IN THE SUPREME COURT OF THE STATE OF NEVADA

BRAD L. KNOWLTON,
an individual,

Appellant,

v.

VALLEY ASCENT, LLC, a Nevada limited liability company, 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.

Electronically Filed
Oct 28 2021 03:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No.: 82694

ANSWERING BRIEF OF RESPONDENTS

TAMI D. COWDEN, ESQ., Nevada Bar No. 8994
MARK E. FERRARIO, ESQ., Nevada Bar No. 1625
KARA B. HENDRICKS, ESQ., Nevada Bar No. 7743
GREENBERG TRAURIG, LLP
10845 Griffith Peaks Dr. Suite 600
Las Vegas, Nevada 89135
Telephone No. (702) 792-3773
E-mail: cowdent@gtlaw.com
ferrariom@gtlaw.com
miltenbergerc@gtlaw.com

Attorneys for Respondents

CORPORATE DISCLOSURE STATEMENT

Pursuant to NRAP 26.1, Respondents, through their undersigned counsel, state as follows:

No corporate disclosure is required of the Respondents William L. Lindner, Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; Juel A. Parker, Trustee of the Juel A. Parker Family Trust, Lisa Parker, Trustee of the Juel A. Parker Family Trust; and S. Bruce Parker, Trustee of the Steven Bruce Parker Family Trust, as neither they nor the trusts of which they are trustees, are corporate entities.

Greenberg Traurig, LLP represented Respondents in the proceedings below.

Dated this 28th day of October, 2021.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden
Tami D. Cowden, Esq.
Nevada Bar No. 8994
10845 Griffith Peak Dr. Ste. 600
Las Vegas, Nevada 89135

Attorney for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

ROUTING STATEMENT

Respondents agree with Appellant that this Court's retention of this matter is presumed pursuant to NRAP 17(9), as this case originated in Business Court.

ISSUES PRESENTED

I. THE DISTRICT COURT PROPERLY FOUND THAT KNOWLTON HAD NO STANDING TO MAINTAIN ANY OF HIS CAUSES OF ACTION.

II. THE DISTRICT COURT DECIDED THE MATTER ON THE MERITS

Respondents William L. Lindner, as Trustee of the William L. Lindner and Maxine G. Lindner Trust of 1988; Juel A. Parker, individually and as Trustee of the Juel A. Parker Family Trust; Lisa Parker, individually and as Trustee of the Juel A. Parker Family Trust; and S. Bruce Parker, as Trustee of the Steven Bruce Parker Family Trust (collectively "Respondents") by and through their counsel of record, the law firm of Greenberg Traurig, LLP, hereby submit this Answer Brief.

INTRODUCTION

This Court should affirm the judgment of the District Court. Appellant Bradley Knowlton assigned his membership interest, and all of his rights, interests, and claims relating to his membership interest to his former wife. As he is no longer in the position of obtaining any benefit from this litigation, he has no standing to continue its pursuit. Accordingly, the District Court's grant of summary judgment on the issue was appropriate, and should be affirmed.

STATEMENT OF RELEVANT FACTS

Origin of the Dispute

This appeals arises from a dispute involving Valley Ascent, LLC, a Nevada limited liability company ("Valley Ascent" or the "Company") formed for the purpose of owning real property leased to a car wash facility. **I JA 3-5.** Former member and manager, Brad A. Knowlton, instituted this lawsuit after the Respondents Trusts, who together owned 61.45% of the Company, and acting

through their respective trustees, removed Mr. Knowlton, who then owned 38.55% of the Company, as Manager of Valley Ascent for gross negligence and self-dealing. **I JA 1**; **I JA 47-55**. The Amended Operating Agreement of Valley Ascent ("AOA") expressly permits the majority members to remove a manager for "gross negligence, self-dealing, or embezzlement." **I JA 30, Art. VIII, § 2.2.** Moreover, the AOA states that "The Manager shall not have any contractual right to such position." **I JA 30, Art. VII, § 2.**

The Respondents voted to remove Knowlton after discovering an assortment of discrepancies relating to Valley Ascent, including a multi-million dollar loan balance that was expected to be no more than a few hundred thousand dollars; significant unexplained reductions in a bank balance for Valley Ascent, unpaid distributions to members, and Knowlton's failure to provided company records when requested by members. **II JA 209-210.** At a telephone meeting held on December 23, 2019, the Respondents voted to remove Knowlton as Manager. *Id.* Written consent by the majority of members to the removal was subsequently obtained. **I JA 47-55.** Subsequently, the Respondents learned that Knowlton had been paying himself fees as manager, at a rate of 4% at the time of his termination, even though written approval of manager compensation was required by the AOA, but not obtained. **I JA 30, Art. VII, § 6.** Respondents determined that Knowlton received more than $450,000 from such unauthorized "fees".

In January 2020, all members of Valley Ascent, including Knowlton, met in person. **II JA 210-211, ¶ 17.** Knowlton was given an opportunity to explain the discrepancies, but provided no satisfactory explanation. ***Id.* at ¶¶ 18-20**. A new manager could not be appointed because the AOA requires 70% majority to name a manager, and while Knowlton refused to vote for anyone but himself, the majority of members were unwilling to approve him. ***Id. at 20***.

The Litigation Below

Knowlton filed suit. He named as Defendants the Respondents, with each trustee named individually, as well as the trustee of their respective trusts; thus, the defendants included the individual Respondents, as well as the trusts they represent. He also named Valley Ascent as a defendant.[1] **I JA 1-2.** He alleged claims as follows:

Claim for Relief	Nature of Claim	Alleged Against
First	Breach of AOA (based on termination and replacement)	Trust Respondents
Second	Breach of Covenant of Good faith and fair dealing, (based on termination and replacement)	Trust Respondents

[1] It appears that Knowlton's inclusion of Valley Ascent was for derivative purposes. *See*, e.g., There is nothing in the record to indicate that Valley Ascent was ever served. No appearance was entered on Valley Ascent's behalf. Knowlton did not include Valley Ascent as a Respondent in the Case Appeal Statement filed in the District Court. **I SA 1,** or in his captions for the Docketing Statement and the Opening Brief filed with this Court.

Third	Declaratory Relief, (that He is Manager of Valley Ascent	All Defendants
Fourth	Intentional Interference with Valley Ascent's contracts with Third Party banks	All Defendants – (claim brought wholly derivatively on behalf of Valley Ascent)
Fifth	Seeking Expulsion of Members (on behalf of Valley Ascent)	Juel Parker Trust and Bruce Park Trust (claim brought wholly derivatively on behalf of Valley Ascent)
Sixth	Breach of Fiduciary Duties (based on termination and replacement)	All Defendants- (claim brought partly derivatively on behalf of Valley Ascent)
Seventh	Receivership (alternative to preliminary injunction)	All Defendants (claim brought partly derivatively on behalf of Valley Ascent)
Eighth	Preliminary Injunction (seeking reinstatement)	All Defendants (claim brought partly derivatively on behalf of Valley Ascent)

I JA 9-16

Knowlton moved for a preliminary injunction, seeking to have himself reinstated as Manager. **I JA 58-161**. Respondents opposed, presenting evidence of Knowlton's misconduct. The District Court denied the Motion for Preliminary Injunction, and granted the Respondents' countermotion requesting that a third party Manager be appointed. **II JA 282-284.** The Court noted that Respondents had made a facial showing of the misconduct by Knowlton, by his taking of a management fee and failure to provide requested records to members. ***Id.***

During the above events, divorce proceedings in the State of Utah between Knowlton and his former wife, Shondell Swenson, which had been proceeding for several years, wound to a conclusion. In a Judgment and Decree of Divorce ("Decree") entered on June 5, 2020, it was ordered that 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 entry of this Judgment and Decree of Divorce.

III JA 439, ¶ 18.

Knowlton concedes he that executed a document in compliance with the Decree. **III JA 360:9-19;** *see also Opening Brief*, p. 5. That document stated:

> (1) Bradley 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 rights 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.

II JA 337 (the "Assignment"). On July 20, 2020, through her counsel, Ms. Swenson demanded that Brad dismiss his claims in this litigation. **II JA 350; 356.** Knowlton failed to comply. II JA 350.

In September 2020, Respondents filed their Motion for Summary Judgment, asserting that Knowlton had no standing to pursue his claims, as all such claims had been transferred to Ms. Swenson. **II JA 338-356.**

In his Opposition, Knowlton acknowledged that to the extent any of the claims alleged were derivative of Valley Ascent, he no longer had standing to pursue them, and expressly consented to the dismissal of the 4th, 5th, and 7th causes of action, and to Valley Ascent's claim for breach of fiduciary duties, the 6th cause of action. However, he claimed to have standing as to the 1st (breach of the AOA); 2nd (violation of covenant of good faith and fair dealing, referencing the AOA); 3rd (declaratory relief that he is the Manager of Valley Ascent); and to the 6th (breach of fiduciary duties) to the extent that claim was brought on his individual behalf. **III JA 367.** He asserted that had not intended to assign any of his individual rights in the litigation to Ms. Swenson, and that the assignment was only effective as of June 2020, and he was entitled for damages accrued until that date. He further claimed that even if the Assignment did include his claims related to his ownership interest, his claims as manager nonetheless survived, as such claims did not relate to his ownership interest. **III JA 367-371.**

Knowlton did *not* argue that the Assignment was ineffective as a result of any purported request for amendment or appeal of the Decree. He did include the following footnote in his Opposition:

> That said, nothing contained in the Assignment, nor this Opposition, should be construed as a waiver of Knowlton's rights asserted in the Appeal that is presently ongoing regarding the Decree of Divorce entered in the Utah Divorce proceedings. 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 VA.

III JA 368, n. 1.

The District Court was unpersuaded by Knowlton's arguments, and granted the Motion for Summary Judgment. **III JA 456.** Respondents' counterclaims were subsequently voluntarily dismissed, and the District Court ordered the clerk to close the matter. **III JA 478.** This Appeal followed. **III JA 481.**

SUMMARY OF THE ARGUMENT

The District Court properly determined that, as a result of the Assignment of his interests to his former wife, Knowlton had no standing to maintain the action. Knowlton's challenges to the validity to the Assignment should be disregarded, as he failed to preserve these issues below. However, even if considered, the challenges are without merit. Knowlton's challenge to the finality of the Decree is misdirected, as it was the Assignment, not the Decree, which actually transferred his interests. Moreover, to the extent the Decree has any bearing on the validity of the Assignment, it would be its finality for purposes of enforcement, and not for purposes of issue preclusion, that would be the relevant

question. The law is clear in both Nevada and Utah that absent a stay, a judgment is enforceable pending any review.

Nor is there any merit to Knowlton's claims that the assignment did not include the causes of actions alleged herein. The plain language of the Assignment, which uses a plural to describe what was included in the transfer, belies Knowlton's claims that only his membership interest, and not all of his "rights, interests, and claims" related to that interests, had been transferred. Because the AOA did expressly disclaim any contractual right to the manager position, Knowlton could not have any claims based on his position as manager. And because all of his claims were transferred, claims that accrued prior to the effective date of the Assignment were necessarily included.

Accordingly, the judgment should be affirmed.

STANDARD OF REVIEW

"Standing is a question of law reviewed de novo." *Arguello v. Sunset Station, Inc.,* 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). Contract interpretation presents a question of law, and is therefore review de novo. *May v. Anderson*, 121 Nev. 668, 672-73, 119 P.3d 1254, 1257 (2005). This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc*., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

LEGAL ARGUMENT

The District Court properly granted summary judgment in favor of Respondents, as there were no issues of material fact as to whether Knowlton retained standing to bring his remaining causes of action. **NRCP 56.** Because standing must be maintained throughout a proceeding, dismissal is appropriate if standing when lost during the course of litigation.

That is precisely what occurred here. Subsequent to the filing of his Complaint, Knowlton transferred all interests and rights in his claims to his former wife. Accordingly, he was no longer in a position to receive any benefit from the litigation, and his claims were properly dismissed. *See Nat'l Gold Mining Corp. v. Hygrade Gold Co.*, No. 78685, at *4, n.3 (Nev. July 1, 2021) (holding that one who "released and relinquished all of his right, title and interest" in claims had not standing to pursue such claims).

I. THE DISTRICT COURT PROPERLY FOUND THAT KNOWLTON HAD NO STANDING TO MAINTAIN ANY OF HIS CAUSES OF ACTION.

Knowlton was no longer the real party in interest and had no standing to maintain his claims. The question of standing overlaps with the inquiry into whether a party is considered a real party in interest. “The real party in interest" rule embodied in NRCP 17 asks whether a party possesses "a significant interest in the litigation." *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 368, 252 P.3d 206,

208 (2011). Standing requires this significant interest, but also requires the party to have a sufficiently severe and legally cognizable injury such that a suit is appropriate. *Schwartz v. Lopez,* 132, 732, 743, 82 P.3d 886, 884 (Nev. 2016). Here, the Assignment transferred all of Knowlton's ownership interest in Valley Ascent, as well as any and all of his claims related to that interest. As all of his claims raised in his Complaint related to his ownership interest, such claims no longer belonged to Knowlton following the execution of the Assignment.

Knowlton's arguments that the Decree was not a final judgment that could be relied upon are without merit. In this matter, it is the validity of the Assignment that is at issue. Moreover, a judgment is final and enforceable pending appeal, unless enforcement of that judgment has been stayed. Here, there is no evidence of any stay of the Decree, nor of any effort to invalidate the Assignment. Accordingly, the District Court properly relied on the Assignment in finding that Knowlton no longer had standing to bring his claims.

A. The District Court Properly Considered and Relied on the Assignment, Regardless of any Purported Appeal of the Decree.

The District Court properly relied on the Assignment in finding that Knowlton had no standing. While Knowlton challenged the effect of the Assignment, he never challenged its validity. For the first time on appeal, Knowlton suggests that the Assignment should not have been relied upon, based on his argument that the Decree which ordered the Assignment's execution was

not final. Specifically, he contends that because he purportedly sought to amend the Decree, it was not a final judgment when the District Court ruled on the Motion for Summary Judgment, and that the Decree continued to lack finality, due to a purported pending appeal.

First, Knowlton failed to preserve the issue, and therefore, it is not properly reviewed by this Court. Moreover, Knowlton failed to present any evidence that the Decree is currently subject to an appeal. Indeed, since he failed to make this argument below, the absence of such evidence is not surprising. Furthermore, Knowlton is simply incorrect that a Utah judgment is not enforceable while a motion to amend or an appeal of that order is pending. As Knowlton failed to show that the Assignment was not valid, the judgment should be affirmed.

1. Knowlton failed to preserve or support with evidence any issue of the validity of the assignment.

This Court should disregard pages 8-11 of the Opening Brief, as within those pages, Knowlton essentially challenges the validity of the Assignment, through a challenge to the finality of the Decree. Knowlton's theory is because the Assignment was executed due to the requirements of the Decree, and because he is appealing the Decree, the District Court should not have ruled on the issue of standing.

Knowlton did not challenge the validity of the Assignment below; instead, he posed various theories as to why the Assignment did not extend to some of his

causes of action. Nor did he make any request to the District Court to stay this matter, or to delay ruling on the Motion for Summary Judgment, pending the outcome of his challenges to the Decree. Accordingly, Knowlton's attacks on the validity of such issues are not properly before this Court. *See Dermody v. City of Reno*, 113 Nev. 207, 210-11, 931 P.2d 1354, 1357 (1997) (denying consideration of new arguments raised on appeal where liability was contested on a different theory below); *Powers v. Powers,* 105 Nev. 514, 516, 779 P.2d 91, 92 (1989) (same).

Knowlton contends he raised this issue in his Opposition to the Motion for Summary Judgment, through a mention of a pending appeal in a footnote. *See Opening Brief,* pp. 6, 9. The point made in the footnote was that Knowlton's Opposition should not be construed as a waiver of claims made in his Utah appeal. III JA 568, n.1. Significantly, even this passing reference makes no mention of a request to a pending motion for amendment of the Decree. Also significant is the fact that Knowlton did not provide any evidence that an appeal was, in fact, actually pending. His affidavit did not include any assertion that a notice of appeal had been filed, and he did not provide a copy of any Notice of Appeal that he filed. Mere statements contained in a brief do not constitute evidence contained in the record. *Phillips v. State*, 105 Nev. 631, 634 (Nev. 1989) ("Facts or allegations

contained in a brief are not evidence and are not part of the record.").[2] Nor did he provide any information as to the issues raised in the appeal, or explain how success in an appeal could result in the Assignment being voided.

Accordingly, even if Knowlton *had* raised a challenge to the Assignment based on a pending appeal of the Decree, the District Court could not have denied summary judgment on that basis, as summary judgment can only be granted or denied based upon evidence that would be admissible at trial. *See* NRCP 56(e) (affidavits in support of or in opposition to summary judgment "shall set forth such facts as would be admissible in evidence"); *see also Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (evidence opposing summary judgment must be admissible at trial).

2. The appellate status of the decree was irrelevant to the issue of standing.

Even if Knowlton had properly raised and supported this issue, the argument would still fail. The District Court would not have been required to consider whether the Decree was entitled to full faith or credit. Once the Assignment was executed, the District Court did not need to look any further than that document.

[2] Knowlton implicitly acknowledges this rule in his factual statement, where he made no citation to the record to support his assertions that he filed an original and amended Notice of Appeal of the Divorce Decree. *Opening Brief*, p. 5.

Furthermore, even if the finality of the decree had any relevance, Knowlton's theory that a judgment is unenforceable while any review is pending is simply incorrect under both Nevada and Utah law. The law in both states is clear that absent the issuance of a stay, a judgment is enforceable. *See Edwards v. Ghandour* , 123 Nev. 105, 159 P.3d 1086 (2007), *abrogated on other grounds by Five Star Capital Corp. v. Ruby* , 124 Nev. 1048, 1054, 194 P.3d 709, 712–13 (2008); *Mardanlou v. Ghaffarian*, 351 P.3d 114, 118 (Utah Ct. App. 2015) ("However, absent a stay of judgment either by the district court itself or by an appellate court pending appeal, a district court has jurisdiction to enforce its judgment.")(internal quotations and citation omitted). Knowlton himself implicitly acknowledged this truth, by complying with the Utah court's order that he execute the Assignment within a set number of days. Clearly, he did not receive a stay of the Decree as to this issue, and therefore, he complied with its time limitation.

Despite his own recognition of the enforceability of the Decree, Knowlton relies on a California case, *Thorley v. Superior Court*, 78 Cal.App.3d 900 (Cal. Ct. App. 1978), for the proposition that a Utah judgment "may" not be final while an appeal is pending. *Opening Brief*, p. 10. However, Knowlton's careful cherry picking of language from this opinion is nothing more than an attempt to mislead the Court. In *Thorley*, it is made clear that it is not the filing of a Notice of Appeal that renders a judgment unenforceable, but rather, a subsequent entry of a stay of

enforcement upon the posting of a supersedeas bond that will halt enforcement pending that appeal. *See Thorley,* 78 Cal.App.3d at 907 ("Absent such notice and the giving of a bond, the judgment of the Utah district court was subject to immediate enforcement.").

Knowlton also relies on Nevada precedent discussing the full faith and credit to be given judgments from other states for purposes of issue preclusion as the authority determining whether an order is final. *Opening Brief*, pp. 8-9, *citing, inter alia*, *Kirsch v. Traher*, 134 Nev. 163, 414 P.3d 818 (2018). Knowlton points to *Kirsch*'s test for finality for purposes of issue preclusion to argue that the pendency of a motion to amend the judgment precludes finality under Nevada law. Such reliance is inapposite, however, because the Decree's relevance to the issues here, if it has any at all, would be as to its enforceability to preclude any reneging on the Assignment. Thus, the question would not be whether the test for issue preclusion has been satisfied, but instead, whether the judgement is enforceable.

Under Nevada law, it is clear that absent a stay, a judgment is enforceable while a NRCP Rule 59 Motion to Alter or Amend, or an appeal is pending. *See* NRCP 62(b)(authorizing grant of stay of execution pending certain post-judgment motions, including Rule 59, where appropriate bond is posted); (d) authorizing stay of judgment where appropriate security is posted. The law in Utah is nearly identical. *See* Utah R. Civ. P. 62.

Knowlton's argument that the Decree was not a final judgment is both without relevance and without merit. The Judgment should be affirmed.

B. The Assignment Transferred Knowlton's Claims to Ms. Swenson.

Knowlton next contends that the Assignment did not include his causes of action in the litigation below. However, a view of the assignment establishes that this claim is without merit.

When construing the language of a document, the plain meaning of the words used should be applied. *See Canfora v. Coast Hotels & Casinos, Inc.,*121 Nev. 771, 776, 121 P.3d 599, 603 (2005) ("[W]hen a contract is clear on its face, it 'will be construed from the written language and enforced as written.'"). Here, the plain language of the Assignment indicates that Knowlton's claims were transferred to Ms. Swenson.

The Assignment stated:

> (1) Bradley 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 rights 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.

II JA 337 (emphasis added). Based on this wording, it is clear that what was assigned to Ms. Swenson was not just the single item of Knowlton's "ownership

interest" in Valley Ascent, but also Knowlton's rights, interests, and claims related to that interest.

This is evident from the use of the *plural* present perfect verb form in the assignment language: "all of which *have been transferred*." Had it been only Knowlton's ownership interest that had been transferred, and not also the rights, interests and claims relating to the membership interest, then the clause would have used the singular verb form: all of which *has been transferred.* *See Livingston v. TrustGuard Ins.*, 558 F. App'x 681, 3 (7th Cir. 2014) (noting that phrase "any applicable bodily injury bonds or policies have been exhausted" meant "all such bonds and policies" due to the use of the plural "have been").

Because the ownership interest, and the "rights, interests, and/or claims related" to that membership interest were transferred to Ms. Swenson, the District Court properly held that Knowlton no longer had any interest in his causes of action.

1. Because the Assignment included Knowlton's "rights, interests, and/or claims," the effective date of the Assignment is immaterial.

Knowlton's claim that he is entitled to pursue claims to the extent of injuries suffered prior to the date of the Assignment is without merit. As shown above, all of Knowlton's "rights, interests and claims" were transferred to Ms.

Swenson. Thus, existing claims, to the extent such had accrued, were included in the transfer.

Furthermore, even if Knowlton could have sought damages suffered prior to the date of the Assignment, the District Court properly dismissed the claims, as it is undisputed that Knowlton suffered no damages. The purported damages suffered by Knowlton were his nonreceipt of manager fees from January through June 2020. But here it is undisputed that Knowlton took payments for the time he served as manager. Leaving aside the fact that Knowlton presented no evidence that the members of Valley Ascent had ever agreed in writing to pay *any* fees to the manager, following his termination, Knowlton did not provide services, and therefore, earned no fee. Accordingly, he suffered no damages. Moreover, as shown below, any claimed entitlement to a fee would depend upon a contractual right to be the manager, which Knowlton did not possess.

Nor does Knowlton have a claim for member distributions that, according to him, should have been made between January and June 2020. This, too, would obviously be a claim related to his membership interest, and thus, was assigned to Ms. Swenson. But even if this Court were to find that he had not transferred claims accruing prior to the Assignment date, Knowlton would not have a claim for a lack of distributions. This is so because no such claim was ever pleaded in the Complaint. Moreover, none of the Respondents could be liable for that claim,

as the decision regarding the payment of distributions was vested in the Manager. I JA 34, Art. X. §§ 2.3, 3. The Manager appointed by the Court was and is not a party to this litigation; nor was the Company ever more than a nominal defendant, who was never even served.

2. All of Knowlton's claims were related to his former ownership interest, and therefore, were properly dismissed.

The District Court properly found that all of Knowlton's claims were related to his former ownership interest in Valley Ascent. Knowlton contends that his claims included those made as the Manager, and therefore, the contract claims, the request for declaratory relief as to his entitlement to be Manager, and the breach of fiduciary duty claim survived the Assignment. Again, Knowlton's argument fails.

To the extent that these claims could be considered to have been brought by Knowlton as manager, the claims are all premised on a contractual right to be the manager. But Knowlton had no contractual right to be manager of Valley Ascent.

An operating agreement must "be interpreted and construed to give the maximum effect to the principle of freedom of contract and enforceability." NRS 86.290(4)(b). Here, the AOA expressly states that no contractual right to be manager was created therein. **I JA 30, Art. VII, § 2**. Accordingly, a manager of Valley Ascent had no contractual right to enforce the provisions relating to the termination or appointment of the any provisions. Any claim based on a challenge

to the propriety of the termination of Knowlton as Manager could only be maintained by a member of Valley Ascent. As Knowlton is not a member, and assigned his rights as a member to Ms. Swenson, his claims were properly dismissed.

II. THE DISTRICT COURT DECIDED THE MATTER ON THE MERITS.

Knowlton contends that the District Court did not hear the merits of his claims, and that this is violation of the public policy of Nevada. This contention is without merit. A grant of summary judgment is a decision on the merits of the claim. *John v. Douglas County School District*, 219 P.3d 1276, 8 (Nev. 2009) (noting that a grant of summary judgment is "an adjudication upon the merits.").

/ / /

CONCLUSION

Knowlton has failed to show that the District Court erred in granting summary judgment in favor of the Respondents. Accordingly, the judgment should be affirmed.

Dated this 28th Day of October, 2021.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden
Tami D. Cowden, Esq.
Nevada Bar No. 8994
MARK E. FERRARIO, ESQ.
Nevada Bar No. 1625
KARA B. HENDRICKS, ESQ.
Nevada Bar No. 7743
10845 Griffith Peak Drive, Suite 600
Las Vegas, Nevada 89135

Attorney for Respondents

CERTIFICATE OF COMPLIANCE WITH NRAP 28 AND 32

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 MS Word 2003 in Times New Roman 14.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 4540 words.

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 requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th Day of October, 2021.

GREENBERG TRAURIG, LLP

/s/ Tami D. Cowden
Tami D. Cowden, Esq.
Nevada Bar No. 8994
Mark E. Ferrario, Esq.
Nevada Bar. No. 1625
Christopher R. Miltenberger, Esq.
Nevada Bar No. 10153
10845 Griffith Peak Dr. Ste. 600
Las Vegas, Nevada 89135

Attorney for Respondents

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Greenberg Traurig, LLP, that in accordance therewith, I caused a true and correct copy of the foregoing ***Answering Brief of Respondents*** to be served via this Court's e-filing system, on counsel of record for all parties to this matter on this 28th day of October, 2021.

/s/ Andrea Lee Rosehill
An employee of Greenberg Traurig, LLP.