No. 22-CV-0548

In the

District of Columbia Court of Appeals

CAPITAL RIVER ENTERPRISES, LLC, *et al.*,

Appellants,

v.

CHRISTOPHER ABOD, *et al.*,

Appellees.

On Appeal from the Superior Court of the District of Columbia, Civil Division, in Case 2022 CA 000258 R(RP) (Hon. Hiram E. Puig-Lugo, Associate Judge)

JOINT BRIEF OF APPELLEES HARRY ROUPAS, CHRISTOPHER ABOD AND BCJCL, LLC

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1(a) of the Rules of the District of Columbia Court of Appeals, BCJCL, LLC hereby states as follows: BCJCL, LLC does not have any parent corporation or any publicly held corporation that owns 10% or more of its stock.

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Defendants and Appellees Harry Roupas, Christopher Abod and BCJCL, LLC ("Appellees") respectfully submit this Brief in opposition to the Appeal Brief filed by Plaintiffs and Appellants Capital River Enterprises, LLC and Kuei-Yin Chang Liu (collectively, "Appellants") of the trial court's Order dated April 21, 2022 (the "Order"), granting Appellees' Motions to Dismiss Counts I, III, IV and V of Appellants' Complaint (the "Motions to Dismiss"[1]). In support hereof, Appellees state as follows:

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal is the latest chapter in a quixotic effort by Appellant Kuei-Yin Chang Liu (or, more accurately, her alleged attorney in fact, Yu-Dee Chang)[2] to avoid loans that were lawfully agreed to by Ms. Liu's two business partners, Napoleon Ibiezugbe and Kevin Falkner. The Superior Court dismissed all claims against the lenders, Appellees Christopher Abod and Harry Roupas (as to the first deed of trust) and BCJCL, LLC (as to the second deed of trust), and upheld the validity of the deeds of trust by which the loans were secured. The trial court's ruling was entirely correct and should be affirmed.

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[1] Appx. 0105 (Motion to Dismiss of Harry Roupas and Christopher Abod); Appx. 0126 (Motion to Dismiss of BCJCL, LLC).

[2] The Complaint was verified by Yu-Dee Chang on behalf of Appellant Kuei-Yin Chang Liu. (Appx. 0024). Appellant Liu has never signed any of the papers filed, nor has she appeared at any proceedings in this case.

Appellant Capital River Enterprises, LLC ("Capital River") has three members: Appellant Kuei-Yin Chang Liu ("Ms. Liu"), Napoleon Ibiezugbe ("Mr. Ibiezugbe"), and Kevin Falkner ("Mr. Falkner"). Pursuant to a Memorandum of Understanding ("MOU") signed by all three, major decisions for Capital River may be made by "a two-third majority vote of the Members, each of whom shall have one vote for each major decision required."[3] In April 2019, Appellees Christopher Abod ("Mr. Abod") and Harry Roupas ("Mr. Roupas") made two loans to Capital River, which were secured by a first deed of trust on two parcels of real property in the District of Columbia. In November 2019, Appellee BCJCL, LLC ("BCJCL") made a loan to Capital River, which was secured by a second deed of trust on the real property owned by Capital River. All of these loans and deeds of trust (the "DOTs") were agreed to by Mr. Ibiezugbe and Mr. Falkner, *i.e.*, a two-third majority of the members of Capital River.

Ms. Liu now claims she was unaware of the loans. Ms. Liu and Capital River further allege that, in obtaining the loans, Mr. Ibiezugbe and Mr. Falkner utilized a "forged and fraudulent" operating agreement. Curiously, neither Ms. Liu nor Capital River sued the alleged fraudsters, Mr. Ibiezugbe and Mr. Falkner. Instead, Appellants filed an action against the lenders, Mr. Abod, Mr.

[3] Appx. 0124.

Roupas, and BCJCL, as well as the settlement agent, Appellee Premium Title & Escrow, LLC ("Premium Title"). In their Complaint, Appellants brought a claim for quiet title, asking the Superior Court to declare the DOTs as invalid, as well as tort claims against Mr. Abod, Mr. Roupas, BCJCL, and Premium Title based on the same theory.

The Superior Court properly ruled that the Complaint fails to state a claim against Mr. Abod, Mr. Roupas, and BCJCL. The reason is simple—pursuant to the MOU, Mr. Ibiezugbe and Mr. Falkner had actual authority to take out the loans and grant the DOTs on behalf of Capital River. This fact is dispositive of all of Appellants' claims against Mr. Abod, Mr. Roupas, and BCJCL, who are simply the lenders in these transactions. The Superior Court's ruling dismissing the claims against Mr. Abod, Mr. Roupas, and BCJCL should be affirmed in its entirety.

II. ISSUES PRESENTED

Appellants' statement of the issues inaccurately portrays the facts and allegations before the Court and the Superior Court's rulings. Stated correctly, the issues presented by Appellants are as follows:

> 1. Whether the Superior Court was correct in ruling that the alleged existence of a forged and fraudulent operating agreement did not render the DOTs void *ab initio* since Mr. Ibiezugbe and Mr. Falkner had actual authority to agree to the DOTs.

> 2. Whether the Superior Court was correct in ruling that Mr. Ibiezugbe and Mr. Falkner had actual authority to agree to the DOTs based on the MOU, which stated that "[a]ll major decisions and choices during the Investment Period shall be made by a two-third majority vote of the Members, each of whom shall have one vote for each major decision required."

The answer to both questions is yes. This becomes readily apparent when considering the questions in reverse order. The Superior Court accurately read Appellants' own Operating Agreement and MOU, which expressly granted Mr. Ibiezugbe and Mr. Falkner actual authority to make all major decisions, including the decision to obtain loans secured by the Property pursuant to the DOTs. Because Mr. Ibiezugbe and Mr. Falkner had actual authority, Appellants' contention that Mr. Ibiezugbe and Mr. Falkner submitted a forged and fraudulent operating agreement does not render the DOTs void *ab initio*. Put another way, since the real Operating Agreement and MOU granted actual authority, any alleged forged operating agreement is irrelevant, and the DOTs remain valid.

The trial court ruled correctly on both issues, which were entirely dispositive of Appellants' case. The Superior Court properly dismissed all claims against Mr. Abod, Mr. Roupas, and BCJCL, and its ruling should be affirmed.

III. STATEMENT OF FACTS

The only issue in this appeal "is the legal sufficiency of the complaint."[4] For this reason, the "facts" before the Court consist of the allegations in Appellants' Complaint. The relevant factual allegations in the Complaint are summarized below.

Capital River was formed on October 18, 2017.[5] The operations of Capital River are governed by an Operating Agreement dated October 26, 2017.[6]

The Operating Agreement provides that the Members' ownership interest in the LLC will be as follows: Kuei-Yin Chang Liu: 50%, Napoleon Ibiezugbe: 25%, Kevin Falkner: 25%.[7] The Operating Agreement contains an integration clause, which provides: "This Agreement, along with the Memorandum, constitutes the entire agreement among the Members regarding the terms and operations of the Company . . ."[8]

Importantly, the Operating Agreement provides that a "Memorandum of Understanding the same date as this Agreement" is "attached hereto and made a part hereof" and that "[a]ll decisions regarding the operation of the

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[4] *Scott v. FedChoice Fed. Credit Union*, 274 A.3d 318, 322 (D.C. 2022).
[5] Appx. 0006.
[6] Appx. 0026.
[7] Appx. 0027.
[8] Appx. 0030.

Company's affairs shall be managed as outlined in the Memorandum and any subsequent Resolution of the Members."[9] The Operating Agreement further provides: "In the event of any conflict in language, the Memorandum shall control."[10]

The MOU, dated October 26, 2017, states that it "is made for the purpose of memorializing the material terms of an investment agreement between Members, and shall supplement and amend the Operating Agreement dated October 26, 2017."[11]

The MOU memorializes the contributions of the Members of Capital River and states their intended purpose for the business, including the potential development of the Property:

> [T]he Members have each committed either cash, debt, risk, building and/or contracting skills, professional insight and/or professional negotiating skills to the investment opportunity whereby the Members intend to obtain a government issued building permit to allow the construction of approximately forty-four (44) condominium units with an average unit size of 750 square feet (the "Project") and then EITHER sell the Property along with the obtained government permits OR develop the Property in accordance with the approved and

[9] Appx. 0027.
[10] *Id.* (emphasis added).
[11] Appx. 0123.

> permitted plans and specifications, all for the purpose of making a profit from their investment . . .[12]

In the trial court, Appellants alleged that the "MOU provided that Ms. Liu's consent was necessary for any major decisions involving the LLC/the Property"[13] because—according to Appellants—the MOU provided that the "three LLC members each had a vote equivalent to their percentage ownership in the LLC and a 66% majority was required for all decisions."[14] Notably, Appellants failed to attach a copy of the MOU to their complaint, likely hoping their representation as to its content would control. Appellants' inaccurate recitation of the terms of the MOU cannot be squared with the

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[12] Appx. 0123. In the trial court, Appellants alleged that "Capital River was created for the sole purpose of purchasing the Property, obtaining a building permit, and selling the Property at a profit either with the building permit or after developing the Property" (Appx. 0003; 0148; 0167), and that "Capital River was formed on October 18, 2017, for the purpose of purchasing and selling the Property." (Appx. 0006). Likewise, Appellants' Brief (at 3) contends that Capital River "was formed for the purpose of purchasing the Property, obtaining a building permit, and settling the property." However, the MOU provides that Capital River was created to purchase and sell the Property or to develop the Property. The MOU does not provide that the Property was purchased solely for the purpose of resale.

[13] Appx. 0011.

[14] Appx. 0011–12; Appx. 0155; Appx. 0174. The trial court specifically addressed this point in the Order (Appx. 0221), writing, "Upon review of the MOU, the Court finds that Plaintiffs' recitation of the MOU and the actual contents of the MOU vary. Specifically, the MOU did not require 'a 66% majority' for all decisions. Rather, 'all major decisions and choices . . . shall be made by a two-third majority vote of the members, each of whom shall have one vote for each major decision.'"

documents itself, which expressly states that all major decisions are to be made based not on the Members' percentage of ownership, but rather a two-third majority vote of the three Members:

> The period from the date of closing on the purchase and acquisition of the Property until the date of closing on the sale and settlement of the Property shall be defined as the "Investment Period." All major decisions and choices during the Investment Period shall be made by a two-third majority vote of the Members, each of whom shall have one vote for each major decision required . . .[15]

In addition, the MOU further states that "Ibiezugbe shall be instructed to carry out the final decisions of the Members."[16] It also contains an integration clause, which provides: "This Memorandum of Understanding includes the full and complete terms of agreement by and between the Members and no party is relying upon the verbal representations of the other when entering into this Agreement."[17]

Faced with the plain language of their own agreement, Appellants now present a slightly different interpretation of the MOU, asserting that "the three Capital River members were intended to vote in accordance with their percentage interest."[18] But again, this contention is directly contrary to the

[15] Appx. 0124 (emphasis added).
[16] *Id.*
[17] Appx. 0125.
[18] Appellants' Brief at 20 (emphasis added).

plain terms of the MOU, which states: "All major decisions and choices during the Investment Period shall be made by a two-third majority vote of the Members, each of whom shall have one vote for each major decision required."[19] No matter how many times Appellants attempt to couch it differently to fit their legal argument, the language of the MOU plainly and unambiguously granted authority for major decisions to be made by two of the three Members.

Capital River purchased two parcels of real property in the District of Columbia on October 27, 2017 for $1.39 Million ("the Property").[20] On April 1, 2019, Mr. Ibiezugbe and Mr. Falkner (two of the three members of Capital River, along with Ms. Liu) granted a Deed of Trust and Security Agreement, Assignment of Leases and Rents to Trustees Jason A. Pardo and/or Russell S. Drazin (the "RA DOT"), securing the repayment of two Notes in the total principal sum of $499,000 by the Property, from beneficiaries/lenders Harry Roupas and Christopher Abod, recorded in the District of Columbia Office of the Recorder of Deeds on November 1, 2019 as Document No. 2019118174.[21]

[19] Appx. 0124 (emphasis added).
[20] The Property is located at 2318 Nicholson Street and 2322 Nicholson Street, SE, Washington, DC 20020 (Lot 819 and Lot 8 in Square 5560). Appx. 0006; Appx. 0038.
[21] Appx. 0044.

On November 5, 2019, Mr. Ibiezugbe and Mr. Falkner (two of the three members of Capital River, along with Ms. Liu) granted a Second Deed of Trust (the "BCJCL DOT") to George Leroy Moran, as trustee, securing the repayment of a Promissory Note in the total principal sum of $375,000 by the Property from beneficiary/lender BCJCL, LLC, recorded in the District of Columbia Office of the Recorder of Deeds on November 7, 2019 as Document No. 2019121356.[22]

The RA DOT and the BCJCL DOT were executed, authorized, and granted by Mr. Ibiezugbe and Mr. Falkner, consistent with their authority under the Capital River Operating Agreement and MOU.[23]

Nevertheless, on January 29, 2022, Capital River and Ms. Liu (by her alleged attorney in fact, Yu-Dee Chang),[24] brought an action in the Superior Court against Mr. Abod, Mr. Roupas, and BCJCL, as well as Premium Title.[25] Appellants did not sue the two people they claim defrauded them—Mr. Ibiezugbe and Mr. Falkner.

In the trial court, Appellants pled four causes of action against Mr. Abod, Mr. Roupas, and BCJCL: Count I: Declaratory Judgment to Quiet Title;

[22] Appx. 0086.
[23] Appx. 0081; Appx. 0101.
[24] Appx. 0024.
[25] Appx. 0001–24.

Count III: Tortious Interference with Business Relations; Count IV: Slander of Title; and Count V: Civil Conspiracy. All four claims were based on the same theory—that Mr. Ibiezugbe and Mr. Falkner committed a fraud against Capital River and Ms. Liu; that Mr. Abod, Mr. Roupas, and BCJCL should have somehow known about or suspected the fraud; and that the DOTs should be invalidated.

On March 7, 2022, Mr. Abod and Mr. Roupas moved to dismiss all of the claims against them[26] and, on March 10, 2022, BCJCL also moved to dismiss all of the claims against it.[27] On April 21, 2022, the Superior Court granted the Motions to Dismiss and dismissed Counts I, III, IV, and V of the Complaint.[28]

Appellants' inaccurate description of the MOU did not escape the attention of the trial court, which (upon review of the document) concluded that it granted Mr. Ibiezugbe and Mr. Falkner actual authority:

> Despite repeatedly referencing the document, Plaintiffs do not provide a copy of the MOU with their complaint. Because of this, Defendants attached a copy of the MOU to their Motions to Dismiss. . . .
>
> Upon review of the MOU, the Court finds that Plaintiffs' recitation of the MOU and the actual

[26] Appx. 0105–25.
[27] Appx. 0126–46.
[28] Appx. 0218–24.

> contents of the MOU vary. Specifically, the MOU did not require "a 66% majority" for all decisions. Rather, "all major decisions and choices…shall be made by a two-third majority vote of the members, each of whom shall have one vote for each major decision." MOU ¶ 10. Tellingly, after production of the MOU, Plaintiffs alternatively suggest that "the MOU language…is at a minimum ambiguous [as] the parties clearly did not intend for Ibiezugbe and/or Falkner to be able to act on major decisions involving the Property without Ms. Liu's authorization." Pl. Opp'n to BCJCL Mot. to Dismiss at 9. The Court disagrees. The MOU authority is clear and unambiguous and provided Ibiezugbe and Falkner with actual authority to make "major decisions and choices regarding the Property" with a two-third majority vote of the Members, which would include borrowing and encumbering the Property with the First and Second Deeds of Trust.[29]

The Court further concluded that this actual authority supported the DOTs irrespective of whether Mr. Ibiezugbe and Mr. Falkner allegedly submitted an altered operating agreement, explaining:

> Moreover, that Ibiezugbe and Falkner may have secured the First and Second Deeds of Trust through the use of a fraudulently altered Operating Agreement, as alleged in the complaint, does not automatically void the First and Second Deeds of Trust because Ibiezugbe and Falkner had the actual authority to enter into these transactions on behalf of Capital River pursuant to the plain language of the MOU. Thus, Capital River is responsible for

[29] Appx. 0220–21.

> Ibiezugbe and Falkner's agreements with Defendants. . . .[30]

The Superior Court's decision was correct as to both issues. The MOU granted Mr. Ibiezugbe and Mr. Falkner actual authority to enter into the loan transactions and grant the DOTs at issue; therefore, the DOTs are valid and enforceable. Appellants' allegation that Mr. Ibiezugbe and Mr. Falkner presented an altered operating agreement does not change this reality. For the reasons explained below, the Superior Court's decision should be affirmed.

IV. STANDARD OF REVIEW

"As a motion to dismiss a complaint 'presents questions of law, [this Court's] standard of review . . . is de novo.'" *Scott v. FedChoice Fed. Credit Union*, 274 A.3d 318, 322 (D.C. 2022) (citing to *Johnson-El v. District of Columbia*, 579 A.2d 163, 166 (D.C. 1990)). "The only issue on review of a dismissal made pursuant to Rule 12(b)(6) is the legal sufficiency of the complaint." *Scott v. FedChoice Fed. Credit Union*, 274 A.3d 318, 322 (D.C. 2022). "A complaint should be dismissed under Rule 12(b)(6) if it does not satisfy the pleading standard in Rule 8(a)." *Potomac Dev. Corp. v. D.C.*, 28 A.3d 531, 543 (D.C. 2011).[31] Dismissal is appropriate "where the complaint

[30] Appx. 0221–22.

[31] In *Potomac Dev. Corp.*, 28 A.3d at 544, n.4, this Court adopted the 12(b)(6) standards articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

fails to allege the elements of a legally viable claim." *Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015).

As set forth below, even if Appellants' allegations were accepted as true, Appellants' cause of action to quiet title to the Property and to void the DOTs (Count I of Appellants' Complaint) was fatally flawed and did not state a cognizable claim against Appellees because—pursuant to the plain language of the Operating Agreement,[32] as supplemented and amended by the MOU[33]—Mr. Ibiezugbe and Mr. Falkner had actual authority to execute and grant the deeds of trust at issue. Therefore, there was no basis to "quiet title" to the Property as to the deeds of trust, which were unquestionably obtained with actual authority of Capital River.

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[32] Appx. 0026.

[33] Appx. 0123. Appellants misstated the contents of the MOU in their Complaint (Appx. 0011–12: "three LLC members each had a vote equivalent to their percentage ownership in the LLC and a 66% majority was required for all decisions") and—despite repeatedly referencing the document (Appx. 0006)—did not attach it to their Complaint. Still, a motion to dismiss pursuant to Rule 12(b)(6) may rely upon documents that are referred to in the complaint. *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1025 (D.C. 2007) ("Documents that a defendant attached to a motion to dismiss are considered part of the pleadings if they are referred to in plaintiff's complaint and are central to her claim."); *Oparaugo v. Watts*, 884 A.2d 63, 76 n.10 (D.C. 2005) (on motion to dismiss, court may consider documents that "were referenced in the complaint"). The MOU was central to Appellants' cause of action to void the DOTs, and was properly considered by the trial court on the Motions to Dismiss.

Appellants' other claims against Appellees for Tortious Interference with Business Relations (Count III), Slander of Title (Count IV), and Civil Conspiracy (Count V) fail for the same reason. Simply put, Mr. Falkner and Mr. Ibiezugbe collectively and unambiguously possessed actual authority to grant the deeds of trust at issue based on Capital River's own governing documents, and Appellants' repeated and irrelevant protestations of "forgery" and "fraud" do not change the actual authority possessed by Mr. Falkner and Mr. Ibiezugbe, as properly determined by the trial court. For these reasons, Counts I, III, IV and V of the Complaint were properly dismissed against Appellees and the Order should be affirmed.

V. ARGUMENT

A. An Allegedly Altered Operating Agreement Provides no Basis to Void the DOTs.

Appellants argue repeatedly (at least twenty times in their brief, and frequently in bold font) that Mr. Abod, Mr. Roupas, and BCJCL granted the loans at issue based on an allegedly "forged and fraudulent" operating agreement, and therefore the DOTs are void *ab initio*. This argument—the crux of Appellants' case—is factually unsupported and legally wrong.

Factually, there is no forged operating agreement in the record and the description of its contents is made "[u]pon information and belief."[34]

Appellants' focus on an allegedly altered operating agreement distracts from the controlling issue in this appeal—the fact that Mr. Falkner and Mr. Ibiezugbe had actual authority to execute and grant the DOTs on behalf of Capital River pursuant to the terms of the real Operating Agreement and MOU, which Ms. Liu voluntarily executed and agreed would govern the operations of Capital River. This issue is addressed in detail in Section B, below. As the Superior Court correctly held, however, even if Appellants' claim of a forged and fraudulent operating agreement is assumed to be true, it would not affect the validity of the DOTs.

As a matter of law, if the DOTs themselves were forged, they would be incapable of conveying any interest in the Property to Appellees and would likely be held void *ab initio*. *See McNairy v. Baxter*, 320 B.R. 30, 39 (Bankr. D.D.C. 2004) ("[I]f the Limited Power of Attorney was a forgery, the deed of trust executed pursuant to the Limited Power of Attorney is ineffective."); *see also M.M. & G., Inc., v. Jackson*, 612 A.2d 186, 191 (D.C. 1992) ("It is well settled that a forged deed cannot validly transfer property and that even a bona fide purchaser takes nothing from that conveyance."). However, the DOTs

[34] Appx. 0003.

were not forged. Appellants do not even allege that the DOTs were forged. Rather, their claim is that an operating agreement was allegedly altered. From this assertion, they leap to the conclusion that the DOTs should be declared void. The law does not support this argument for two reasons.

First, even if the operating agreement was altered (as Appellants allege), that fact would not render the DOTs void. The DOTs remain duly authorized and recorded conveyances of real property.[35] This case is similar to *Pitman Place Dev., LLC v. Howard Invs., LLC*, 330 S.W.3d 519 (Mo. Ct. App. 2010), in which the development company Pitman Place Development, LLC ("Pittman") borrowed $525,000 (secured by a deed of trust) from lender Howard Investments, LLC, through the use of a fraudulently altered operating agreement, which contained a false provision allowing Matt Burghoff (a single member of the LLC) to borrow $750,000 on behalf of Pittman. *Id*. at

[35] In their Brief (at 8), Appellants misstate the conclusions of the trial court by alleging the trial court held that, "because Ibiezugbe and Falkner purportedly had actual authority to encumber the Property, it did not matter that they submitted a fraudulent operating agreement in connection with securing the Deeds of Trust." In fact, the trial court wrote that, merely because "Ibiezugbe and Falkner may have secured the First and Second Deeds of Trust through the use of a fraudulently altered Operating Agreement, as alleged in the complaint, does not automatically void the First and Second Deeds of Trust." (Appx. 0221) (emphasis added). The trial court made no finding that an altered operating agreement existed or was used in the settlements of the DOTs. This is one more example of the Appellants bending the record to suit their preferred version of events.

524. However, in *Pitman Place*, the Missouri Court of Appeals did not "void" the Howard Investments deed of trust based on the fraudulently altered operating agreement; rather, the court conducted a review of whether Burghoff had actual or apparent authority to obtain the loan on behalf of Pittman—ultimately concluding that the deed of trust was enforceable because "Burghoff had apparent authority to enter into transactions such as the Rockwood Bank loan transaction under the Operating Agreement," even though all parties to the transaction agreed that Burghoff fraudulently altered the Pittman operating agreement to obtain the loan. *Id*. at 527.[36] Likewise, in this case, Mr. Ibiezugbe and Mr. Falkner had actual authority to enter into the transactions at issue. This remains true irrespective of whether they created an altered operating agreement, as Appellants claim.

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[36] *Littleton Constr. Ltd. v. Huber Constr., Inc.*, 27 N.Y.3d 1081 (2016) is similarly analogous. There, Littleton (a construction company) and another construction company (Huber) entered into a joint venture (controlled by an operating agreement) for a series of renovation projects in a public school district. At trial, the court held that the purported operating agreement between Littleton and Huber was forged. In so finding, the court invalidated the operating agreement and held that "[w]ith the operating agreement invalidated, the governing contract was the parties' memorandum of understanding, which was indisputably signed by both parties. *Id*. at 1083 (emphasis added). *See also Scotch Bonnett v. Matthews*, 417 Md. 570, 588 (2011) ("The use of a deed that is neither a forged document, nor signed with a forged signature, but which derives its 'transactional vitality' from forged corporate articles of amendment, does not render a conveyance of land void *ab initio*; rather, good title is transferred to bona fide purchasers for value without notice.").

In their Brief, Appellants principally rely on a single District of Columbia case to support their position that the DOTs would be void in the event the Operating Agreement and/or consent of the members[37] had been altered as alleged: *Smith v. Wells Fargo Bank*, 991 A.2d 20 (D.C. 2010). However, *Smith* is entirely inapposite and further supports the trial court's dismissal of the Complaint.

In *Smith*, Willie Smith owned real property located at 3061 Vista Street, NE. *Id.* at 32. On November 4, 2005, Willie Smith allegedly executed a durable power of attorney naming his daughter, Mary A. Smith, as his attorney in fact, granting her the power to "sell, lease, grant, encumber, release or otherwise convey any interest in my real property and to execute deeds and all other instruments on my behalf." *Id.* On November 15, 2005, Mary Smith executed a deed transferring the property from "Mary Smith, agent for Willie Smith" to herself for the consideration of ten dollars. One day later, Willie Smith died without a will. *Id.*

[37] In their Brief (at 5, n.2), Appellants state ("upon information and belief") that a "consent of the members" was also forged or altered while—at the same time—alleging that Premium Title breached their standard of care by "failing to obtain a resolution from all members." Appellants' Brief at 25. As they do in their Complaint, Appellants have "loaded up" their Brief with as many disparate and contradictory claims as possible in the hopes that one contention "sticks" in this case.

On November 3, 2006, Mary Smith obtained a mortgage loan on the property in the amount of $220,000 upon execution of a deed of trust that was subsequently acquired by Wells Fargo. *Id.* at 23. On June 8, 2007, the other surviving children of Willie Smith brought a complaint to quiet title against Mary Smith and Wells Fargo, contending the POA did not grant Mary Smith the power to convey the property to herself as a gift, and alleging the signature on the POA was a forgery. *Id.* On appeal, the Court of Appeals held that—while the general power-to-convey provisions of the POA did not authorize Mary Smith to convey the property to herself—the language in the POA gave Ms. Smith apparent authority to transfer the property to herself as a gift, and held that Wells Fargo was to be protected as a bona fide purchaser. *Id.*

Simply stated, the *Smith* case has nothing to do with operating agreements; the case is generally cited for the proposition that a deed (or deed of trust) will be void if obtained by a forged power of attorney,[38] however,

[38] In the District of Columbia, forged powers of attorney cannot convey any interest in real property because, under well-established real property law, a "general or specific power of attorney executed by a person authorizing an attorney-in-fact to sell, grant, or release any interest in real property shall be executed in the same manner as a deed and shall be recorded with or prior to the deed executed pursuant to the power of attorney." D.C. Code § 42-101(a); *see also McNairy v. Baxter*, 320 B.R. 30, 34, 39 (Bankr. D.D.C. 2004). Although settlement companies often review operating agreements as part of the closing of a loan, there is no similar requirement in the District of Columbia that operating agreements be executed or recorded in order to grant

even facially defective powers of attorney can be sufficient to convey real property depending on the authority actually or apparently provided to the agent.

Appellants' Brief (at 14) also cites to *Levi v. Commonw. Land Title Ins.*, 2013 WL 5708402 (S.D.N.Y., Oct. 21, 2013) for the incorrect proposition that a "mortgage was unenforceable because it was obtained using a forged/fraudulent LLC operating agreement that falsely represented defendant was 60% owner." In *Levi,* a property located at 2141 Lenox Avenue in New York City was conveyed in 2008 from Henry Vargas to Peter Skylass through use of an operating agreement that showed Mr. Vargas was a 60% owner of the company (2141 MD) that owned the Lenox Avenue Property, when—in fact—Mr. Vargas was entirely unaffiliated with 2141 MD and had no interest in the company or the property. The United States District Court for the Southern District of New York (in a prior opinion) held that "because Vargas had no authority to bind 2141 MD, the mortgage in which he purported to do so was unenforceable." *Id*. at *3. However, contrary to Appellants' assertions, the deed of trust at issue in *Levi* was not voided due to a forged operating

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or record a deed, or to validly convey an interest in real property. Therefore, there is no basis for Appellants' conclusion that the mere presentation of an altered operating agreement to a settlement company as part of a loan closing transaction would, by itself, void a resulting deed of trust.

agreement, it was voided based on the lack of actual authority of Mr. Vargas to convey the property.

Here, as in *Pitman Place*, merely because Mr. Ibiezugbe and Mr. Falkner may have presented an allegedly altered operating agreement and/or consent of the members for Capital River as part of the settlement of the DOTs provides no independent basis to "void" the DOTs. Rather, the relevant question as properly recognized by the trial court was whether, pursuant to the plain terms of the MOU, Mr. Ibiezugbe and Mr. Falkner had actual authority to obtain the DOTs on behalf of Capital River.[39] Because the plain and unambiguous terms of the MOU provided Mr. Ibiezugbe and Mr. Falkner with the requisite actual authority, there is no basis to declare that the DOTs are void, and the trial court's dismissal of Count I of the Complaint should be affirmed.

Second, even setting aside the foregoing, Appellants' argument is incorrect because an allegedly altered operating agreement would not even constitute forgery. "Forgery is defined as the signing of the name of another

[39] In their Brief (at 4, 5, 9, 18-20, 22) Appellants repeatedly assert that the DOTs secured "personal loans" made to Mr. Ibiezugbe and Mr. Falkner. This bald representation is unsupported by the plain terms of the DOTs, which were granted and executed on behalf of Capital River. For the avoidance of any doubt, however, two promissory notes at issue (Appx. 0195; Appx. 0202) were both executed by Capital River and represented loans made to the LLC and not to Mr. Ibiezugbe and Mr. Falkner personally.

person or organization with the intent to deceive but does not mean a signature that consists in whole or in part of one's own name signed with or without authority in any capacity for any purpose." Depositors forgery and other crime coverages, 3 Casualty Insurance Claims § 48:16 (4th ed.) (emphasis added); *see also United States v. Gilbert*, 433 F.2d 1172, 1173 (D.C. Cir. 1970) (holding that when "a defendant is charged with forging the name of a real or existing person, lack of authority is an essential part of the crime of forgery . . . to establish falsity in a forgery charge it must be made to appear not only that the person whose name is signed to the instrument did not sign it, but also it must be established by competent evidence that the name was signed by defendant without authority") (internal quotation omitted); Forgery or Alteration, 11A Couch on Ins. § 167:49 ("Forgery is generally understood to mean the signing of the name of another person or organization with intent to deceive. A signature consisting of one's own name, even if signed without authority, cannot constitute forgery as that term is used in a financial institution bond."). There is no argument that Mr. Ibiezugbe or Mr. Falkner signed Ms. Liu's (or anyone else's) name to the alleged operating agreement. The allegation, rather, is that they presented an altered agreement that did not include Ms. Liu as a member. This would not be a forgery, and therefore the case law addressing forged documents on which Appellants rely is irrelevant.

For this additional, reason, the Superior Court's order dismissing Count I of the Complaint should be affirmed.

B. Mr. Ibiezugbe and Mr. Falkner Had Actual Authority to Grant the DOTs.

1. The MOU Unambiguously Provides that Mr. Ibiezugbe and Mr. Falkner had Actual Authority to Execute and Grant the DOTs.

Here, the plain language of the MOU confirms that Mr. Ibiezugbe and Mr. Falkner had actual authority to make "major decisions and choices regarding the Property," which would include encumbering the Property with the DOTs.

The operating agreement is to be interpreted by the Court as a contract. *Parker v. United States Tr. Co.*, 30 A.3d 147, 149 (D.C. 2011). As such, it must be interpreted in the same manner as any other contract, limiting the analysis to "plain meaning of the contractual terms if they are otherwise unambiguous." *2301 M St. Coop. Ass'n v. Chromium LLC*, 209 A.3d 82, 87 (D.C. 2019). "The proper interpretation of a contract term is a question of law, which this court reviews *de novo*." *BSA 77 P St. LLC v. Hawkins*, 983 A.2d 988, 993 (D.C. 2009).

In their Brief (at 21), Appellants contend that, "at a minimum, the MOU language is ambiguous" and that "Capital River and Ms. Liu should be entitled to present evidence as to the Capital River members' understanding and

intention of the MOU"—a contention Appellants first raised in their Oppositions[40] to the Motions to Dismiss in the trial court.

However, even if this argument is considered, a contract is ambiguous "[i]f there is more than one interpretation that a reasonable person could ascribe to the contract, while viewing the contract in context of the circumstances surrounding its making." *Gryce v. Lavine*, 675 A.2d 67, 69 (D.C. 1996). "A contract is not rendered ambiguous merely because the parties disagree over its proper interpretation." *Id.* at 69 (citing *Holland v. Hannan*, 456 A.2d 807, 815 (D.C. 1983)). Rather, a contract is ambiguous "when, and only when, it is, or the provisions in controversy are, reasonably or fairly susceptible of different constructions or interpretations, or of two or more different meanings." *Holland*, 456 A.2d at 815 (quoting *Burbridge v. Howard Univ.*, 305 A.2d 245, 247 (D.C. 1973)).[41]

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[40] Appx. 0154; Appx. 0174.

[41] Virginia law provides for a similar analysis (in the event the Operating Agreement and MOU are construed under Virginia law). *See Westmoreland-LG&E Partners v. Virginia Elec. & Power Co.*, 486 S.E.2d 289, 294 (1997) (interpreting an operating agreement as a contract and holding that "[p]arol evidence of prior or contemporaneous oral negotiations are generally inadmissible to alter, contradict, or explain the terms of a written instrument provided the document is complete, unambiguous, and unconditional . . . Contracts are not rendered ambiguous merely because the parties or their attorneys disagree upon the meaning of the language employed to express the agreement. Even though an agreement may have been drawn unartfully, the court must construe the language as written if its parts can be read together without conflict." (internal citation and quotation omitted).

Here, the MOU allows "[a]ll major decisions and choices during the Investment Period" to be "made by a two-third majority vote of the Members, each of whom shall have one vote for each major decision required . . ."[42] Moreover, the plain language of paragraph 11 of the MOU states that "Ibiezugbe shall be instructed to carry out the final decisions of the Members."[43] Appellants contend that such language is ambiguous because "there is no definition of what constitutes a 'major decision' or whether such decisions were limited to 'investments' in the Property (indeed, Ibiezugbe and Falkner were tasked with obtaining a building permit and potential construction on the Property)."[44] However, as this Court has previously stated, courts should "honor the intentions of the parties as reflected in the settled usage of the terms they accepted in the contract." *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 1170 (D.C. 2004) (noting that the Court "will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity.").

Further, Appellants provide no support for their contention that encumbering the Property would not constitute a "major decision" concerning

[42] Appx. 0124 (emphasis added).
[43] Appx. 0124.
[44] Appellants' Brief at 21.

the Property.[45] There is ample evidence from the plain language of the MOU showing Mr. Ibiezugbe and Mr. Falkner would need to obtain construction financing, and no indication that such construction financing would not be secured by Capital River's interest in the Property. For example, the MOU provided that Ms. Liu was to contribute the initial purchase price for the Property, along with an additional $182,520.06 to be set aside as "Planning and Permitting Funds . . . to be used for architectural designs and drawings, engineering studies, legal fees and permitting costs . . ."[46] On the other hand, Mr. Ibiezugbe and Mr. Falkner would "be responsible for: 1) all costs associated with the formation of the Company; 2) timely payment of property taxes and insurance on the Property; 3) all maintenance costs of the property (if any); and 4) all expenses, costs and fees insured after the exhaustion of the Planning and Permitting funds"[47] and would also be responsible for "all actions necessary to hire, and fire, architects, engineers, lawyers and related professions of their choosing to advance and complete the Project." Further,

[45] Appellants do not suggest—nor could they—that granting a deed of trust on behalf of Capital River would be considered a "minor decision."
[46] Appx. 0123.
[47] Appx. 0123.

Mr. Ibiezugbe and Mr. Falkner were entitled to charge Capital River for "hard costs associated with the Project for expenses actually incurred."[48]

These plain terms of the MOU do not run counter—and in fact support—the ability of Mr. Ibiezugbe and Mr. Falkner to obtain financing, secured by the Property, to satisfy the above-noted financial obligations, which would be a method for Capital River to advance Mr. Ibiezugbe and Mr. Falkner for "hard costs associated with the Project for expenses actually incurred."

2. The Purported Extrinsic Evidence Proffered by Appellants Violates the Parol Evidence Rule and was Properly Disregarded by the Trial Court.

In their Brief, Appellants further seek to muddy the waters and distract from the plain terms of the MOU by contending that—after the DOTs were granted by Capital River pursuant to the actual authority provided by the MOU—Mr. Falkner and Mr. Ibiezugbe executed a purported "Amendment to the Operating Agreement and MOU"[49] dated November 9, 2020, "which

[48] Appx. 0124. Even Appellants acknowledge in their Brief (at 4) that "Ibiezugbe and Falkner were in charge of obtaining the building permit and completing development of the Property." (emphasis added).

[49] The trial court properly did not consider Appellants' contentions that Mr. Ibiezugbe and Mr. Falkner "confirmed their violation of the Operating Agreement and MOU in conversations on November 9, 2020, November 27, 2020, and January 21, 2021." (Appx. 0156; Appx. 0175).

stated that they exceeded their authority."[50] However, an amendment executed after the fact would not alter the actual authority Mr. Falkner and Mr. Ibiezugbe held at the time the DOTs were executed, nor does the purported amendment cite any other reasoning or provide any other statement beyond a conclusory acknowledgment by Mr. Falkner and Mr. Ibiezugbe of the purported breach.[51] *See 2301 M St. Coop. Ass'n v. Chromium LLC*, 209 A.3d 82, 86 (D.C. 2019) (holding that contracting parties unexpressed intent at the time contract was formed is irrelevant if the contractual terms are unambiguous).

Here, the authority provided to Mr. Ibiezugbe and Mr. Falkner in the MOU is unambiguous, and Appellants' attempts to "interpret" the plain language of the MOU with the above extrinsic "evidence" violates the parol

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[50] Appellants' Brief at 19.

[51] In their Brief at 21, Appellants ask the rhetorical questions: "[I]f Ibiezugbe and Falkner could actually encumber the Property under the terms of the real Operating Agreement and MOU, why would they create a forged and fraudulent operating agreement in connection with securing the Deeds of Trust? Why wouldn't they just submit the real Operating Agreement and MOU?" In so asking, Appellants overlook the obvious corollary question: If the MOU did not provide Mr. Ibiezugbe and Mr. Falkner with actual authority to make "major decisions" about Capital River (including granting the DOTs), then why did Ms. Liu find it necessary on November 9, 2020 to have Mr. Ibiezugbe and Mr. Falkner execute a purported amendment to the Operating Agreement and MOU that changed the powers of the members to act, including by vesting all "decision-making power" of Capital River "solely with LIU . . ."? (Appx. 0181).

evidence rule and should not be considered by this Court in determining whether Mr. Falkner and Mr. Ibiezugbe had actual authority to grant the DOTs. *See 2301 M St. Coop. Ass'n*, 209 A.3d at 86 ("We follow the parol evidence rule, which excludes extrinsic evidence to assist in contract interpretation and limits our analysis to the plain meaning of the contractual terms if they are otherwise unambiguous.") (citing *Abdelrhman v. Ackerman*, 76 A.3d 883, 888 (D.C. 2013)).

In this case—despite Appellants' attempts to suggest otherwise—the unambiguous terms of the Operating Agreement and MOU demonstrate that (1) Mr. Ibiezugbe and Mr. Falkner—who held a "two-third majority vote of the Members, each of whom shall have one vote"—had actual authority to make "major decisions and choices regarding the Property," which would include borrowing and encumbering the Property with the DOTs and (2) Mr. Ibiezugbe and Mr. Falkner exercised their actual authority as a two-third majority vote of the Members to authorize and execute the DOTs and encumber the Property as security for the loans.[52] Appellants' attempts to

[52] As noted by the Motions to Dismiss (Appx. 0117; Appx. 0138), Appellees sympathize with Appellants' contentions that "Ms. Liu had no knowledge of the First Deed of Trust or the promissory notes and did not authorize, approve, or agree to their execution" (Appx. 0008); however, such allegations are irrelevant to the issue of whether Ms. Liu provided Mr. Ibiezugbe and Mr. Falkner with actual authority to execute and grant the DOTs, and whether the

mischaracterize the actual authority of Mr. Ibiezugbe and Mr. Falkner to make "major decisions and choices regarding the Property" are inapposite to the plain language of the MOU.

C. The Superior Court Properly Granted Appellees' Motion to Dismiss.

As explained above, the DOTs are valid and enforceable, and the Superior Court was correct to dismiss Appellants' Count I for Quiet Title. For the same reasons, Appellants' tort claims against Appellees were properly dismissed.

Appellants do not address their counts for tortious interference with business relations (Count III), slander of title (Count IV), or civil conspiracy (Count V) in their Brief, other than to say that they brought suit in the Superior Court including a claim for "tortious interference, slander of title, and civil conspiracy."[53] However, the Superior Court properly dismissed the claim finding "that Ibiezugbe and Falkner had the actual authority to enter into these

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DOTs properly burden the Property. Ms. Liu may feel "wronged" by Mr. Falkner and Mr. Ibiezugbe (whom Appellants did not make parties to the underlying lawsuit)—however, if Ms. Liu did not want Mr. Falkner and Mr. Ibiezugbe to have the ability to make major decisions about the Property without notice to Ms. Liu, then Ms. Liu should not have executed an Operating Agreement and MOU providing that such major decisions could be made by a "two-third majority vote of the Members, each of whom shall have one vote for each major decision required."

[53] Appellants' Brief at 2.

transactions on behalf of Capital River."[54] Thus, Appellants had no claim in the Superior Court, and they have no claim here.

1. Count III, Tortious Interference with Business Relations, was Properly Dismissed.

Count III asserted a claim for Tortious Interference with Business Relations.[55] To prevail on a claim for tortious interference with business relations, a plaintiff must prove: "(1) existence of a valid contractual or other business relationship; (2) [the defendant's] knowledge of the relationship; (3) intentional interference with that relationship by [the defendant]; and (4) resulting damages." *Newmyer v. Sidwell Friends Sch.*, 128 A.3d 1023, 1038 (D.C. 2015) (quoting *Havilah Real Prop. Servs., LLC v. VLK, LLC*, 108 A.3d 334, 345–46 (D.C. 2015)). A defendant avoids liability for interference with business relations if his conduct was legally justified or privileged. *See NCRIC, Inc. v. Columbia Hosp. for Women Med. Ctr., Inc.*, 957 A.2d 890, 900 (D.C. 2008).

The only allegation of "interference" in the complaint is that Appellees "facilitat[ed] and allow[ed] Falkner and Ibiezugbe to take out loans for their own personal benefit and us[e] the Property as collateral to secure the loans."[56]

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[54] Appx. 0222.
[55] Appx. 0020–21.
[56] Appx. 0020.

As explained above, however, under the Operating Agreement and MOU, Mr. Ibiezugbe and Mr. Falkner had actual authority to take out the loans. Appellees' "allowing" them to take out the loans could not possibly have constituted interference with the very contracts that permitted them to do so.[57]

First, in the Complaint[58], and in their Brief[59], Appellants contend that Mr. Ibiezugbe and Mr. Falkner secured the loans from Mr. Abod, Mr. Roupas, and BCJCL as "their own personal loans." This incorrect and bald representation is unsupported by the plain terms of the DOTs, which were granted and executed on behalf of Capital River. The two promissory notes at

[57] Appellants' repeated assertion that the loans were for Mr. Ibiezugbe and Mr. Falkner personally, and did not benefit Capital River, is of no moment. It is not the role of a lender to police borrowers' use of the funds. If Appellants believe the funds were misused, their remedy is to bring an action against Mr. Ibiezugbe and Mr. Falkner, which thus far they have failed to do. Even assuming Mr. Ibiezugbe and Mr. Falkner obtained the loans for improper purposes, they had actual authority to take the loans on behalf of Capital River and to encumber the property. The DOTs remain valid and enforceable and there is no basis for a claim of tortious interference.

[58] Appx. 0020.

[59] Appellants' Brief at 4, 5, 9, 18–20, 22.

issue[60] were both executed by and addressed to, Capital River. Mr. Ibiezugbe and Mr. Falkner signed the notes in their official capacity as members of Capital River. *See* DC CODE § 28:3-402(b)(1) ("If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument."). It is clear on the face of the notes that both Mr. Ibiezugbe and Mr. Falkner signed the notes on behalf of Capital River.[61]

Second, The MOU expressly grants authority to *any two members* of Capital River to make "major decisions" on behalf of the Company.[62] The court properly noted that the MOU states, "all major decisions and choices . . . shall be made by a two-third majority vote of the members, each of whom shall have one vote for each major decision."[63] This grants Mr. Falkner and Mr. Ibiezugbe actual authority to make "major decisions."[64] Thus, borrowing money by using the Property as security is a major decision that Mr. Falkner and Mr. Ibiezugbe were granted authority to make by Capital River's own governing documents.

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[60] Appx. 0195, 0202.
[61] *Id.*
[62] Appx. 0124 ("All major decisions and choices during the Investment Period shall be made by a two-third majority vote of the Members, each of whom shall have one vote for each major decision required . . .").
[63] Appx. 0221.
[64] *Id.*

The trial court correctly dismissed this claim.

2. Count IV, Slander of Title, was Properly Dismissed.

Count IV is a claim for Slander of Title.[65] To prevail on such a claim, a plaintiff must prove: "(1) the communication relating to the title was false and malicious; (2) damages resulted from the publication of the statements; and (3) if, special damages are sought, the underlying damages must be pled with specificity." *Psaromatis v. English Holdings*, 944 A.2d 472, 488 n.20 (D.C. 2008). In *Psaromatis*, the appellant filed a *lis pendens* to protect his interest in a property. *Id.* The appellee claimed that the appellant attempted to slander the title by filing the *lis pendens*. *Id.* The Court determined that because the appellant was within his rights to file a *lis pendens* and because the filing was made in good faith, a claim for slander of title was without merit. *Id.* Another case, *Bloom v. Beam*, further determined that "a lis pendens 'does not contain a false statement of fact' if it merely 'accurately recites the facts of the filing of the lawsuit.'" 99 A.3d 263, 267 (D.C. 2014).

According to Appellants, the allegedly slanderous communication was the recording of the DOTs.[66] This cannot be so, since the DOTs are valid and their recording accurately put the world on notice of Appellees' liens on the

[65] Appx. 0221.
[66] Appx. 0021.

Property. Appellants allege Appellees made a false communication relating to title by the "gratuitous and bad faith recording" of the DOTs and thus conclude that Appellees slandered title to the Property.[67] The Complaint fails to allege any other false or malicious communications by Appellees relating to title to the Property. Because Mr. Falkner and Mr. Ibiezugbe had actual authority to enter into the DOTs on behalf of Capital River, the recording of the DOTs were not false, nor malicious. It is an accurate communication regarding title to the Property.

Similarly, there is no allegation that the terms of the DOTs are false or inaccurate. Appellants only claim that Mr. Falkner and Mr. Ibiezugbe "submitted a forged Operating Agreement in connection with securing the First and Second Deeds of Trust."[68] Appellants' issue is with the alleged "forged" operating agreement, not a "forged" deed of trust. Considering the DOTs do not contain any false statements of fact, the filing of the document itself cannot be the basis of a slander to title claim. *See Bloom*, 99 A.3d at 267.

Further, when a slander of title claim is based on recordation of documents related to real property, the filing of such documents in good faith is not false and malicious within the context of slander of title. *See Kemp v.*

[67] Appx. 0021.
[68] Appx. 0219.

Eiland, 139 F. Supp. 3d 329, 347 (D.D.C. 2015) (citing *Psaromatis,* 944 A.2d at 488 n.20). Appellees recordation of the DOTs, which was based on the actual authority of Mr. Falkner and Mr. Ibiezugbe, and which was otherwise done in good faith, cannot support a claim of slander of title.

There has been no slander of title. The trial court's dismissal of this claim was correct.

3. Count V, Civil Conspiracy, was Properly Dismissed.

In Count V, Appellants plead a claim for Civil Conspiracy. To establish a claim for civil conspiracy, a plaintiff must prove: "(1) an agreement between two or more persons (2) to participate in an unlawful act, and (3) injury caused by an unlawful overt act performed by one of parties to the agreement, and in furtherance of the common scheme." *Hill v. Medlantic Health Care Grp.*, 933 A.2d 314, 334 (D.C. 2007).

Here, there was no "unlawful act." Appellees acted lawfully in granting loans to Capital River in exchange for DOTs to the Property, as agreed to by Mr. Ibiezugbe and Mr. Falkner, who together had actual authority to enter into this transaction on behalf of the entity.

As explained above, there was no tortious interference with Appellants' business relationship or slander of title as to the Property. Appellees did not participate in any "unlawful act" related to the DOTs, but rather, executed

their due authority to make "major decisions" on behalf of Capital River. Therefore, there cannot be a claim for civil conspiracy.

The Court properly dismissed this claim.

VI. CONCLUSION

The trial court properly granted Appellees' Motions to Dismiss because Counts I, III, IV and V of the Complaint failed to state a claim for which relief can be granted against Appellees. Pursuant to the plain and unambiguous language of the Capital River Operating Agreement and MOU, Napoleon Ibiezugbe and Kevin Falkner had actual authority to authorize, execute and grant the DOTs. Therefore, there is no basis to "quiet title" to the Property as to the DOTs, which were unquestionably obtained with actual authority of Capital River. Counts III, IV and V were properly dismissed for the same reason.

WHEREFORE, Appellees Harry Roupas, Christopher Abod and BCJCL, LLC respectfully request that this Court affirm the trial court's Order dated April 21, 2022, granting Appellees' Motions to Dismiss Counts I, III, IV and V of Appellants' Complaint, and that the Appellees be awarded costs.

December 28, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief of Appellees Harry Roupas, Christopher Abod and BCJCL, LLC was electronically served on this 28th day of December, 2022 upon:

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REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ David H. Cox
Signature

22-cv-0548
Case Number(s)

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