Case No. 82694

IN THE SUPREME COURT OF
THE STATE OF NEVADA

BRAD L. KNOWLTON, an individual,

Appellant,

vs.

WILLIAM L. LINDNER, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, an individual; and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust,

Respondents.

District Court Case No. A-20-809612-B
Eighth Judicial District Court, Clark County, Nevada

APPELLANT'S OPENING BRIEF

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September 28, 2021

SUPREME COURT OF
THE STATE OF NEVADA

BRAD L. KNOWLTON, an individual, Appellant, vs. WILLIAM L. LINDNER, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; JUEL A. PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, as Trustee of the Juel A. Parker Family Trust; LISA PARKER, an individual; and S. BRUCE PARKER, as Trustee of the Steven Bruce Parker Family Trust, Respondents.	Case No. 82694

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Brad L. Knowlton, Appellant in this case, is an individual, and there is no parent corporation to disclose, nor any publicly held company that owns 10% or more of Appellant's stock.
2. Brad L. Knowlton is represented in the Eighth Judicial District Court and this Court by Erickson & Whitaker PC.

DATED this 28th day of September, 2021.

ERICKSON & WHITAKER PC

By: /s/ Brian C. Whitaker
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JURISDICTIONAL STATEMENT

(A) NRAP 3A(b)(1) grants this Court jurisdiction to review the judgment or order appealed from, allowing an appeal to be taken from a "final judgment entered in an action."

(B) The filing dates establishing the timeliness of the appeal are February 25, 2021 (Entry of Written Order Appealed from and written Notice of Entry of Order served) and March 25, 2021 (Notice of Appeal filed).

(C) This appeal is from the District Court's final judgment entered February 25, 2021, to dismiss this action, as well as from the District Court's Order entered November 13, 2020, granting summary judgment to respondents. Pursuant to NRCP 54(b), the November 13, 2020, Order was not final in nature because it adjudicated fewer than all claims of fewer than all the parties. That Order became final, however, upon the District Court's entrance of its February 25, 2021 Order to Dismiss.

ROUTING STATEMENT

This matter is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(9) as a case originating in Business Court.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Did the District Court err in finding no genuine issue of material fact remained for trial and that summary judgment was proper in this case, such judgment being based upon a Utah trial order and divorce decree that is currently on appeal?

Did the District Court err in granting summary judgment on claims not encompassed within the Assignment of Membership Interest in Valley Ascent, LLC A Nevada Limited Liability Company dated June 19, 2020, and that did not address claims that pre-dated the Assignment?

Did the District Court err in dismissing this case and depriving Appellant, Brad L. Knowlton, of a trial on the merits of the case?

I. STATEMENT OF THE CASE

Appellant, Brad L. Knowlton ("Knowlton"), commenced this lawsuit in District Court on January 31, 2020 after Respondents unlawfully removed him as Manager of Valley Ascent, LLC ("Valley Ascent" or "the Company"), a Nevada limited liability company. In his Complaint, Knowlton alleged breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, intentional interference with contractual relations, expulsion as a member, breach of fiduciary duty, receivership, and preliminary injunction.

Respondents, William L. Lindner, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1998; Juel A. Parker, as Trustee of the Juel A. Parker Family Trust; Lisa Parker, as Trustee of the Juel A. Parker Family Trust; Lisa Parker, an individual; and S. Bruce Parker, as Trustee of the Steven Bruce Parker Family Trust (referred to together as "Respondents"), filed an Answer and Counterclaim on March 20, 2020, objecting to Knowlton's claims and submitting several counterclaims.

On June 5, 2020, Knowlton was divorced from his wife, Shondell Swenson ("Swenson"), in the State of Utah (Case No. 174701016). The Decree of Divorce awarded Swenson the marital interest in Valley Ascent, and Knowlton assigned his membership interest in Valley Ascent to Swenson in accordance with the Divorce Decree by way of an Assignment of Membership Interest in Valley Ascent, LLC A Nevada Limited Liability Company ("Assignment"), effective June 19, 2020.

On June 15, 2020, Knowlton filed a Notice of Appeal in Utah, appealing to the Utah Court of Appeals from the Decree of Divorce. Months later, on September 23, 2020, Respondents filed a Motion for Summary Judgment in District Court in Nevada. There, Respondents alleged Knowlton lacked standing to commence litigation against them because Swenson had been awarded all right,

title, and interest to Knowlton's membership interest in Valley Ascent in a Judgment and Decree of Divorce in the State of Utah.

Despite Knowlton's opposition to Respondents' claims, the District Court granted summary judgment on November 13, 2020, finding Knowlton had failed to demonstrate a right to pursue any of the claims asserted in his Complaint. The District Court subsequently dismissed the case on February 25, 2021, after a Motion from Respondents requesting their counterclaims be dismissed. With the dismissal of the counterclaims the decision of the Court on the Motion for Summary Judgment became final, and Knowlton filed his Notice of Appeal on March 25, 20201 in District Court in Nevada.

II. STATEMENT OF FACTS

Pursuant to a 2005 Amended Operating Agreement ("Operating Agreement"), Knowlton is the Manager of Valley Ascent. *See* Joint Appendix Volume I at 030. As Manager, Knowlton is entitled to "all reasonable expenses incurred in managing the Company" and " compensation, in an amount to be determined from time to time by the written consent of the Members." *Id.* By virtue of an agreement reached at the time the Operating Agreement was signed, Knowlton was paid a management fee in the amount of four percent (4%) of the rents collected on the real properties owned by the Company. *See* Joint Appendix Volume III at 376. Knowlton's tasks as Manager of Valley Ascent included negotiating and preparing leases, maintaining the properties, performing accounting services, negotiating loan refinances, communicating with tenants and subtenants, paying taxes, and setting aside reserve funds for the Company.

The Operating Agreement set forth the membership interests of each member of Valley Ascent. Knowlton maintained a 38.55% membership interest in the Company. The William L. Lindner and Maxine G. Lindner Trust of 1988 maintained a 20% membership interest in the Company. The Juel A. Parker

Family Trust maintained a 36.45% membership interest in the Company. And the Steven Bruce Parker Family Trust maintained a 5% membership interest in the Company. *See* Joint Appendix Volume I at 045. Together, the Juel A. Parker Family Trust, the William L. Lindner and Maxine G. Lindner Trust of 1988, and the Steven Bruce Parker Family Trust held a combined membership interest in Valley Ascent of 61.45% (20% + 36.45% + 5% = 61.45%). *Id.*

In addition, the Operating Agreement also provided provisions for appointing a new manager. Pursuant to the document, "[E]ach Manager shall be appointed by the Members in accordance with Article VIII, and any vacancy occurring in the position of Manager shall be filled in the same manner." *Id.* at 031. Article VIII requires the approval "by a 70% vote of the Member Interests" to "remove a Manager for any reason other than gross negligence, self dealing or embezzlement." *Id.* at 032. The Operating Agreement does not include the position of "Interim Manager."

On December 23, 2019, Defendants signed a "Written Consent of the Members of Valley Ascent, LLC" ("Written Consent for Removal") purporting to remove Knowlton as the manager of the Company. *Id.* at 047 – 050. Knowlton did not sign the Written Consent for Removal, and the document was approved by only 61.45% of the membership interest in the Company. *Id.* Although the Written Consent for Removal alleged Knowlton's conduct as Manager of Valley Ascent was grossly negligent, and that Knowlton had "engaged in self-dealing in his capacity as manager," Defendants did not set forth specific acts of conduct by Knowlton which would give rise to gross negligence or self-dealing. *Id.* at 047. In addition to the Written Consent for Removal, Defendants signed a second Written Consent of the Members of Valley Ascent, LLC ("Written Consent for Appointment of Interim Manager") on December 23, 2019, approving and appointing Lisa Parker as "Interim Manager" of the Company. *Id.* at 052 – 055.

As already stated, the Operating Agreement provides for no such position as "Interim Manager."

Knowlton's removal prevented him from being compensated for his managerial services and from receiving any monthly distributions from the Company, and Knowlton contends the removal was done wrongfully. Between December 23, 2019, and the present, Knowlton has received no dividends for his membership interests in the Company and no payments for his position as Manager.

Accordingly, on January 31, 2020, Knowlton filed a Complaint with the Eighth Judicial District Court in Clark County, Nevada (Case No. A-20-809612-B) alleging breach of contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, intentional interference with contractual relations, expulsion as a member, breach of fiduciary duty, receivership, and preliminary injunction against Respondents. *Id.* at 009, 010, 012 – 015. Respondents filed an Answer and Counterclaim on March 20, 2020. *See* Joint Appendix Volume II at 285 – 313.

On June 5, 2020, Knowlton was divorced from his wife, Shondell Swenson ("Swenson"), in the State of Utah (Case No. 174701016). *See* Joint Appendix Volume III at 458. The Decree of Divorce ("Decree") entered in the Utah divorce action awarded Swenson the "marital interest in Valley Ascent." *Id.* at 439. In that regard, the Decree states as follows:

> [Knowlton] shall sign a document through which he transfers and assigns his interest in Valley Ascent to [Swenson] and permanently relinquishes, waives, and/or releases any rights, interests, or claims related to his ownership interest in Valley Ascent within 14 days of the date of entry of this Judgment and Decree of Divorce.

Id.

To comply with the Decree, Knowlton executed an "Assignment of Membership Interest in Valley Ascent, LLC, a Nevada Limited Liability Company" ("Assignment"), with terms as follows:

> Effective June 19, 2020 and pursuant to the Judgment and Decree of Divorce entered on June 5, 2020 by the Court in Utah Civil Case No. 174701016:
>
> (1) Bradley L. Knowlton hereby transfers and assigns his interest in Valley Ascent, LLC, a Nevada limited liability company, to Shondell Swenson; and
>
> (2) Bradley L. Knowlton hereby permanently relinquishes, waives, and/or releases any and all rights, interests, and/or claims related to his ownership interest in Valley Ascent, LLC, all of which have been transferred to Shondell Swenson by virtue of this Assignment of Interest.

See Joint Appendix Volume II at 337.

On May 13, 2020, however, Knowlton filed a Motion to Alter or Amend the Trial Ruling and for Limited New Trial Pursuant to Rules 52, 54, and 59 of the Utah Rules of Civil Procedure ("Motion to Alter or Amend") (Case No. 174701016).

On June 15, 2020, Knowlton also filed a Notice of Appeal in his Utah divorce case (Case No. 174701016), appealing to the Utah Court of Appeals from the Decree and from the Utah court's Findings of Fact and Conclusions of Law, Ruling on Objections to Form, and Trial Ruling in the divorce case. Subsequently, on December 11, 2020, Knowlton amended the Notice of Appeal to appeal from the November 12, 2020, Utah Ruling and Order on his Motion to Alter or Amend.

On September 23, 2020, Respondents filed their Motion for Summary Judgment in the Nevada District Court case, alleging that Knowlton lacked standing to continue pursuing his claims. *Id.* at 338 – 356. Knowlton opposed Respondents' assertion he lacked standing on October 7, 2020, in his Opposition to Defendants' Motion for Summary Judgment. *See* Joint Appendix Volume III at 357 – 424. There, Knowlton consented to the dismissal of his claims for

intentional interference with contractual relations, expulsion as a member, and receivership, as well as his derivative claims for breach of fiduciary duty, while maintaining he still had standing to assert his remaining claims. *Id.* at 366 – 367.

Knowlton also informed the Nevada District Court of his Utah appeal from the Decree, stating the appeal was "presently ongoing" and that, "If successful, the outcome of that appeal could unwind and/or reverse the effect of the Assignment, and re-vest Knowlton with his Membership Interest in [Valley Ascent]." *Id.* at 368.

At a hearing on November 2, 2020, ten (10) days prior to the Utah Court's Ruling and Order on Knowlton's Motion to Alter or Amend, and in spite of the ongoing appeal in the state of Utah, the Nevada District Court granted Respondents' Motion for Summary Judgment, finding "no issues of material or genuine fact that prevent granting summary judgment," and that "judgment is rendered in Defendants/Counterclaimants' favor on all claims asserted in the Complaint" because Knowlton "failed to demonstrate a right to pursue any of the claims asserted in the Complaint after transferring and assigning his interest in Valley Ascent to Ms. Swenson . . . ." *Id.* at 459 – 560. The Court's Order made no mention of Knowlton's appeal of his Utah divorce case, no mention of Knowlton's pending Motion to Alter or Amend, and no mention of any discussion regarding the strength or weakness of Knowlton's Utah appeal.

An Order denying the majority of Knowlton's requests in the Motion to Alter or Amend was signed by the Utah Court on November 12, 2020.

On February 5, 2021, Respondents filed a Motion to Dismiss Counterclaims, which the District Court granted on February 25, 2021. *Id.* at 477 – 479. Accordingly, on March 25, 2021, Knowlton filed his Notice of Appeal with the Nevada District Court. *Id.* at 481 – 483.

III. SUMMARY OF THE ARGUMENT

A. The Nevada District Court's November 2, 2020, ruling preceded the Utah Court's November 12, 2020, Ruling and Order on Knowlton's Motion to Alter or Amend. Because Knowlton had requested to amend the Utah Decree of Divorce and had requested a new trial, the Utah Decree of Divorce was not a final judgment when the Nevada District Court heard Defendants' Motion for Summary Judgment and rendered its decision.

B. Knowlton is appealing his Utah Divorce Decree. Until the outcome of that appeal is final, the District Court cannot issue summary judgment or dismiss Knowlton's claims for lack of standing, and the District Court's Order should be stayed pending the outcome of the Utah appeals case.

C. In the event this Court finds Knowlton's Divorce Decree is a final order and entitled to full faith and credit in Nevada, it should find the District Court erred in granting summary judgment because a genuine issue of material fact still exists, making summary judgment inappropriate. That genuine issue of material fact relates to the plain language of the Assignment, which sets forth an effective date for the assignment, indicates that Knowlton's claims were not transferred by assignment, and only assigns Knowlton's membership interests in Valley Ascent and not his interest as a Manager. The District Court ignored the plain language of the Assignment in its grant of summary judgment.

D. Public policy in Nevada is that a case should be heard on its merits. By dismissing Knowlton's case, the District Court violated public policy and prohibited the case from being heard on its merits.

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VI. ARGUMENT

A. THE UTAH DECREE OF DIVORCE WAS NOT A FINAL ORDER WHEN THE DISTRICT COURT GRANTED DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BASED UPON KNOWLTON'S ALLEGED ASSIGNMENT OF HIS INTEREST IN VALLEY ASCENT.

In Nevada, a judgment is final only if it is "procedurally definite." *Kirsch v. Traber*, 134 Nev. 163, 167, 414 P.3d 818, 821 (Nevada 2018). (Internal citations omitted.) " 'Finality will be lacking if an issue of law or fact essential to the adjudication of the claim has been reserved for future determination. . . .' " *Id.* (citing Restatement (Second) of Judgments § 13 (Am Law Inst. 1982) at cmt. b). Furthermore, according to the Court in *Kirsch*, "Factors indicating finality include (a) that the parties were fully heard, (b) that the court supported its decision with a reasoned opinion, and (c) that the decision was subject to appeal." *Id.* at 134 Nev. 167, 414 P.3d 822. (Internal citations omitted.)

Moreover, NRCP 56(c) provides that summary judgment is appropriate only when, after a review of the record viewed in the light most favorable to the non-moving party, there are no remaining issues of material fact, and the moving party is entitled to judgment as a matter of law. *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 433 (1989). *See also Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985).

Here, the Nevada District Court heard argument on Defendants' Motion for Summary Judgment prior to a final determination of Knowlton's request to amend the Utah Decree of Divorce and for a new trial. The District Court's decision was based on NRCP 56 as "the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.' " *See* Joint Appendix Volume III at 458 (citing *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d

1027, 1029 (1997). The District Court found that "no issues of material or genuine fact [exist] that prevent granting summary judgment," and found that Knowlton "failed to demonstrate a right to pursue any of the claims asserted in the Complaint after transferring and assigning his interest in Valley Ascent to Ms. Swenson . . . ." *See* Joint Appendix Volume III at 459.

In reality, however, the Utah Divorce Decree was not final when the Nevada District Court issued its decision that Knowlton lacked standing, and the District Court's grant of summary judgment was in error. The Utah Decree of Divorce was not "procedurally definite," as required by *Kirsch*. The parties had not yet been fully heard in Utah, nor was the request to amend the Decree or for a new trial subject to an appeal. As such, Defendants were not entitled to summary judgment based on an alleged lack of standing by Knowlton.

B. KNOWLTON'S DIVORCE CASE IS ON APPEAL IN THE STATE OF UTAH AND THE DISTRICT COURT'S ORDER WAS PREMATURE.

Knowlton is appealing from the June 5, 2020, Utah Judgment and Decree of Divorce, which mandated the assignment of his interest in Valley Ascent. "The Constitution requires that 'Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.' " *Donlan v. State*, 127 Nev. 143, 145, 249 P.3d 1231, 1233 (2011) (citing U.S. Const. art. IV, § 1). The legal principle of "full faith and credit" requires this Court to give a valid judgment in Utah the same effect in Nevada as it would have in Utah. *See Reynolds v. Stockton*, 140 U.S. 254, 264, 11 S. Ct. 773, 775 (1891).

Conversely, however, the effect of a judgment in one state cannot be given greater effect in another state than is given to it in the state where rendered. *Bd. of Public Works v. Columbia College*, 84 U.S. 521, 529 (1873). *See also Robertson v. Pickrell*, 109 U.S. 608, 610 (1883). According to this Court, "the Supreme

Court has clearly established that the Full Faith and Credit Clause does not require a State to apply another State's law in violation of its own legitimate public policy." *Donlan*, 127 Nev. at 145-146, 249 P.3d at 1233. (Internal citations omitted.)

Moreover, "As a corollary of this broader principle [of full faith and credit], a judgment will not be recognized or enforced in other states insofar as it is not a final determination under the local law of the state of rendition." *Thorley v. Superior Court*, 78 Cal.App.3d 900, 906, 144 Cal. Rptr. 557, 561 (Cal. Ct. App. March 20, 1978). (Internal citations omitted.) "Since a judgment will not have the force of res judicata as to issues that remain subject to final determination, a state is not required by the full faith and credit clause to recognize or enforce a judgment rendered in a sister state insofar as the judgment is not a final determination." *Id.* Where an "appeal [is] pending," and where "notice of appeal . . . [has] been filed," a Utah judgment may not be final. *Id.* at 78 Cal.App.3d at 907, 910, 144 Cal. Rpt. at 561, 564. Pursuant to the Restatement (Second) of Judgments § 13 (Am Law Inst. 1982) at cmt. f, "The pendency of . . . an appeal from a judgment, is relevant in deciding whether the question of preclusion should be presently decided in the second action. It may be appropriate to postpone decision of that question until the proceedings addressed to the judgment are concluded."

Here, the District Court dismissed Knowlton's action based on a summary judgment ruling holding that Knowlton had no standing to litigate because a Utah divorce Decree transferred the entirety of his interest in Valley Ascent to his ex-wife. *See* Joint Appendix III at 459 – 460. The Court's decision, however, ignored the fact that Knowlton has appealed the Utah Decree, challenging the Utah Court's division of marital property. That appeal was filed June 15, 2020, prior to Defendants' request for Summary Judgment and prior to the District Court's Order dismissing this case, as in *Thorley*.

Until the Utah Court of Appeals hears Knowlton's appeal, and the Decree becomes final, any dismissal of this case in Nevada is premature, as the Utah Decree could be undone, and the marital property and its assignment reassessed. In that case, any Order in Nevada based on the Utah Decree would be invalid. The District Court's Order, if not stayed pending the outcome of the Utah appeal, could very well allow for an unlawful taking of Knowlton's property, in violation of his rights. The Restatement (Second) of Judgments § 16 (Am Law Inst. 1982) at cmt. a addresses the fact that "If judgment is rendered in the second action on the basis of the judgment in the first, and the judgment in the first is then nullified, the problem arises what is to happen to the second, dependent judgment." If Knowlton's Divorce case is overturned on appeal in Utah and the Decree of Divorce is effectively nullified, the District Court's Order would be nullified as well, and the Courts would be left with inconsistent rulings based upon a nullity.

The Restatement (Second) of Judgments § 13 (Am Law Inst. 1982) at cmt. f indicates that "waiting until the appeal is disposed of" to make a ruling in an action "may indeed be the best course if that disposition will not be long delayed and especially if there is real doubt about the outcome . . . ." In this case, the District Court did not hear argument on the validity of Knowlton's Utah appeal and did not consider whether "real doubt" exists about the outcome. Without having considered whether there is real doubt regarding the outcome of the Utah appeal, the Court's decision was premature.

The Nevada District Court was informed of Knowlton's appeal and the possibility the Utah Divorce Decree could be overturned. Pending the final outcome of the Utah Court of Appeals decision, this Court should stay the Order of the Nevada District Court to ensure the validity of the Nevada District Court's Order rather than requiring the parties to re-litigate subsequent to the Utah appellate action to restore Knowlton's property.

C. THE PLAIN LANGUAGE OF KNOWLTON'S ASSIGNMENT WAS NOT CONSIDERED BY THE DISTRICT COURT WHEN GRANTING SUMMARY JUDGMENT.

In Nevada, summary judgment is appropriate only when, after a review of the record viewed in the light most favorable to the non-moving party, there are no remaining issues of material fact and the moving party is entitled to a judgment as a matter of law. *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 433 (1989). *See also Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985). A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank of Nevada v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279 (1989). The substantive law controls which factual disputes are material and will preclude summary judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling on a motion for Summary Judgment, the Court is required to construe the pleadings and proof in a light most favorable to the non-moving party. *Oak Grove Inv. v. Bell & Gosset Co.*, 99 Nev. 616, 623, 668 P.2d 1075, 1079 (1983). *See also Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986).

In issuing a Summary Judgment based on Knowlton's alleged lack of standing, the District Court did not review the record in the light most favorable to Knowlton, the non-moving party. Even in the event this Court finds the Utah Divorce Decree to be final in nature, Summary Judgment by the District Court was still improper. In Nevada, clear and unambiguous language in a contract will be enforced as written. *America First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P3d 105, 106 (2015).

Here, though the language of the Assignment is clear and unambiguous, the District Court did not allow Knowlton's case to be heard on the merits to ensure

the Assignment was properly enforced. Instead, the District Court ignored the effective date of the Assignment and the plain language of the Assignment in making its Order, improperly granting summary judgment.

i. *The District Court Did Not Consider the Effective Date of the Assignment in Granting Summary Judgment.*

In Nevada, the effective date of a contract is essential for purposes of interpretation and enforceability. *Public Employees' Retirement Bd. v. Washoe County*, 96 Nev. 718, 721, 615 P.2d 972, 974 (1980). Similarly, effective dates are essential for statutory interpretation as well. *See Sigel v. McEvoy*, 101 Nev. 623, 625, 707, P.2d 1145, 1146 (1985). *See Holloway v. Barrett*, 87 Nev. 385, 392, 487 P.2d 501, 505-506 (1971).

In *Retirement Bd.*, Nevada state statute was amended, affecting the public employment contracts of several public employees who were denied the ability for early retirement upon the amendments to the statute. *Retirement Bd.*, 96 Nev. at 722, 615 P.2d at 975. Because "[n]o state may pass a law impairing the obligation of contracts," the Court held any changes to the contracts resulting from the statutory change could only affect new hires subsequent to the date of the statutory amendments. *Id.*

In *Sigel*, the Court held that a state statute governing gaming debts was inapplicable to a dispute between parties to an agreement reached prior to the effective date of the statute. And in *Holloway*, the Court affirmed a District Court decision to appoint an appraiser in a foreclosure subsequent to the effective date of a state statute allowing the Court to do so.

Here, Knowlton assigned his membership interest in Valley Ascent "Effective June 19, 2020 and pursuant to the Judgment and Decree of Divorce entered on June 5, 2020 by the Court . . . ." *See* Joint Appendix Volume II at 337. As in *Retirement Bd.*, the effective date of the Assignment is essential in enforcing

Knowlton's rights to Valley Ascent. Even if this Court finds the Assignment to be the result of a final Order from the Utah Court, Knowlton still maintains standing to address his claims against Respondents prior to June 19, 2020, the effective date of his Assignment to Swenson. Respondents removed Knowlton as Manager of Valley Ascent on December 23, 2019 and Knowlton filed his Complaint against Respondents on January 31, 2020. Pursuant to the plain language of the Assignment, Knowlton's assignment to Swenson was not effective until June 19, 2020, and Knowlton should be compensated for his services of Manager between December 23, 2019 (the date of his alleged removal) and June 19, 2020 (the effective date of Knowlton's Assignment).

Between December 23, 2019 and June 19, 2020, Knowlton received no dividends for his membership interests in the Company and no payments for his position as Manager. No assignment of interest occurred until June 19, 2020, as is explicitly set forth in the plain language of the Assignment, and Knowlton is entitled to litigate against Respondents in pursuit of the money he alleges is owed him for the period between December 2019 and June 2020.

ii. *The Plain Language of the Assignment Clearly Indicates Knowlton Continues to Own and Control the Claims Asserted in His Complaint.*

In interpreting contracts, the Court should "discern the intent of the contracting parties." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012). (Internal citations omitted.) "Therefore, the initial focus is on whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written." *Id.* Generally, this Court construes "unambiguous contracts . . . according to their plain language." *Sheehan & Sheehan v. Nelson Malley & Co.*, 121 Nev. 481, 487-488, 117 P.3d 219, 223-224 (2005). Likewise, in contract interpretation, "every word must be given effect if at all possible." *Bielar v. Washoe Health Sys.*, 129 Nev. 459, 465, 306 P.3d 360, 364 (2013).

Here, the plain language of the Assignment clearly demonstrates Knowlton still owns and controls the claims asserted in his Complaint. The claims asserted in Knowlton's Complaint were on file well before the signing of the Assignment, and yet the Assignment makes no mention of those claims, the District Court action, or Respondents. No such language was included in the Assignment because neither Knowlton nor Swenson intended for Knowlton's claims to be transferred. Instead, the Assignment transfers Knowlton's ownership interests in Valley Ascent to Swenson and waives and releases claims against Swenson rather than making a specific assignment of claims to her

The Assignment applies only to the resolution of the Utah divorce proceedings and does not vest any rights in Defendants. Defendants are not parties to the Assignment and cannot enforce the Assignment. While the Assignment "relinquishes, waives, and/or releases any and all rights, interests, and/or claims related to his ownership in Valley Ascent," the transferred claims are limited to Knowlton's ownership interest in Valley Ascent. *See* Joint Appendix Volume II at 337. The "claims" referenced are not the claims asserted in this District Court action, and the Assignment does not reference those claims or that action.

iii. *The Plain Language of the Assignment Clearly Indicates Knowlton Surrendered Only His Ownership Interest in Valley Ascent.*

In Nevada, a Manager of a company does not need to be a member as well. NRS 86.291 states as follows:

> If provision is made in the articles of organization, management of the company may be vested in a manager or mangers, who may but need not be members. The manager or managers shall hold the offices, have the responsibilities and otherwise manage the company as set forth in the operating agreement of the company or, if the company has not adopted an operating agreement, then as prescribed by the members.

An LLC "can be member-managed or manager-managed . . . . An LLC can have a non-member manage its operations . . . . The non-member manager has no

ownership interest in the LLC and need not have any involvement in the formation of the LLC." *In re Leeds*, 589 B.R. 186, 197 (B.R. D. Nev. August 1, 2018).

The Operating Agreement in this case vests management of Valley Ascent in a Manager, who does not need to be a member of the Company. Regarding management of Valley Ascent, the Operating Agreement states, "*Unless also a Manager*, the Members shall not have any right or power to take part in the management or control of the Company or its business and affairs or to act for or bind the Company in any way." *See* Joint Appendix Volume I at 029. (Emphasis added.) According to the Operating Agreement, a Manager of Valley Ascent need not be a member, and members cannot manage the Company. Furthermore, the Operating Agreement makes Knowlton the Manager of Valley Ascent, granting him the "sole and exclusive right to manage the business of the Company" and the right to compensation for his services as Manager. *Id.* at 030. The rights and responsibilities of members of the Company are distinct from those of the Manager, and many of Knowlton's claims for relief in his Complaint deal exclusively with his role as Manager, and not as a member, of Valley Ascent. Knowlton's claim for breach of contract, violation of the implied covenant of good faith and fair dealing, and breach of fiduciary duty are based in Defendants' wrongful removal of Knowlton as Manager of Valley Ascent.

As a result of Defendants' behavior, Knowlton has been deprived of the compensation he is entitled to as Manager of Valley Ascent. Pursuant to the language of the Assignment, Knowlton relinquished his "claims related to his *ownership interest* in Valley Ascent . . . ." *See* Joint Appendix Volume II at 337. (Emphasis added.) The Assignment clearly limits any transfer to one of "ownership interest" and does not transfer or assign Knowlton's rights or claims as Manager of Valley Ascent in any respect. Knowlton did not transfer any claims to Swenson resulting from his position as Manager of the Company and as a result,

Knowlton has standing. Accordingly, the District Court erred in granting Summary Judgment to Defendants.

D. THIS CASE SHOULD BE HEARD ON ITS MERITS AND DISMISSAL WAS IMPROPER.

There is a public policy preference in Nevada to hear a case based on its merits. *Schulman v. Bongberg-Whitney Electric Inc.*, 98 Nev. 226, 228, 645 P.2d 434, 435 (1982). The District Court's dismissal of the case prevents Knowlton from having a trial on the merits of his case.

NRCP 54(b) requires any decision by the Court "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties" to be entered as a final judgment before it can be appealed. Because the District Court's order granting Summary Judgment was not final, Knowlton could not initially appeal the District Court's Order. Subsequent to the District Court's dismissal of the case, Knowlton now appeals the dismissal and the grant of Summary Judgment so that his case can be heard on its merits, pursuant to the state of Nevada's public policy.

V. CONCLUSION

Based on the facts and arguments above, this Court should find the District Court's Orders granting summary judgment and dismissal to be in error and remand the case to the District Court to be heard on its merits.

DATED this 28th day of September, 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point font, Times New Roman style.

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the

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requirements of the Nevada Rules of Appellate Procedure.

DATED this 28th day of September, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Erickson & Whitaker PC and that on the 28th day of September, 2021, a copy of the foregoing **APPELLANT'S OPENING BRIEF** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system ("E-Flex"). Participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail as follows:

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