IN THE SUPREME COURT OF THE STATE OF NEVADA

RALLY CAPITAL, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, Appellant, vs. COPPER MOUNTAIN INVESTORS, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondent.	No. 84204
RALLY CAPITAL, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, Appellant, vs. COPPER MOUNTAIN INVESTORS, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondent.	No. 84664

ORDER OF AFFIRMANCE

These are consolidated appeals from district court orders granting an NRCP 50(a) motion for judgment as a matter of law (Docket No. 84204) and awarding attorney fees and costs (Docket No. 84664). Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

Appellant Rally Capital, LLC (Rally), and respondent Copper Mountain Investors, LLC (Copper Mountain), are 50/50 members of ANCCC, LLC (ANCCC), a Nevada company that owns land in Arizona. Copper Mountain is owned by Deifik Investments, LLC (Deifik Investments), and Copper Land Investments, LLC. Deifik Investments is owned by Nancy and Bruce Deifik (the Deifiks). In 2012, the Rally and Copper Mountain amended the ANCCC operating agreement (the Amendment) to allow members to pledge their interests as collateral for a

loan. The Amendment created a purchase option where, in the event Copper Mountain defaulted on such a loan, Rally would have the option to purchase Copper Mountain's interest. Subsequently, the Deifiks pledged their interest in Deifik Investments, which among other investments included their interest in Copper Mountain, as collateral for a loan with Luxor Capital Group, LP (Luxor), to purchase a casino (the Luxor loan). The Deifiks defaulted on the Luxor loan and Luxor acquired Deifik Investments' assets as part of the settlement. When Rally learned of this, it attempted to assert the purchase option under the Amendment. Luxor refused and Rally brought a breach of contract action against Copper Mountain. After the close of evidence at trial, the district court granted Copper Mountain's motion for judgment as a matter of law pursuant to NRCP 50(a), finding that the Amendment unambiguously required a member to pledge their entire interest in ANCCC to trigger the purchase option.

Rally argues that the district court erred in granting Copper Mountain's NRCP 50(a) motion because the Amendment is ambiguous. Rally alleges that the court had previously determined the Amendment was ambiguous when it denied summary judgment. Additionally, Rally argues the district court improperly relied on extrinsic evidence by reviewing separate operating agreements between the parties to find that the Amendment's purchase option unambiguously applied only to *direct* pledges.

Reviewing the district court's decision de novo, we affirm. *See Redrock Valley Ranch, LLC v. Washoe Cty.*, 127 Nev. 451, 460, 254 P.3d 641, 647-48 (2011) (explaining that "[c]ontract interpretation is a question of law" which this court generally reviews "de novo, looking to the language of

the agreement and the surrounding circumstances"). To begin, when the district court denied the motion for summary judgment, it did not find that the Amendment was ambiguous, rather, it found that there were outstanding questions of material fact and issues that needed to be developed at trial.[1] At the time of trial, the district court received more evidence, including testimony from witnesses, depositions, and subsequently produced documents, that were not available at the time of the pretrial motion for summary judgement. The Amendment's purchase option provides that "in the event that any loan, debt or obligation for which Copper's Member interest is pledged or encumbered becomes in default[,] . . . then the other Member shall have the right to purchase Copper's Member interest." The Amendment plainly refers only to "Copper's Member interest." *See Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (holding that the court will enforce a contract as written where the language "is clear and unambiguous" (quoting *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012)). In reviewing the Luxor Pledge and Security Agreement, the Deifiks only pledged *their* interest in Copper Mountain, vis-à-vis Deifik Investments; there is no mention of ANCCC, nor is Copper Mountain's interest in ANCCC itself pledged. The district court also appropriately reviewed objective extrinsic evidence of the parties' other agreements and found that the

[1]Rally has consistently argued that the Amendment was unambiguous throughout the case and even at the jury trial, including in its trial brief and in response to Copper Mountain's first NRCP 50(a) motion. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

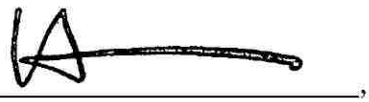
parties chose not to distinguish direct and indirect loans. *See Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 313, 301 P.3d 364, 368-69 (2013) (distinguishing extrinsic subjective beliefs at the time of contracting are inadmissible whereas objective extrinsic and unrebutted evidence of trade usage and custom is admissible); *see also* Restatement (Second) of Contracts § 212(2) (Am. Law Inst. 1981) ("A question of interpretation of an integrated agreement is to be determined by the trier of fact if it depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence. Otherwise a question of interpretation of an integrated agreement is to be determined as a question of law.").

The Luxor loan did not involve a direct pledge of Copper Mountain's member interest in ANCCC. Thus, the purchase option was not triggered as Copper Mountain's member interest in ANCCC was not pledged and the Amendment does not prohibit indirect pledges and transfers. *See In re Huber*, Bankr. No. 11-41013, Adversary No. 12-04171, 2013 WL 6184972, at *4-6 (Bankr. W.D. Wash. Nov. 25, 2013) (collecting cases and concluding that "the majority analysis" is that a contract must expressly state that an "upstream" (or indirect) transfer is covered by a contract). Accordingly, we affirm the district court's order granting Copper Mountain's NRCP 50(a) motion in Docket No. 84204.[2] Regarding attorney fees and costs, Rally's only argument on appeal is that the district court erred in granting Copper Mountain's NRCP 50(a) motion so this court should also reverse the award of attorney fees and costs.

[2]In light of our conclusions, we need not address the parties' other arguments.

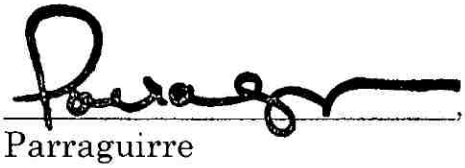
Because we affirm the underlying judgment, we likewise affirm the district court's order awarding Copper Mountain attorney fees and costs in Docket No. 84664.

It is so ORDERED.



_____, J.
Herndon

_____, J.
Lee



_____, J.
Parraguirre

cc: Hon. Mark R. Denton, District Judge
Stephen E. Haberfeld, Settlement Judge
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Reid Rubinstein & Bogatz
Eighth District Court Clerk