IN THE SUPREME COURT OF THE STATE OF NEVADA

CONTROLLED CHAOS INC., A DOMESTIC CORPORATION,
Appellant,
vs.
ARTS DISTRICT HOLDINGS LLC, A DOMESTIC LIMITED LIABILITY COMPANY,
Respondent.

No. 87016

FILED

NOV 26 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court's grant of a motion to dismiss. Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Controlled Chaos Inc. was a member of Respondent Arts District Holdings LLC (ADH), a limited liability company formed to purchase and develop a building in Las Vegas. ADH is governed by an operating agreement, which dictates how its membership can issue a capital call and the process by which a member's shares can be diluted. Pursuant to the operating agreement, ADH issued a capital call of roughly $100,000. The call was authorized by a majority of ADH members. Following the capital call Controlled Chaos asserted, "I WILL be participating in the cash call." Yet, Controlled Chaos provided no funds. Additionally, unlike the other ADH members, Controlled Chaos had never contributed capital to ADH. The only financial contribution from Controlled Chaos was a loan that had been paid back, and does not impact this appeal. Due to the failure to meet the capital call, Controlled Chaos's membership shares in ADH were diluted to the point of elimination.

Controlled Chaos sued ADH, alleging ADH breached the terms of the operating agreement in issuing the capital call without unanimous

approval of ADH members and in eliminating Controlled Chaos's shares entirely, among other claims. ADH filed a motion to dismiss under NRCP 12(b)(5) and (d). The district court originally granted Controlled Chaos time for discovery under NRCP 56(d), then ordered supplemental briefing. After a review of the briefing and evidence, the district court granted the motion to dismiss in favor of ADH on all claims.

When a motion to dismiss is decided on matters outside the pleadings, as was done here, the motion is treated as one for summary judgment under NRCP 56. This court reviews a grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is only appropriate where, construing all evidence in the light most favorable to the nonmoving party, "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a); *see also Wood*, 121 Nev. at 729, 121 P.3d at 1029. Contract interpretation is also subject to a de novo standard of review. *See Bielar v. Washoe Health Sys., Inc.*, 129 Nev. 459, 465, 306 P.3d 360, 364 (2013). When interpreting a contract, this court endeavors "to discern the intent of the contracting parties." *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (internal quotation marks omitted). To do so, initially, we determine "whether the language of the contract is clear and unambiguous; if it is, the contract will be enforced as written." *Id.* (internal quotation marks omitted). We also read the contract "as a whole and avoid[ ]negating any contract provision[s]." *Road & Highway Builders v. N. Nev. Rebar*, 128 Nev. 384, 390, 284 P.3d 377, 380 (2012); *and Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) ("[i]n the absence of ambiguity or other factual complexities, contract interpretation presents a question of law that

the district court may decide on summary judgment") (internal quotation marks omitted).

Despite Controlled Chaos's assertions to the contrary, nowhere does the operating agreement require unanimous assent before a capital call is issued. The agreement lists seventeen items which "require the consent of the Members holding a Majority Interest in the Company," including "[m]aking a Capital Call." The agreement also provides three actions requiring "[u]nanimous approval of the Members," including "[m]aking a Capital Call in excess of $50,000." The agreement's language facially distinguishes the majority "consent" required to issue a capital call generally from the unanimous "approval" required to validate a capital call in excess of $50,000. Thus, the operating agreement does not address the timing of the approval for a capital call of over $50,000.

Controlled Chaos indisputably provided assent to the capital call when it responded, "I WILL be participating in the cash call." Controlled Chaos later expressed an intention to pay the cash call, "Im [sic] planning on dropping off a cashier's check before 5 pm tomorrow," and requested a one-day extension of the deadline to contribute after allegedly going to the bank to get a cashier's check and finding it closed. Given Controlled Chaos's agreement to the capital call, the district court properly concluded ADH complied with the terms of the operating agreement.

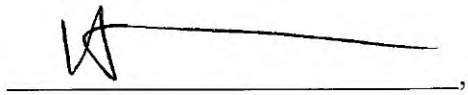
Because ADH did not breach the operating agreement in issuing the capital call, the remaining question before this court is whether the complete elimination of Controlled Chaos's interest in ADH was the appropriate remedy for Controlled Chaos's failure to comply with a valid capital call. We conclude the district court properly determined that Controlled Chaos retains no interest in ADH.

First, we note there is no genuine dispute of fact regarding Controlled Chaos's contributions to ADH. Controlled Chaos points to a wire transfer on June 26, 2017, explicitly designated for "Art District Holdings," arguing this contribution prevents the total elimination of its interest in ADH. Yet ADH provided text messages from Controlled Chaos indicating that payment was designated for a different investment property, emails between ADH members concluding the wire was not applied to ADH, and two declarations asserting Controlled Chaos made no capital contribution to ADH. Controlled Chaos supplied no admissible evidence to rebut ADH's evidence and generate a genuine dispute on the issue. In the face of ADH's evidence, no rational trier of fact could find Controlled Chaos contributed to ADH. *See Wood*, 121 Nev. at 731, 121 P.3d at 1030 (explaining that a "nonmoving party may not defeat a motion for summary judgment by relying on the gossamer threads of whimsy, speculation and conjecture") (internal quotation marks omitted)).

Given the lack of contribution, elimination of Controlled Chaos's interest was permitted under the operating agreement. The operating agreement permits a member to contribute additional capital when another member fails to provide funds, and the "contributing Member's additional contribution shall increase the Capital Account of the contributing Member and decrease, or eliminate, the Capital Account of the non-contributing partner on a pro-rate [sic] basis." Thus, ADH may restructure ownership interests based on pro rata shares of capital contributed by other members. And ADH presented evidence that other members of ADH contributed substantial capital beyond that sought in the capital call and Controlled Chaos provided none. Accordingly, under the

operating agreement, the district court properly concluded that Controlled Chaos's pro rata share in ADH is zero. Therefore, we,

ORDER the judgment of the district court AFFIRMED.



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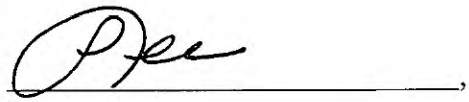
Herndon



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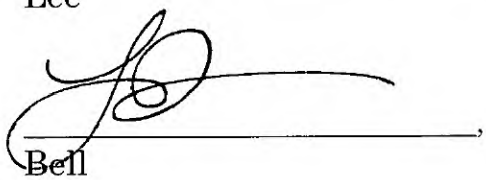

_____, J.
Bell

cc: Hon. Susan Johnson, District Judge
Stephen E. Haberfeld, Settlement Judge
Jennings & Fulton, Ltd.
Garman Turner Gordon LLP
Walsh & Friedman, Ltd.
Eighth Judicial District Court Clerk