC Holding] all documents, disks or other computer media or other materials in his possession or under his control that are connected with or derived from [TLC's] business and activities.
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> *Id.* at 58.

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[3] The other Members of TLC Holding executed the OA *after* Knepper's employment was terminated. Knepper filed his executed copy of the OA on February 3, 2025, as an exhibit to his Motion for Partial Summary Judgment.

Additionally, the OA includes non-solicitation and non-compete restrictive covenants that are relevant to the present dispute. Namely, section 10.11(a) and (b) provide the following:

> (a) Non-Solicitation. Each Class B Member agrees that *while he is a Member of [TLC Holding] and during the twenty-four (24) month period following the date on which he ceases to be a Member of [TLC Holding]*, or the twenty-four (24) month period from the date a court of competent jurisdiction enters a final order enforcing the terms of this provision, whichever is later, the Member shall not, for himself or on behalf of any third party, at any time or in any manner:
>
> (i) solicit or induce, or attempt to induce, any employee or independent contractor of any Company within [TLC] to terminate their relationship with such Company for any reason whatsoever; or
>
> (ii) hire any Person then employed or engaged by [TLC] or employed or engaged by [TLC] within a 12-month period preceding the hiring, provided that such Member, on behalf of [TLC], had interaction with, or gained confidential information about, such Person while such Member was a Member of [TLC Holding]; or
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> (iii) perform or provide, assist in the performance or provision of, or solicit to perform or provide the same, or substantially similar, work, products or services as done or provided by [TLC], for or for the benefit of, any Customer, provided that such Member, on behalf of [TLC Holding], had interaction with, or gained confidential information about, such Customer while such Member was a Member of [TLC Holding]. "Customer" means a Person who obtained work, products[,] or services from [TLC] while such Member was a Member of [TLC Holding].
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> (iv) perform or provide, assist in the performance or provision of, or solicit to perform or provide the same, or substantially similar, work, products or services as anticipated or planned to be done or provided by [TLC], for or for the benefit of, any Prospective Customer, provided that such Member, on behalf of [TLC Holding], had interaction with, or gained confidential information about, such Prospective Customer while such Member was a Member of [TLC Holding]. "Prospective Customer" means any Person who or which was targeted to become a Customer within the then prior twelve-month period.
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> (b) Non-Competition. Each Class B Member agrees that *while he is a Member of [TLC Holding] and for a period of twenty-four (24) months following the date on which he ceases to be a Member of [TLC Holding]*, or twenty-four (24) months from the date a court of competent jurisdiction enters a final order enforcing the terms of this provision, whichever is later, the Member shall not, for himself or on behalf of any third party . . . compete with [TLC Holding] by Engaging in [TLC Holding] Business in the area within (and within twenty-five (25) miles of) the counties, cities, towns, and other localities in which [TLC Holding] (or its subsidiaries and affiliates) have conducted its business (or taken material measures

> or steps to commence conducting its business or pursue property development transactions) in the then prior twenty-four (24) months (or, as applicable, the twenty-four (24) months prior to the date on which the Member ceases to be a member of [TLC Holding]). "Engaging in [TLC Holding] Business" means to perform similar functions as those such Member (or others such Member supervised) performed while such Member was a Member of [TLC Holding].

Id. at 57–58 (emphasis added).

TLC, Inc. terminated Knepper's employment without cause on July 7, 2023. However, it is undisputed that Knepper became, and remains, an "Inactive Class B Member" of TLC Holding.[4] *Id.* at 48–49. Knepper admitted during the course of this litigation that after receiving notice of his termination, he used a personal Dropbox account and other physical storage media to retain various documents and information from his TLC-issued work computer. These retained materials included various PDF documents, Word documents, and Excel files; the entirety of Knepper's TLC Outlook and OneDrive Accounts; and many other documents that Knepper had access to through his computer (collectively, the "Materials"). At trial, Knepper testified that he only disclosed the Materials to his counsel and an expert who was retained for the purposes of this litigation. On October 10, 2023, a letter signed by Aaron Phipps—TLC, Inc.'s CFO and a member of TLC Holding's Board of Directors—and Julie Richardson—TLC, Inc.'s human resources manager—("the Letter") was sent to Knepper requesting that he return any documents from or related to deals on which Knepper was not a partner or projects for which he did not have "Finalized Deal Units."[5] Pl.'s Ex. 14.

Knepper filed his nine-count Complaint against TLC on January 10, 2024. On April 2, 2025, the Court awarded partial summary judgment to Knepper on Count VII, declaring that Knepper is a Finalized Deal Member,[6] and Count IX, declaring that Knepper has the right, upon reasonable demand, to inspect TLC's books and records as allowed by section 13.1-1028 of the

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[4] Under the OA, termination of employment without cause is an "Inactive Status Triggering Event," which transforms an *Active* Class B Member into an "Inactive Class B Member." Pl.'s Ex. 10, at 48. Inactive Class B Members retain Class B Membership interests notwithstanding separation from employment or the occurrence of an Inactive Status Triggering Event. *Id.* at 48–50.

[5] Under the OA, the term "Finalized Deal Units" refers to a Member's Units, which are tied to a particular project or "deal" in TLC's pipeline. Pl.'s Ex. 10, at 6–7. A Member's Units become "finalized" for a specific project only after TLC closes on a construction loan for that project. *Id.* In general, a Member whose Units have become "Finalized Deal Units" is entitled to certain distribution rights that flow from the revenue of that specific project.

[6] TLC defended against Count VII by arguing, *inter alia*, that Knepper violated the terms of the OA by retaining and disclosing the Materials as part of the present litigation, thereby triggering the OA's forfeiture provisions. Finding this argument not appropriate for summary judgment, the Court declined to rule on it pretrial.

Code of Virginia. A trial on the remaining counts was held on April 7–11, 2025.[7] After the jury verdicts, only the following issues remain for the Court to decide: (1) whether Knepper violated the OA and triggered the forfeiture provisions therein and (2) with respect to Counts VI and VIII, whether the restrictive employment covenants in the RC and OA, respectively, are unenforceable.

Positions of the Parties

The Forfeiture Clause

TLC asserts that Knepper violated section 10.11(c) of the OA by retaining and using the Materials after his employment was terminated. More specifically, TLC alleges that Knepper violated section 10.11(c) in at least two ways: (1) wrongfully accessing and using the Materials and (2) failing to turn over the Materials after receiving the Letter. TLC asserts that Knepper's use of the Materials in the present litigation does not fit the exception to section 10.11(c)'s general prohibition regarding the use and disclosure of confidential information. *See* Pl.'s Ex. 10, at 58 (providing that no Member shall disclose or use confidential information "except as required to conduct, or in furtherance of, [TLC's] business"). With respect to the Letter, TLC asserts that the Letter constituted a demand from TLC Holding's Board of Directors to Knepper to return the Materials and, thus, Knepper violated section 10.11(c) when he failed to do so.

In response, Knepper asserts that he had, and continues to have, a right to access the Materials as a Class B Member. Although he concedes that he used the Materials during the present litigation, he claims that such use is permitted under the OA because he is protecting his Class B Membership interest. In other words, Knepper alleges that protection of an LLC's member's interest—via litigation—is an inherent business interest of any LLC. Thus, his disclosure of the Materials to his counsel and an expert trial witness was conducted "in furtherance of [TLC's] business." Regarding the Letter, Knepper asserts that because the Letter did not reference or in any way identify TLC Holding's Board of Directors, it was not a valid request from the board and, therefore, he did not violate the OA when he failed to comply with it.

The Restrictive Covenants

Knepper asserts that the restrictive covenants in both the OA and RC are overbroad and thus unenforceable under Virginia law. With respect to the restrictive covenants in the OA, Knepper points out that they are effective until six months *after* a Member of TLC Holding becomes a former Member. In effect, Knepper asserts that because he is an Inactive Member—and will continue to remain an Inactive Member until he sells or otherwise releases his membership interest in TLC Holding—the OA's restrictive covenants apply to him indefinitely. Further, Knepper alleges that the geographical scope of the OA's restrictive covenants is

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[7] Counts I–V were tried before a jury and Knepper's remaining declaratory judgment counts—Counts VI and VIII—were tried before the Court.

unlawfully vague and overbroad. More specifically, because the restrictive covenants' geographical scope includes areas where TLC may have future business, Knepper asserts that he could be unaware of whether he is violating the restrictive covenants. With respect to the type of work covered by the covenants, Knepper asserts the restricted activities are overbroad because the covenants preclude him from future employment that is unrelated to his prior employment with TLC. Lastly, Knepper contends that the OA's non-solicitation provision is overbroad because it restricts him from hiring TLC employees in any capacity, including for services in which TLC has no legitimate business interest.

Knepper likewise asserts that the RC's restrictive covenants are overbroad and unenforceable. He contends that the geographic scope of the RC's restrictions includes locales where TLC does not have a legitimate business interest in restricting Knepper from working and, due to the RC's indefinite geographic scope, the restriction is unlawfully ambiguous. Further, Knepper claims that the type of work restricted by the RC includes projects that Knepper initially pursued for TLC but with which TLC decided not to proceed; according to Knepper, the term "pursued" as used is overbroad and could apply to a range of services—including, for example, site investigation and project research—and, additionally, TLC has no legitimate interest in preventing Knepper from working on projects that it has no intention of developing and completing.

In response, TLC maintains that Knepper's sophisticated, executive role within TLC justifies restrictions that would otherwise be overly restrictive for lower-tier employees. TLC contends that the OA restrictions are no more than necessary to protect its legitimate business interest from an inactive, non-employee Member. For instance, TLC posits that Knepper possesses crucial proprietary knowledge by virtue of his managerial role within TLC that necessitates restrictions for services he did not perform personally but includes services he supervised. TLC likewise maintains that it has a legitimate business interest in locales within which Knepper researched and pursued projects because Knepper used, and still has, TLC's proprietary information. Specifically, with respect to the restrictive covenants in the OA, TLC asserts that Knepper's extant membership interest—and the rights to certain materials and information that this interest entails—makes it necessary to restrict Knepper under the OA's restrictive covenants as long as he is a Member of TLC Holding.

Analysis

Legal Standard

When interpreting the meaning of a contract, Virginia courts are normally limited to looking within the four corners of the contract. *See Globe Co. v. Bank of Boston*, 205 Va. 841, 848, 140 S.E.2d 629, 633–34 (1965) (opining that "where an agreement is complete on its face, is plain and unambiguous in its terms, the court is not at liberty to search for its meaning beyond the instrument itself" and "[t]his is so because the writing is the repository of the final agreement of the parties") (internal citations omitted).

Although restrictive covenants may be enforceable under certain circumstances, they are disfavored in Virginia as restraints on trade. *Omniplex World Servs. Corp. v. US Investigations Servs.*, 270 Va. 246, 249, 618 S.E.2d 340, 342 (2005). As such, they are "strictly construed, and, in the event of an ambiguity, [are] construed in favor of the employee." *Modern Env'ts v. Stinnett*, 263 Va. 491, 493, 561 S.E.2d 694, 695 (2002).

Virginia applies the same test to non-solicitation clauses as to noncompetition clauses. *See Foti v. Cook*, 220 Va. 800, 805, 263 S.E.2d 430, 433 (1980) (applying the same three-prong reasonableness test used for non-competes to a non-solicitation clause). Under this test, "the employer bears the burden to show that the restraint [(i)] is no greater than necessary to protect a legitimate business interest, [(ii)] is not unduly harsh or oppressive in curtailing an employee's ability to earn a livelihood, and [(iii)] is reasonable in light of sound public policy." *Stinnett*, 263 Va. at 493, 561 S.E.2d at 694. In analyzing these factors, "each case must be determined on its own facts." *Id.*

In determining whether a restraint is no greater than necessary, courts consider "the restriction in terms of function, geographic scope, and duration." *Simmons v. Miller*, 261 Va. 561, 581, 544 S.E.2d 666, 678 (2001). Of note, these are not "three separate and distinct issues"; rather, the Court considers these factors together. *Id.*

Discussion

A. Knepper Did Not Violate the Forfeiture Clause in the OA.

The Court first addresses whether Knepper violated section 10.11(c) of the OA and thereby triggered the OA's provision providing for forfeiture of his Class B Units. As an initial matter, the Court need not look beyond the four corners of a contractual agreement if its terms are unambiguous. *See Globe Co. v. Bank of Boston*, 205 Va. 841, 848, 140 S.E.2d 629, 633–34 (1965) (holding that because a written agreement is "the repository of the final agreement" between the parties, the court is limited to interpreting a complete and unambiguous contract pursuant to its written terms). Accordingly, the Court examines the text of section 10.11(c) to see whether Knepper's disclosure of the Materials constituted a violation of the OA.

1. Knepper's Retention of the Materials After He Was Terminated Did Not, and Does Not, Constitute a Breach Under Section 10.11(c) of the OA.

The Court holds that Knepper's continued access to and retention of the Materials did not constitute a breach under section 10.11(c) of the OA. As an initial matter, it is undisputed that some of the Materials are considered "confidential" for purposes of section 10.11(c). It is likewise undisputed that Knepper was permitted—as part of his responsibilities as an employee of TLC, Inc., and due to his status as an active Class B Member—access and review of the Materials prior to his termination. Although TLC apparently requested that Knepper immediately return his TLC-provided computer upon termination, TLC has not identified, nor does the OA contain, a provision providing for a violation of section 10.11(c) by Knepper's failure to

immediately do so. Further, section 10.11(c) does not distinguish between Active and Inactive Class B Members with respect to confidential materials nor does it necessarily prohibit an Inactive Class B Member from retaining confidential materials upon termination of his employment from TLC. Accordingly, the Court finds that Knepper did not breach section 10.11(c) simply by retaining the Materials.

2. Knepper's Use of the Materials Did Not, and Does Not, Constitute a Breach of Section 10.11(c) of the OA.

The Court next addresses whether Knepper violated section 10.11(c) of the OA by disclosing the Materials during the course of this litigation. Section 10.11(c) provides that Members—active or inactive—are prohibited from using or disclosing confidential information "except as required to conduct, or in furtherance of, [TLC's] business." Knepper testified at trial that he used and disclosed the Materials solely for the purpose of advancing the present litigation against TLC. Accordingly, the question before the Court is whether using confidential information in litigation against TLC for TLC Holding's alleged breach of the OA is "required to conduct, or in furtherance of, [TLC's] business." The Court holds that it is.

TLC Holding is organized under the Virginia Limited Liability Companies Act, which provides that LLC members enter into operating agreements "to regulate or establish the affairs of the [LLC], *the conduct of its business and the relations of its members*." *Va. Code* § 13.1-1023 (2021 Repl. Vol.) (emphasis added). Because the OA of a Virginia LLC is inextricably tied to its business interests, the Court finds that Knepper did not violate the OA when he used the Materials in the present litigation to enforce the terms of the OA. In other words, the Court finds—under the facts of this case—that enforcement by an LLC member of his rights under an operating agreement—even via litigation—is within the definition of a company's "business." Therefore, the Court finds that Knepper did not violate section 10.11(c) by disclosing the Materials to the Court, his attorneys, and an expert as part of the present litigation.

3. Knepper Did Not Violate the OA When He Failed to Turn Over the Materials to TLC Holding's Board of Directors in Response to the Letter.

The Court further finds that Knepper did not violate the OA when he failed to turn over the Materials upon receipt of the Letter. Section 10.11(c) of the OA provides that "[e]ach Class B Member agrees that, at any time on request of [TLC Holding's] Board of Directors, he shall turn over to [TLC Holding] all . . . material[s] . . . that are connected with or derived from [TLC's] business and activities." The Letter—which was sent to Knepper after he had been terminated from his employment with TLC, Inc.—was signed by Julie Richardson, TCL, Inc.'s human resources manager, and Aaron Phipps, TLC, Inc.'s CFO and a member of TLC Holding's Board of Directors. The Letter did not reference TLC Holding's Board of Directors, nor did the Letter indicate that the request was made on behalf of the board pursuant to section 10.11(c) of the OA or otherwise. Although both Richardson and Phipps testified that they believed the Letter to be authorized by the board, Knepper testified that he did not believe that the request in the Letter was made on behalf of the board. Because the Letter does not in any way reference TLC

Holding's Board of Director or Section 10.11(c) of the OA, the Court finds that the Letter—based on its very language—did not constitute a request from *the board* to return the Materials. Accordingly, the Court finds that Knepper's failure to return the Materials upon receipt of the Letter did not, and does not, constitute a breach of section 10.11(c) of the OA. Therefore, the Court denies TLC's alternative defense to Count VII—that Knepper's noncompliance triggered forfeiture under the OA.

B. The Restrictive Covenants in the RC and OA Are Unenforceable.

Finally, the Court rules on Counts VI and VIII of the Complaint, in which Knepper alleges that the restrictive covenants in the RC and OA, respectively, are unenforceable.

Restrictive covenants are disfavored in Virginia. *Omniplex World Servs. Corp. v. US Investigations Servs. Inc.*, 270 Va. 246, 249, 618 S.E.2d 340, 342 (2005). As such, they are "strictly construed" and, if ambiguous, are construed against the employer and in favor of the employee. *Modern Env'ts v. Stinnett*, 263 Va. 491, 493, 561 S.E.2d 694, 695 (2002). Consistent with this approach, the employer bears the burden of proving that the restraint is "no greater than necessary to protect a legitimate business interest, is not unduly harsh or oppressive in curtailing an employee's ability to earn a livelihood, and is reasonable in light of sound public policy." *Id.*; *see also Omniplex*, 270 Va. at 249, 618 S.E.2d at 342 (substituting "narrowly drawn" for "no greater than necessary"). This is a fact-intensive analysis that focuses on the function, geographic scope, and duration of the restraints. *Simmons v. Miller*, 261 Va. 561, 581, 544 S.E.2d 666, 678 (2001). Of note, these factors are not separate and distinct but, rather, the Court considers them together. *Id.*

1. The RC Is Overbroad Under Virginia Law.

Knepper asserts that section (2)(a) of the RC is overbroad because it prohibits Knepper from engaging in competitive services in Charleston, South Carolina. A restrictive covenant is greater than necessary, and therefore unenforceable, when it imposes geographical limitations in areas where the employer does not have a legitimate business interest. *See Simmons*, 261 Va. at 581, 544 S.E.2d at 678 (finding a restrictive covenant greater than necessary in part because "the non-competition clause is without geographical limitation" when the employer only "had exclusive rights to import and distribute . . . [on the] east coast"); *see also Cantol, Inc. v. McDaniel*, No 2:06cv86, 2006 U.S. Dist. LEXIS 24648, at *1, *12–13 (E.D. Va. Apr. 28, 2006) (finding that "[t]he Supreme Court of Virginia has never upheld a restrictive covenant, which was ancillary to an employer-employee relationship, when the restrictive covenant could be applied to a geographic area in which the employee performed no function for the employer"). TLC did not present any evidence at trial indicating that it currently has any LIHTC developments in South Carolina. Further, the Court finds that the RC's restriction precluding Knepper from pursuing LIHTC developments in "Hampton Roads, Virginia" is ambiguous given the fact that the RC provides no definition of this geographic region. This is particularly so given that Hampton Roads can refer to seven different cities within the region. Accordingly, even assuming, *arguendo*, that both the type of services prohibited and the two-year duration of the

provision are not overbroad or ambiguous, the geographic limitation runs afoul of the mandate that restrictive covenants be no greater than necessary to protect an employer's legitimate business interests. For this reason, the Court finds that section (2)(a) of the RC is unenforceable.

Additionally, Knepper contends that the restrictions in section (2)(b) are unenforceable as overbroad. As discussed above, restrictive covenants must be no greater than necessary to protect an employer's legitimate business interest and must not be "unduly harsh and oppressive in curtailing [an employee's] legitimate efforts to earn a livelihood." *Advanced Marine Enters. v. PRC, Inc.*, 256 Va. 106, 118, 501 S.E.2d 148, 155 (1998). Section 2(b) of the RC prohibits Knepper from "pursu[ing], provid[ing] assistance to anyone pursuing, or provid[ing] any services to any individual or entity other than [TLC]" on "any project deal or opportunity on which [Knepper] worked or sought on behalf of [TLC] during the last two years of [Knepper's] employment." As adduced at trial, Knepper's services for TLC included project conceptualization, including projects and developments that TLC chose not to pursue. In other words, section (2)(b) prohibits work on developments in which TLC has no legitimate business interest merely because these developments were at one point "sought" by Knepper on behalf of TLC. For similar reasons, section (2)(b) is also unduly oppressive to Knepper, who must avoid working on projects on the basis of *de minimis* project conceptualization, even if TLC has no intention of pursuing such projects. For these reasons, the Court finds that section (2)(b) of the RC is unenforceable as overbroad.

Finally, Knepper argues that section (2)(c) of the RC is overbroad because it completely restricts Knepper from, *inter alia*, hiring TLC employees for himself or any other person or entity. As discussed above, restrictive covenants must not exceed the measures necessary to protect the employer's legitimate business interest. *Stinnett*, 263 Va. at 493, 561 S.E.2d at 695. As section(2)(c) is written, Knepper is prohibited from hiring a TLC employee in any and every capacity—from a C-suite executive to a janitor—even if, as noted at trial, Knepper desires to hire a TLC employee as a personal dog walker. *See Omniplex*, 270 Va. at 250, 618 S.E.2d at 342 (invalidating a prohibition on performing any service "for any other employer in a position supporting [the former employer's customers]," regardless of whether such service would be in competition with the former employer). Because the restrictions in section (2)(c) exceed those necessary to protect TLC, Inc.'s legitimate business interest, the Court finds that this section is unenforceable. Accordingly, the Court finds for Knepper on Count VI and declares that the RC is unenforceable under Virginia law.

2. The Restrictive Covenants in the OA Are Overbroad Under Virginia Law.

In evaluating the restrictive covenants in the OA, the Court notes that these provisions are indefinite—and potentially unlimited—in duration as applied to Knepper. The non-solicitation and non-competition provisions of the OA's restrictive covenants apply to all Members of TLC Holding regardless of status. The covenants make no distinction between Active and Inactive Members; nor do the covenants distinguish between a Member who is currently employed by TLC Inc., was employed in the past, or has never been employed by the company. Although Knepper is no longer a TLC, Inc. employee, he remains an Inactive Class B Member of TLC

Holding by virtue of owning Class B Units. Knepper will continue to remain an Inactive Class B Member until he sells or otherwise releases his membership interest in TLC Holding. The durational limits specified by the OA's restrictive covenants specifically apply to former Members, but they do not contain any language limiting the duration of the restrictions against Inactive Members, like Knepper, *i.e.*, Inactive Members who are no longer employed by TLC, Inc. In other words, these provisions theoretically restrict the employment of certain former employees who remain Inactive Members of TLC Holding indefinitely.

A restrictive covenant with an indefinite duration is *per se* not "narrowly drawn." Accordingly, the Court finds that the omission of a durational limit to the restrictions on former employees in Knepper's shoes demonstrates that such restrictions are not narrowly drawn and thus, are unenforceable.[8] Therefore, the Court finds for Knepper on Counts VI and VIII, and declares that the RC and the restrictive covenants in the OA are unenforceable.

Conclusion

For the reasons discussed above, the Court finds that Knepper is not in violation of the OA and has not triggered the forfeiture provisions therein. Furthermore, the Court finds for Knepper on Counts VI and VIII and declares that the restrictive covenants in the RC and OA are unenforceable.

Attached is an Order consistent with the ruling in this letter opinion.

Sincerely,

David W. Lannetti
Circuit Court Judge

DWL/rmt/ajl

[8] The Court notes that much of the language in the restrictive covenants found to be overbroad and unenforceable in the RC exists in the restrictive covenants in the OA. Thus, the OA restrictive covenants can likewise be found unenforceable on those grounds. The Court also recognizes that Knepper may have duties as a Member of TLC Holding that could lead to restrictions similar to those included in the OA.. Nonetheless, the Court holds that restrictive covenants regarding future employment, given their disfavored status and narrowly tailored focus, are not the appropriate vehicle for enforcing obligations and restrictions to which an LLC member may be held.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

Kristopher Knepper,

Plaintiff,

v. Civil Case No.: CL24-224

The Lawson Companies, Inc., *et al.*,

Defendants.

FINAL ORDER

For the reasons set out in its July 3, 2025, letter opinion, the Court finds that Knepper is not in violation of the Second Operating Agreement ("OA") and has not triggered the forfeiture provisions therein. Furthermore, the Court finds for Knepper on Counts VI and VIII and declares that the restrictive covenants in the "Restrictive Covenants" agreement and the OA are unenforceable.

Endorsements are waived pursuant to Rule 1:13 of the *Rules of Supreme Court of Virginia*. Any objections shall be filed within fourteen days. The Clerk shall send a copy of this Order to Randy C. Sparks, Esquire; Sharon K. Reyes, Esquire; and Anne G. Bibeau, Esquire.

Enter: July 3, 2025

David W. Lannetti, Judge