73448-2

Court of Appeal No. 73448-2-I

King County Superior Court No. 15-2-05326-4 SEA

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

JAY FRIET, an individual,

Appellant,

v.

KATHERINE GAISER, an individual; GUARDIANSHIP SERVICES OF SEATTLE, a non-profit organization; LANDON ENTERPRISES, LLC, a limited liability company; and CAROL GAISER, an individual for the purposes of petitioning to appoint a guardian,

Respondents.

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

Respondents Katherine Gaiser ("Katherine"), Carol Gaiser ("Carol"), and Guardianship Services of Seattle ("GSS") (collectively, "Respondents")[1] mischaracterize Appellant's claims and misconstrue applicable law. Appellant did not bring a derivative action "in the right of a limited liability company [Landon Enterprises, LLC (the "LLC")] to recover a judgment ***in its favor***."[2] Rather, Appellant, "whose rights, status [and] other legal relations are affected by" the LLC's operating agreement (the "Agreement"), brought this declaratory judgment action to obtain judgment ***in his own favor*** determining questions under the Agreement of his and his co-owners' rights, status and legal relations. Appellant exceeds Washington's Uniform Declaratory Judgment Act's ("UDJA") low burden for demonstrating that he is an "interested person" under the Agreement—the Agreement itself expressly binds him. The UDJA therefore authorizes him to ask the courts to "determine ***any question of construction or validity*** arising under the [Agreement] and obtain a declaration of rights,

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[1] Because many of the actors in this case have the same surnames, this brief often uses first names for clarity.

[2] Washington's Limited Liability Company Act (the "LLC Act") authorizes members to bring derivative actions (i.e. actions in the name and right of the limited liability company): "A member may bring an action in the superior courts in the right of a limited liability company ***to recover a judgment in its favor*** if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed." RCW 25.15.370

status or other legal relations thereunder."[3] Appellant's right to a declaration of rights, status, and legal relations under the Agreement includes the determination of rights and relations that affect him, regardless of whether the Agreement repeatedly identifies him in each provision that he asks the trial court to construe. Appellant's rights and relations under the Agreement do not exist in isolation from the rights, status, and relations of other owners, Members, and Managers, any more than the relations of an index finger exist in isolation from the thumb.

Instead of applying the liberally-interpreted UDJA's actual language, Respondents would have this Court establish a new, restrictive, and unsupported rule that would prohibit limited liability company owners, if their member status is contested, from seeking judicial declarations of the operating agreements that affect them. Such a rule would allow members owning just one percent of a limited liability company to hold hostage alleged non-members owning 99 percent, with no judicial recourse. In the present situation, Appellant is the largest owner ("Unit Holder") of the LLC, owning 50 percent of the LLC's Governance and Financial Units, but at Respondents' urging the trial court ruled that he has no standing to request a judicial determination of his rights, status, and other legal relations under the Agreement.

[3] RCW 7.24.020.

Respondents rely on an inapposite line of cases addressing a different and narrow question: When does an individual have standing under the UDJA to challenge the constitutionality of a statute or ordinance? Rules defining interested parties under statutes or ordinances of widespread application are inapposite when determining whether an individual is an "interested person" under a contract, or whether a contract "affects" that individual's rights, status, or other legal relations.

But even under UDJA jurisprudence regarding statutes and ordinances—if read fairly—the trial court's summary judgment should be reversed. Respondents unfairly conflate the steps of their proposed test and add requirements neither in the UDJA's language nor in the cases Respondents cite. Also fatal is Respondents' circuitous logic. They circuitously argue that Appellant lacks standing to seek a declaration of his rights under the Agreement because he does not have any rights to declare. But Appellant, an uncontested 50 percent owner of the LLC, expressly bound by the Agreement, is a "person interested under" the Agreement whose "rights, status [and] other legal relations" are affected by the Agreement. Under the UDJA (and even under the inapposite authorities cited by Respondent), Appellant is entitled to "have determined any question of construction or validity arising under the [Agreement] and obtain a declaration of rights, status or other legal relations thereunder."

In addition to misconstruing the law, Respondents ask this Court to affirm summary judgment based entirely on Katherine's (the moving party's) self-serving declaration, even though she refused to permit discovery herself, despite outstanding discovery requests, and despite admitting she had over 1,500 pages of responsive documents. Respondents argue in ill grace that Appellant produced minimal evidence, while ignoring their own discovery evasions.

II. ARGUMENT

Appellant provided an analysis of the UDJA in his initial Brief of Appellant and will avoid undue repetition of those points here. Brief of Appellant ("App. Br.") at §§ IV.A and V.B.1. Some bear recapping, however, in light of Respondents ignoring the UDJA's plain language and their arguments for inapposite tests to determine whether Appellant is an interested person ***under a contract*** that expressly binds him and is a source of his rights, status, and legal relations. When viewed for what it is—a declaratory judgment action—there can be no mistaking this suit for a derivative action.[4] And, because this is not a derivative action, all of Respondents' efforts to disprove Appellant's Member-status are irrelevant, and the trial court's summary judgment should be reversed. In addition,

[4] This is true even if the LLC itself could have brought claims similar to Appellant's—i.e. if a Member could have sought on behalf of the LLC a determination of all owners' respective rights, status, and legal relations..

this Court should reverse the trial court's summary judgment if for no other reasons than because the trial court failed to apply appropriate summary judgment standards and ignored Respondents' discovery evasions.[5]

A. The UDJA Authorizes Appellant to Request Judicial Construction of the Agreement

1. UDJA Is Unambiguous

Respondents argue that Appellant lacks standing to bring his claims because he "did not ask the trial court to declare what ***his*** rights were as a non-member transferee under the [Agreement]." Respondents' Brief ("Resp. Br.) at 21 (emphasis original). In addition to being inaccurate and circuitous, Respondents' argument ignores the plain language of the UDJA: "A person interested under a . . . contract . . . or whose rights, status or other legal relations are affected by a . . . contract . . . , may have determined ***any question of construction*** or validity arising under the . . . contract . . . ***and obtain a declaration of rights, status or other legal relations thereunder.***"[6] RCW 7.24.020 (emphasis added).

The statute does not limit standing to "parties" to a contract. RCW 7.24.020. Nor does it say owners of limited liability companies may

[5] The parties agree that the standard of review is *de novo*.
[6] Appellant returns to this provision because Respondents so persistently ignore its second half.

only seek declarations of their rights, status, and legal relations if they are members. The UDJA is purposefully broad in allowing any "person interested under" a contract to bring an action to determine any question of construction of the contract. *Id.* Nor does the UDJA restrict judicial determinations solely to the rights of the requesters. Seldom under contract can one interested person's rights be assessed or declared in isolation from the rights of the other interested persons. The UDJA expressly authorizes declarations beyond the movant's "rights"; it notably allows interested persons to obtain a declaration of status and "other legal relations" under a contract.

Appellant asked the trial court to address questions of construction of the Agreement pertaining to, for example: (i) a non-owner attorney-in-fact's exercise of an owner-Member's perquisites; (ii) proper issuance and use of proxies; and (iii) the number of Governance Units needed for a Quorum and Majority. Appellant sought determination of pertinent parties' statuses under the Agreement, including: (i) Appellant's; (ii) Carol's;[7] and (iii) Katherine's. Appellant also sought determination of

[7] Because the Agreement defines a Member's status, in part, by whether he or she has become incapacitated as to her or his estate, as that term is defined and used in RCW 11.88, *et seq.*, Appellant asked the trial court to apply that statute's definition to Carol's now apparent incapacity for the limited purpose of determining her Member status. Appellant's request is subsumed in his cause of action for declaratory relief, regardless of the fact that he also has legal standing to initiate a guardianship proceeding under RCW 11.88, *et seq.* At least at this point, no such proceeding is necessary.

"legal relations" under the Agreement, including: (i) whether an owner-Member can transfer Member perquisites to a non-owner by power of attorney; (ii) whether a Member's non-owner attorney-in-fact can make Member decisions that affect owners; and (iii) whether and when Governance Units held by alleged non-Members must be considered to determine a Quorum and/or Majority.[8]

2. Respondents' Cited Authority is Inapposite

Respondents obscure the clear language of the UDJA with inapposite cases, which they argue constrict the meaning of "interested person" under a contract. But the cases they cite deal exclusively with UDJA claims challenging the ***constitutionality of statutes and ordinances***.[9] *See Branson v. Port of Seattle*, 152 Wn.2d 862, 866, 101 P.3d 67, 69 (2004) (UDJA claim that Sea-Tac's rental car concession fees violate the Revised Airports Act and RCW 14.08, *et seq.*); *Grant Cty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 797, 83 P.3d 419, 421 (2004) (rehearing of declaratory judgment claim challenging constitutionality of petition method of annexation); *Walker v. Munro*,

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[8] Contrary to Respondents' assertions, the aforementioned requests are all in the record, in, for example, Appellant's: (i) Amended Complaint, CP 379–83; (ii) Motion for Temporary Restraining Order, CP 142–45, 148–49; (iii) Opposition to Motion for Summary Judgment, CP 574–75; 578–79; and (iv) Oral Argument on Summary Judgment, RP 15:10–17:1.

[9] The UDJA permits judicial construction of statutes and ordinances, in addition to contracts, deeds, and wills.

124 Wn.2d 402, 405, 879 P.2d 920, 922 (1994) (declaratory judgment claim that Initiative 601 is unconstitutional); *High Tide Seafoods v. State*, 106 Wn.2d 695, 697, 725 P.2d 411, 412 (1986) (constitutional challenge to Washington's tax on enhanced food fish).

Respondents also leave out key limiting language in these opinions' UDJA analyses. *E.g. Branson*, 152 Wn.2d at 875 ("First, we ask whether the interest asserted is arguably within the zone of interests to be protected ***by the statute or constitutional guaranty in question***.") (emphasis added); *Grant Cty.*, 150 Wn.2d at 802 (same); *High Tide*, 106 Wn.2d at 701-02 ("The prevailing rule requires a person or party ***seeking to challenge the constitutionality of a law*** . . . to show that the particular action complained of has operated to the person's or party's own prejudice.") (emphasis added).

The desirability for a UDJA plaintiff challenging the constitutionality of a statute, ordinance, or government action to allege "harm personal to the party" is plain enough: statutes and ordinances do not single out individuals but typically apply *en mass*. Both to prevent floods of constitutional challenges from inundating the legal system, and to determine whether a challenger has sufficient direct interest to motivate competent adversarial litigation, courts require plaintiffs to show they fall

within the "zone of interests" protected or affected by the challenged statute or action.

Unlike UDJA claims challenging statutes, so far there is scant Washington jurisprudence analyzing standing to request determination of a contract's terms. Perhaps this is because contracts are typically narrow in scope of affected individuals. They bind or affect a relatively narrow band of entities. Thus, to determine an "interested person" under a contract or a person "whose rights, status or other legal relations are affected by" a contract, courts often need only look to the four corners of the document in question, and such determinations may not precipitate appellate review.[10] If the contract expressly binds an individual,[11] or defines the individual's rights, status, and legal relations,[12] then the individual overcomes the low standing threshold to ask "any question of construction . . . arising under the contract." RCW 7.24.020. Respondents' new proposed tests would be both unnecessary and unduly restrictive.

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[10] Maryland courts which have assessed this issue hold that "[g]ranting a motion to dismiss a declaratory judgment action without declaring the rights of the parties [under a contract] rarely is appropriate." *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 556, 731 A.2d 957, 961 (1999).

[11] The Agreement expressly binds all Unit Holders. CP 217.

[12] The Agreement defines the statuses of Unit Holder, Transferee, and Member, as well as the rights inherent in each. It also defines the legal relations among them, including obligations and accountably to each other.

3. Respondents Misapply Even the Inapposite Law to Which They Resort

Notwithstanding the infirmities of transposing UDJA standing analyses for determining the constitutionality of statutes to standing analyses for determining construction of private contracts, even the former, if applied here, would still warrant reversal of the trial court's summary judgment. Respondents cite *Branson*, which states that an "interested person" can ask the courts to answer "any question arising under the validity of a contract" so long as that person presents a justiciable controversy that includes:

> (1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

Branson, 152 Wn.2d at 877 (internal citations omitted). Under that test, Appellant presented a justiciable controversy.[13]

Respondents deny the existence of a justiciable controversy by arguing that Appellant asked the trial court to make a determination of rights that were not "direct and substantial" to him. In doing so, they conflate "direct and substantial" interests in the outcome of a UDJA action

[13] Appellant outlines the justiciable controversy in his Brief. App. Br. at 26–28.

with principles guiding derivative actions. But the UDJA does not need Respondents' conflations. UDJA jurisprudence defines "direct and substantial" interests as those that are not "potential, theoretical, abstract or academic." *Branson*, 152 Wn.2d at 877.

Here, Appellant has direct and substantial interests in the outcome of his UDJA action. For example, Appellant challenged Katherine's ability to lawfully exercise her mother's Member perquisites under the Agreement. Katherine exercised those perquisites to, among other things, ***terminate Appellant's employment as property manager of the LLC*** and ***stop all LLC distributions to him***.

Appellant also asked the trial court to determine the meanings of "Quorum" and "Majority" as used in the Agreement. Properly interpreted, Carol (or Katherine, purportedly acting on her behalf) could not take such actions without ***accounting for Appellant's Governance Units***. Though a Transferee has only limited governance rights under the Agreement, he or she has a direct and substantial interest in the validity of Member actions that can only be undertaken by persons holding ***more than*** 50 percent of ***aggregate*** Governance Units owned by Members ***and*** Transferees. Here, even if Carol could still qualify as a Member (which sadly she cannot), and even if she could delegate her Member perquisites to Katherine (which she cannot), Katherine and GSS together lack the Governance

Units required to lawfully take the actions the they have taken.

Appellant also challenged Carol's Member status. Appellant has a direct and substantial interest in whether Katherine can vote Carol's non-Member Governance Units to withhold distributions to him and terminate his employment contract with the LLC. If the trial court adjudicates Carol incapacitated as to her estate for the limited purpose of determining her Member status, then Carol's dissociation would trigger a majority-in-interest vote to dissolve the LLC. ***Appellant, even as a Transferee, would be entitled to participate in the vote to dissolve or continue the LLC, and he holds a majority of the Units entitled to vote***. CP 214.

4. Contrary to the Law for Summary Judgment Involving Contracts, Respondents Relied on Their Interpretations of the Agreement and Ignored Other Interpretations to Contest Appellant's Standing Under UDJA

Another of Respondents' fatal flaws is that they rely on their own interpretation of the Agreement to support their argument that Appellant lacks standing to bring this UDJA action. Respondents assert that Appellant lacks standing because he "did not ask the trial court to declare what ***his*** rights were." Resp. Br. at 21 (emphasis original). They untenably argue that the declarations Appellant seeks do not affect him personally. *Id.* But they base their argument on their interpretation of the provisions Appellant asked the trial court to interpret. Washington law is clear:

Where there are two plausible interpretations of a contract (here, the Agreement), summary judgment is inappropriate in disputes turning on such contract. *See Western Washington Corp. of Seventh-Day Adventists v. Ferrellgas, Inc.*, 102 Wn. App. 488, 495-96, 7 P.3d 861 (2000) (summary judgment appropriate only where, in light of extrinsic evidence, there is just one reasonable interpretation).

Among other things, Appellant asked the trial court to interpret whether the Agreement requires Members to account for Governance Units owned by non-Members when satisfying the requirements for a Quorum and Majority. Respondents take the position that Appellant cannot seek judicial determination of the pertinent provisions because, in their opinion, Appellant "has no rights of governance, and he cannot impede LLC members who do have those rights." Resp. Br. at 22. Respondents would have the courts simply adopt Respondents' interpretations of the Agreement instead of making their own determination of Appellant's rights. Respondents' approach would circumvent the UDJA framework entirely. This Court should not accept Respondents' tautological reasoning.

Respondents' arguments are also flawed because a court cannot determine the rights, status, and relationships of persons interested in a contract in isolation. A person's rights under a contract typically (and

surely here) affect the rights or obligations of others interested in the Agreement. Under Washington law, "[d]etermination of the intent of the contracting parties is to be accomplished by viewing the contract as a whole," *Berg v. Hudesman*, 115 Wn.2d 657, 667, 801 P.2d 222, 228 (1990). "A court must construe the entire contract together so as to give force and effect to each clause." *Quellos Grp. LLC v. Fed. Ins. Co.*, 177 Wn. App. 620, 634, 312 P.3d 734, 741 (2013). "[A] phrase cannot be interpreted in isolation." *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). Respondents' approach—in addition to finding no support in the UDJA's language—would artificially and unworkably limit the courts' declaratory judgment analyses to isolated provisions depending on who requested relief. Such an approach would be contrary to Washington law of contractual interpretation, and at odds with the UDJA's stated purpose "to settle and to afford relief from uncertainty and insecurity . . . ." RCW 7.24.120.

5. Denial of Standing Under UDJA Would be Inequitable

The courts have ample discretion to provide equitable relief where "there is no adequate legal remedy." *City of Lakewood v. Pierce Cty.*, 144 Wn.2d 118, 126, 30 P.3d 446, 450 (2001). "A maxim of equity states that equity suffers not a right to be without a remedy." *CIGNA Corp. v. Amara*, 563 U.S. 421, 440, 131 S. Ct. 1866, 1879, 179 L. Ed. 2d 843 (2011)

(internal quotations omitted); *see Roberts v. Dudley*, 140 Wn.2d 58, 68, 993 P.2d 901, 907 (2000), *as amended* (Feb. 22, 2000) ("Where there is a right, there is a remedy."). Under the LLC Act (and the Agreement), all Unit Holders have financial rights to share in the LLC's profits and distributions Respondents' arguments and the trial court's summary judgment would leave Appellant with no forum to determine or enforce those rights, rendering them "mere abstractions." *See W.R. Grace & Co.--Conn. v. State, Dep't of Revenue*, 137 Wn.2d 580, 619, 973 P.2d 1011, 1030 (1999) ("[A] right without a remedy is not a right at all but a mere abstraction.") (Sanders, J., dissenting).

A transferee-owner of a limited liability company typically cannot bring a derivative action ***in the right of his or her company to recover a judgment in its favor*** against Members acting beyond their authority or in manners that impact the transferee's ownership rights. But if the transferee-owner were also barred from seeking declaratory relief in his own name construing the operating agreement and his rights, status, or other legal relations, those rights and relations would be "mere abstraction[s]." A 99 percent transferee-owner of a limited liability company would have no judicial recourse to determine his own rights and status—not the LLC's—vis-à-vis a 1 percent member-owner's conduct,

even if the one percent owner's actions were in clear violation of the company's operating document.

The above example is not far removed from this case. Appellant owns half of the LLC, yet at Respondents' urging, the trial court ruled that he has no judicial recourse to determine his rights and legal relations under the LLC's Agreement, let alone challenge Respondents' behavior that violates the Agreement. Even if Appellant were only a Transferee[14] who has only limited interests in whether Members or purported Members must exercise rights in conformance with the Agreement, the UDJA and equity authorize Appellant to judicially challenge Respondents' conduct to protect Appellant's own rights as the LLC's largest owner.

B. The Law of Derivative Actions Does Not Apply to Appellant's UDJA Case

Respondents spend much of their brief arguing that only Members can bring derivative actions, but such argument is beside the point because Appellant's claims are not derivative.[15] The cases cited by Respondents reveal a common theme: actions to remedy injuries "inflicted upon the [company] or its property by a third party." *See Woods View II, LLC v.*

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[14] Appellant's status as a Member or Transferee is a mixed question of law and fact which the trial court improperly decided on summary judgment. *Infra*_§§ C & D.

[15] Appellant's Brief provides analyses distinguishing Appellant's declaratory judgment action to interpret the Agreement from derivative actions brought to recover a judgment belonging to the LLC. App. Br. at 28–35.

Kitsap Cty., 188 Wn. App. 1, 22, 352 P.3d 807, 818 (2015) review denied, (Wash. Nov. 4, 2015).

The derivative claims in those cases include self-dealing, usurping corporate opportunity, and exposing the company to liability. *E.g., Donlin v. Murphy*, 174 Wn. App. 288, 292, 300 P.3d 424, 426 (2013). The alleged injuries also include conversion of corporate assets and breach of fiduciary duties to the company. *E.g., Sound Infiniti, Inc. v. Snyder*, 145 Wn. App. 333, 339-40, 186 P.3d 1107, 1110 (2008) *aff'd but criticized*, 169 Wn.2d 199, 237 P.3d 241 (2010). Other alleged wrongs include violations of federal securities law and illicit compensation, *In re F5 Networks, Inc.*, 166 Wn.2d 229, 234, 207 P.3d 433, 436 (2009), *Woods View II, LLC v. Kitsap Cty.*, 188 Wn. App. 1, 18, 352 P.3d 807, 816 (2015) *review denied*, (Wash. Nov. 4, 2015). All of these cases present a plaintiff seeking to recover a judgment belonging to the company, something Appellant has not done.

Respondents cite *Sound Infinity* for the proposition that claims involving shareholder "perquisites" are derivative, but their recitation of the court's holding is misleading. In *Sound Infinity*, the majority shareholders performed a reverse stock split in conformance with the corporation's shareholder agreement which resulted in the corporation's repurchase of all the plaintiff's shares. 145 Wn. App. at 344. The court

held that the plaintiff, no longer a shareholder, could not bring derivative claims on behalf of the company. *Id.* at 351. The plaintiff's claims for "minority oppression" were similarly dismissed because Washington's Business Corporations Act prescribes the exclusive remedy for dissenting minority shareholders: appraisal and repurchase of the dissenter's shares. *Id.* at 349. As for the alleged "perquisites," the court found they were forms of in-kind dividends that were accounted for in the appraisal and repurchase proceeding.[16] *Id.* at 353. The former owner was thus not without an ample remedy.

C. The Trial Court Ignored Respondents' Discovery Evasions

Respondents take the position that the trial court properly ignored Appellants CR 56(f) plea because Appellant failed to present any sworn statement attesting the existence of a document that would establish his and Carol's Member status. Respondents ignore Appellant's declaration outlining the discovery sought and why CP 897-98, and present this Court with yet another circuitous argument: Appellant could not attest to what documents or testimony existed because Katherine evaded discovery. CP 1187. Katherine refused to produce documents when due and, with GSS, moved to strike long-scheduled depositions. Katherine sent a series of

[16] Presumably, Respondents selected this case because of the prevalence of the word "perquisite" in both the opinion and the present action, despite the clear divergence in meaning.

emails assuring that her and Carol's 1,500 pages of discovery would be sent before the hearing on summary judgment. *Id.* That of course never happened. Respondents having similarly agreed to Carol's video deposition, moved at the last minute to strike it as "obscene." CP 856–63.

Appellant's discovery requests were not "fishing expeditions" as Respondents argue. Appellant properly sought discovery under the Civil Rules in the forms of document production and depositions. All were noted before Respondents hurriedly scheduled their summary judgment. None occurred. Respondents claim that Carol withheld her consent to Appellant's admission as a Member. Appellant was entitled to discovery to (among other things), assess Respondents' claim. Appellant was not required to rely on Katherine's self-serving declaration that she was not "aware" of any such document. Nor should the trial court have ruled on summary judgment with discovery evaded.

D. The Trial Court Failed to Draw Inferences in Appellants' Favor

At summary judgment, the trial court was required to consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party, Appellant. *See Kofmehl v. Baseline Lake, LLC*, 177 Wn. 2d 584, 594, 305 P.3d 230, 236 (2013). The trial court failed to do that. Respondents wrongly conclude that the

evidence Appellant was able to submit (despite Respondents' discovery evasions) do not establish the existence of genuine issues of material fact. If, as Respondents argued, Appellant lacks standing because Carol purportedly never consented to his admission as a Member, then the few documents Appellant did uncover evidencing Carol's approval of Appellant's assumption of Member status and duties should have, at the very least, impelled the trial court to withhold summary judgment until the scheduled preliminary injunction hearing permitted presentation of live testimony and cross-examination after relevant documents were produced.[17]

E. The Trial Court Incorrectly Dismissed Appellant's Cause of Action for Guardianship

Carol's incapacity—and by extension, her Member status—are issues plainly related to (and arguably determinative of) Appellant's UDJA claim.[18] It was therefore properly before the trial court. Under the

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[17] Respondents point to the lack of evidence "that Carol Gaiser, the only other member, reviewed [the corporate] filings and intended them to act as her written consent to admitting [Appellant] as a member." Resp. Br. at 19. As This Court will no doubt recognize, Appellant was impeded in presenting evidence because Katherine refused to produce the 1,500 pages of responsive documents in evasion of the discovery rules and moved for summary judgment before any scheduled depositions could occur.

[18] If a Member is dissociated, she does not lose her owner rights, only her Member perquisites. But the dissociation then requires a vote on whether to continue or dissolve the LLC by all remaining owners except the dissociated Member. CP 214. Here, that would mean a vote by Respondent GSS with a 22.5 percent interest and Appellant with a 50 percent interest.

Agreement, a Member dissociates when he or she is adjudicated incapacitated using the ***definition*** contained in RCW 11.88, *et seq.* Because Katherine alleges she has authority to take actions that affect the LLC's owners based on Carol's Member status, Appellant could have asked the trial court to adjudicate Carol's incapacity after the deposition and at the preliminary injunction hearing on his UDJA claim. Neither the UDJA nor the guardianship statute requires a court to apply the definition of "incapacitated as to one's estate" solely within a separate action for the appointment of a guardian. Any such rule would be ineffective and unhelpful.

Although the trial court could adjudicate Carol's capacity in connection with its determination of rights, statuses, and legal relations under the Agreement, Appellant also has legal standing (but is not required under either the Agreement or the UDJA) to initiate a guardianship proceeding pursuant to RCW 11.88, *et seq.*[19]

As with Appellant's UDJA claim, Respondents ignore the Amended Complaint's express claims by arguing that Appellant did not

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[19] "***Any person . . . may petition for the appointment*** of a qualified person . . . as the guardian or limited guardian of an incapacitated person." RCW 11.88.030. A consolidated action, wherein Appellant seeks declaratory and injunctive relief and petitions the trial court to appoint a guardian for Carol's estate based on a common nucleus of operative facts would advance the Civil Rules' purpose of securing "the just, speedy, and inexpensive determination of every action." CR 1.

meet the requirements of a guardianship petition. Resp. Br. at 34–40. The Amended Complaint is clear that it alone does not serve as the petition. If Appellant were to initiate a guardianship proceeding, whether within this action or separately, and if he omitted from his petition any elements required by RCW 11.88.030(1), then the appropriate remedy would be to grant leave to amend, not to dismiss on summary judgment an action never initiated.

F. The Trial Court Incorrectly Denied Appellant's Request for Injunctive Relief

The trial court dismissed Appellant's claim for injunctive relief without comment for lack of standing. As discussed in Appellant's Brief, the dismissal was in error given the UDJA's express allowance for "further relief," which includes injunctive relief. RCW 7.24.080; *Ronken v. Bd. of Cty. Comm'rs of Snohomish Cty.*, 89 Wn.2d 304, 311-12, 572 P.2d 1, 6 (1977); App. Br. at 35–38. Respondents ignore this authority and instead return to their failsafe: that a transferee-owner does not have member rights. Resp. Br. at 33. Respondents miss the point. The UDJA grants an interested person the right to request judicial determination of a contract's terms and statuses, just as it grants an interested person the right to request further relief to enforce the judicial determination.

RCW 7.24.020; RCW 7.24.080; *Ronken*, 89 Wn.2d at 311-12. Those are not member rights, but rights of interested persons under the Agreement.

Even the UDJA's language directly contradicts Respondents' proposed interpretation. To wit:

> When the application [for further relief] is deemed sufficient, the court shall, on reasonable notice, require any ***adverse party whose rights have been adjudicated*** by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

RCW 7.24.080 (emphasis added). If an interested party under a contract can only adjudicate his own rights and apply for further relief based thereon, then this provision would have no meaning. But that is not the rule, and Appellant has standing to request injunctive relief based on his UDJA claim.

III. CONCLUSION

The trial court dismissed claims Appellant did not bring. Appellant did not commence a derivative action to recover a judgment in the LLC's favor. Instead, Appellant requested judicial determination of his rights and those of others under the Agreement, as well as injunctive relief to preserve those rights. The UDJA authorizes Appellant to do so, and at Respondents' urging, the trial court improperly dismissed his claims on

summary judgment. Appellant respectfully requests that this Court reverse the trial court's ruling and remand the case for proceedings on the merits.

RESPECTFULLY SUBMITTED this 28th day of December, 2015.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on December 28, 2015, a copy of the foregoing **Reply Brief of Appellant** was served by electronic mail to:

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