

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CB3 ENTERPRISES LLC

APPELLANT,

**v.
NAGE L. DAMAS**

RESPONDENT.

DOCKET NUMBER WD75670

DATE: December 10, 2013

Appeal From:

Jackson County Circuit Court
The Honorable Joel P. Fahnestock, Judge

Appellate Judges:

Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and James C. Thompson, Special Judge

Attorneys:

Dennis J. Dobbels and Christopher J. Mohart, Kansas City, MO, for appellant.

Richard E. McLeod, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT

CB3 ENTERPRISES LLC,

APPELLANT,

v.

NAGE L. DAMAS,

RESPONDENT.

No. WD75670

Jackson County

Before Division Four: James E. Welsh, Chief Judge, Presiding, Cynthia L. Martin, Judge and James C. Thompson, Special Judge

CB3 Enterprises, LLC appeals from the trial court's entry of judgment pursuant to a jury verdict in favor of Nage Damas, the former managing member of the company, on his counterclaim for indemnification. CB3 Enterprises argues that the trial court erred in denying its motion for judgment notwithstanding the verdict because Damas did not, and could not, based on CB3 Enterprises' governing documents, establish a *prima facie* case for indemnification. In particular, CB3 Enterprises claims that the lawsuit it filed against Damas was a "direct action," as defined by its Articles of Organization.

AFFIRM.

Division Four holds: CB3 Enterprises' Articles of Organization contain two provisions that state the company's obligation to indemnify its managers or officers. The first provision provides for indemnification for "direct actions," which the Articles of Organization define as "any . . . action, suit or proceeding . . . other than an action by or in the right of [CB3 Enterprises], by the reason of the fact that such manager or officer is or was a manager or officer of [CB3 Enterprises]." The second provision provides for indemnification for "derivative actions," which are defined as "any . . . action, suit or proceeding by or in the right of [CB3 Enterprises] to procure a judgment in its favor by reason of the fact that such manager or officer is or was a manager or officer of [CB3 Enterprises]."

By its plain terms, the "direct actions" provision does not apply to the action filed by CB3 Enterprises against Damas. Instead, the action filed by CB3 Enterprises against Damas falls squarely within the scope of the "derivative actions" indemnity provision. Damas was sued by CB3 Enterprises by reason of his status as the former managing member of the company. Thus, Damas was entitled to indemnification pursuant to a plain reading of the "derivative actions" indemnity provision.

Opinion by Cynthia L. Martin, Judge

December 10, 2013

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