Clerk of the Court
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No. 22-CV-0548

IN THE
DISTRICT OF COLUMBIA COURT OF APPEALS

CAPITAL RIVER ENTERPRISES, LLC, ET AL.,
Appellant,

v.

CHRISTOPHER ABOD ET AL., *Appellees.*

Appeal from the D.C. Superior Court

Case No. 2022 CA 000258 R(RP)

(The Honorable Hiram E. Puig-Lugo)

BRIEF OF APPELLEE PREMIUM TITLE & ESCROW, LLC

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DECEMBER 20, 2022

CERTIFICATE REQUIRED BY RULE 28(A)(2)

The following is a list of all parties and their counsel:

Parties	Counsel
Capital River Enterprises, LLC; Kuei-Yin Chang Liu	Benjamin G. Chew, Esq. Andrew C. Crawford, Esq. Brian West, Esq.
Christopher Abod; Harry Roupas	David H. Cox, Esq. Nathan J. Bresee, Esq. Michael J. Bramnick, Esq. Joseph M. Creed, Esq.
Premium Title & Escrow, LLC	Richard W. Luchs, Esq. Gwynne L. Booth, Esq. Spencer B. Ritchie, Esq.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Premium Title & Escrow, LLC is a District of Columbia limited liability company that is not owned by any parent corporation that is a publicly held corporation, nor is any owner of Premium Title & Escrow, LLC a publicly held corporation. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

December 20, 2022

/s/ Spencer B. Ritchie
Spencer B. Ritchie
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STATEMENT ON APPELLATE JURISDICTION

Premium Title & Escrow, LLC ("Premium Title") asserts that the instant appeal is taken from a final order that disposes of all parties' claims, thereby establishing this Honorable Court's jurisdiction.

ISSUES FOR REVIEW

1. Did the Superior Court err in granting the Motions to Dismiss of Mr. Abod, Mr. Roupas, and BCJCL, LLC and the Motion for Summary Judgment of Premium Title & Escrow, LLC, based on a finding that Capital River Enterprises, LLC, and Kuei-Yin Chang Liu (the "Capital River Parties") had expressly authorized Napoleon Ibiezugbe and Kevin Falkner to make major decisions regarding the Subject Property?

2. Did the Superior Court err in granting Premium Title's Motion for Summary Judgment as to the portion of the Complaint alleging negligence?

I. STATEMENT OF THE CASE

This case presents a situation in which an investor made a business decision to entrust Napoleon Ibiezugbe and Kevin Falkner to make decisions regarding an investment and allegedly suffered a loss. While regrettable, Capital River Enterprises, LLC and Kuei-Yin Chang Liu's (collectively, the "Capital River Parties") cannot be permitted to now shift the loss to a third party rather than pursue those individuals who made the decisions regarding the property. The Capital River Parties' alleged injuries

are attributable to their own decisions and those of Ibiezugbe and Falkner, not the Appellees.

Specifically, this case concerns the decision by the Capital River Parties to entrust Napoleon Ibiezugbe and Kevin Falkner with the ability to make major decisions regarding two parcels of real property located at 2318 and 2332 Nicholson Street, S.E., Washington, D.C. 20009 (the "Property") pursuant to a Memorandum of Understanding ("MOU"). JA 0001-2. The Capital River Parties do not dispute the authenticity of the MOU and have not done so at any stage in the proceedings. *See* Appellants' Br. at 3 (citing JA 0003; 0007; 0123). Ibiezugbe and Falkner encumbered the property with to deeds of trust held by Mr. Abod, Mr. Roupas, and BCJCL, LLC ("BCJCL") pursuant to transactions in which Premium Title & Escrow, LLC ("Premium Title") served as settlement and escrow agent. The Capital River Parties sued Messrs. Abod and Roupas, BCJCL, and Premium Title to quiet title and for negligence, tortious interference, slander of title, and civil conspiracy. *See id*. The Capital River Parties did not attach the Memorandum of Understanding to their Complaint. *See id.*

II. FACTS

A. BACKGROUND

The instant appeal arises from real estate transactions related to two parcels of land located at 2318 and 2322 Nicholson Street, S.E., Washington, D.C. 20009

(collectively, "the Property."). JA 0002. Capital River Enterprises, LLC ("Capital River") was formed for the purpose of purchasing the Property, obtaining a building permit, and settling the property." JA 0006. Plaintiff Ms. Kuei-Yin Chang Liu, Mr. Napoleon Ibiezugbe ("Ibiezugbe") and Mr. Kevin Falkner ("Falkner") executed the Capital River Operating Agreement and Memorandum of Understanding. *Id.* The MOU provides that "all major decisions and choices . . . shall be made by a two-thirds majority vote of the members, each of whom shall have one vote for every major decision." MOU at ¶ 10 (JA 0124).

On or about April 1, 2019, Ibiezugbe and Falkner entered into a Deed of Trust and Security Agreement, Assignment of Leases and Rents ("First Deed of Trust"). JA 0008. On or about November 5, 2019, Ibiezugbe and Falkner entered into a Second Deed of Trust for the Property. *Id.* Premium Title served as the escrow/settlement agent on both transactions. JA 0010. The Capital River Parties allege that Ibiezugbe and Falkner created a forged operating agreement for Capital River. *Id.* Plaintiffs further allege that when Ibiezugbe and Falkner submitted this forged agreement in connection with obtaining the First and Second Deeds of Trust, Premium Title should have known (and did know) that fraud was taking place based on having served as the settlement/escrow agent for Capital River's original purchase of the Property. *Id.* Accordingly, the Capital River Parties claim that Premium Title's actions are directly responsible for the encumbrances on the Property. JA 0011.

B. PROCEDURAL HISTORY

The Capital River Parties brought suit to quiet title of the Property on the basis that the Deeds of Trust were void because they were obtained through a forged operating agreement and that Ibiezugbe and Falkner had exceeded their authority. JA 00018. Notably, the Capital River Parties did not attach the Memorandum of Understanding to their Complaint and only addressed the matter once it was raised by Abod, Roupas, and BCJCL on the Motions to Dismiss. *See* JA 0115.

On April 21, 2022, the Superior Court entered an Order granting Defendants Roupas, Abod, and BCJCL's Motions to Dismiss. In its Order, the Court specifically held that "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." JA 0221. Further, the Court held that because Ibiezugbe and Falkner had actual authority to enter into these transactions on behalf of Capital River, they could not pursue a claim for Tortious Interference with Business Relations or Slander of Title against Roupas, Abod, and BCJCL, LLC. JA 0222-3. Finally, the Superior Court noted that because there was no underlying tort, a related claim for civil conspiracy could not survive a Motion to Dismiss. *Id.* at 6.

On May 25, 2022, Premium Title moved for Summary Judgment on the basis of the Court's findings in its Order of April 21, 2022. JA 0227-30. The Superior Court granted the Motion on the same grounds. JA 0282-88. This appeal followed. On July 26, 2022, the Ms. Liu and Benning McLean Holdings, LLC, filed a complaint against the same defendants as this matter for another, similar transaction, involving a similar memorandum of understanding. *See Benning McLean Holdings, LLC v. Abod et al.*, 2022 CA 003153 R(RP). In that matter, as in this matter, Plaintiffs did not attach the applicable memorandum of understanding to their complaint. *See id.*

III. SUMMARY OF THE ARGUMENT

The Capital River Parties chose to grant the power to make major decisions regarding the Property to Ibiezugbe and Falkner. The choice to do so was a business decision. While that business decision allegedly resulted in a loss, the Capital River Parties cannot now be permitted to shift the loss to a third party. The Capital River Parties, understanding their clear grant of authority to Ibiezugbe and Falkner, failed to attach the Memorandum of Understanding to their Complaint and have only addressed the issue of express authority in response to arguments by Defendants. In so doing, the Capital River Parties have not disputed the authenticity of the Memorandum of Understanding.

The Superior Court correctly relied on the plain language of the Memorandum of Understanding and its express grant of authority to Ibiezugbe and Falkner to make

major decisions regarding the Property. Because Ibiezugbe and Falkner had the actual authority to encumber the property with the deeds of trust, there was no "fraud" perpetrated against the Capital River Parties. Despite the Capital River Parties' obfuscation, the Memorandum of Understanding clearly illustrates the powers granted to the members of Capital River Enterprises, LLC, and neither Ibiezugbe nor Falkner exceeded it. In arriving at its decision, the Superior Court correctly applied controlling case law and the plain terms of the contract.

There is no claim for negligence against Premium Title because the Capital River Parties' damages are caused by their own acts and omissions and not those of Premium Title. Principally, the alleged harm is a result of the Capital River Parties' business decision to entrust Ibiezugbe and Falkner with major decisions regarding the property.

The Capital River Parties have articulated no basis to void the deeds of trust. The Capital River Parties have stated no reason to overlook the plain language of the Memorandum of Understanding in favor of hearsay statements. Nor have the Capital River Parties attempts to undermine the clear language of the MOU created an ambiguity. The Superior Court's grant of summary judgment should be affirmed.

IV. STANDARD OF REVIEW

This Court reviews the trial court's grant of summary judgment *de novo*, *Sears v. Catholic Archdiocese of Washington*, 5 A.3d 653, 657 (D.C. 2010), and must determine whether the party awarded summary judgment demonstrated that there is no

genuine issue of material fact and that it is entitled to judgment as a matter of law. *See George Washington University v. Bier*, 946 A.2d 372, 375 (D.C. 2008). This Court may affirm the trial court on any basis, including one different from that adopted by the trial court. *See, e.g., Max Holtzman, Inc. v. K&T Co., Inc.*, 375 A.3d 510, 513, n. 6 (D.C. 1977).

The United States Supreme Court has made it clear that Rule 56 must be construed, *inter alia*, with due regard for the rights of persons opposing claims that have no factual basis. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).[1] A party cannot defeat summary judgment by vague or conclusory allegations in pleadings or in affidavits. *See Moseley v. Second New St. Paul Baptist Church*, 534 A.2d 346 (D.C. 1987); *see also Ferguson v. District of Columbia*, 629 A.2d 15 (D.C. 1993). Rather, the opponent to a summary judgment motion must make a showing sufficient to establish the existence of each element essential to that party's case. *See, e.g., Bloomgarden v. Coyer*, 156 U.S. App. D.C. 109, 479 F.2d 201, 208 (D.C. Cir. 1973).

V. ARGUMENT

A. THE SUPERIOR COURT DID NOT ERR IN GRANTING THE MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT BECAUSE AN ALLEGEDLY FORGED OPERATING AGREEMENT PROVIDES NO BASIS TO VOID A DEED OF TRUST.

[1] The Court also stated that: "One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and we think it should be interpreted in a way that allows it to accomplish this purpose." 477 U.S. at 323-24 (footnote omitted).

The conveyance at issue in this case is an authorized and recorded transaction entered into pursuant a clear grant of authority in the Memorandum of Understanding. As the trial correctly noted, "Ibiezugbe and Falkner had the actual authority to enter into the transactions on behalf of Capital River pursuant to the plain language of the MOU." JA 0221. The Capital River Parties rely on inapposite cases that in no instance undermine the trial court's conclusions.

The Capital River Parties rely almost exclusively on *Smith v. Wells Fargo*, 991 A.2d 29 (D.C. 2010). This case is both factually and legally distinguishable as well as generally relied upon for the proposition that a deed of trust will be void if obtained by a forged power of attorney. In Smith, Willie Smith, the owner of the real property at issue in that case allegedly executed a durable power of attorney naming his daughter, Mary A. Smith, as his Attorney in Fact. *Id.* at 22. The POA granted his daughter the power to "sell, lease, grant, encumber, release or otherwise convey any interest in my real property and to execute deeds and all instruments on my behalf." *Id.* Mary Smith subsequently executed a deed transferring the property to herself for ten dollars. *Id.*

Mary Smith subsequently obtained a mortgage loan on the property upon execution of a deed of trust acquired by Wells Fargo. *Id.* at 23. The other surviving children of Willie Smith brought a complaint to quiet title and in their complaint alleged that the POA did not grant Mary Smith the power to convey the property as a gift to herself and that the signature on the POA was not authentic. *Id.* The Court held that the

power of convey provisions of the POA "did not authorize Mary Smith to convey the property to herself for ten dollars." *Id.* However, the Court was satisfied that the POA gave Mary Smith "at least apparent authority to convey the property to herself." *Id.* The case was remanded as to the issue of forgery. *Id.*

The Capital River Parties rely on nonbinding decisions that are either inapposite or distinguishable. First, *McNairy v. Baxter*, 320 B.R. 30, 39 (Bankr. D.D.C. 2004), like the *Smith* case, pertains to an alleged forgery in a power of attorney. Similarly, the Capital River Parties rely on an intermediate appellate state case from Colorado for the proposition that title commitment requirements as the "bible" that specifies the items that need to be met before closing. Appellants' Br. at 14 (citing *Fid. Nat'l Title Co. v. First Am. Title Ins. Co.*, 210 P.3d 272, 276 (Colo. Ct of App. 2013)). First, this case is not binding, and second, it does not articulate a basis to void the transaction.

Levi v. Commonwealth Land Title Ins. Co., 2013 U.S. Dist. LEXIS 150867 (S.D.N.Y. Oct. 21, 2013), is similarly inapplicable. In that case, a property was conveyed trough a use of an operating agreement that showed the individual as a 60% owner of the company making the conveyance, when he was entirely unaffiliated and owned no portion of the property or company. *Id.* at *1-2. The Court granted summary judgment on the basis that the individual had no authority to bind the entity to a mortgage. *Id.* at *7.

Courts look to whether the parties undertaking the disputed transaction had the actual or apparent authority to do so. For instance, in *Pittman Place Dev. v. Howard Investments, LLC*, 330 S.W. 3d 519 (Mo. Ct. App. 2010), the Missouri Court of Appeals did not automatically declare a deed of trust void based on a fraudulently altered operating agreement, but reviewed whether the member of the LLC had the authority to undertake the transaction. *Id.* at 527. The Missouri Court of Appeals upheld the transaction on the basis that the member "had apparent authority to enter into the transactions." *Id.*

Similarly, here, the Court should look to whether Mr. Ibiezugbe and Mr. Falkner had the actual or apparent authority to enter into the disputed transaction. The Capital River Parties have not articulated a basis to void the transaction at issue in the case, nor pursuant to the below analysis, have they articulated any basis that Ibiezugbe and Falkner acted outside of this grant of authority, or that the grant of authority is ambiguous. *Infra* Sec. V.B. Plainly, the Superior Court did not ignore "clear-cut law" but undertook a thorough analysis of the governing documents that the Capital River Parties entered into and correctly determined that Ibiezugbe and Falkner had the actual authority to enter into the transactions at issue.

Contrary to the Capital River Parties' assertions, the Superior Court did not "authorize fraud"—as set forth more fully below, because Ibiezugbe and Falkner were authorized to enter into the transaction at issue in this matter, there was no "fraud"

against the Capital River Parties. Appellants' Br. at 16; JA 221-22; *Infra* Sec. V.C. The Superior Court applied the objective law of contracts, as dictated by controlling case law, and applied the plain language of the Memorandum of Understanding to the facts. The Capital River Parties have not articulated a basis to set aside the Superior Court's sound decision and analysis.

B. THE SUPERIOR COURT DID NOT ERR IN GRANTING THE MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT BECAUSE THE PLAIN LANGUAGE OF THE MOU PROVIDED IBIEZUGBE AND FALKNER WITH ACTUAL AUTHORITY TO ENTER INTO THE TRANSACTION.

The plain language of the Memorandum of Understanding unambiguously gives Ibiezugbe and Falkner the authority to enter the transaction at issue in this case. JA 0124. The Capital River Parties' allegations regarding the parties' understanding and intent cannot prevail against the MOU's clear terms. *See* Appellants' Br at 18-19. Nor can the Capital River Parties' obfuscation and reliance on extrinsic evidence. *Id.* at 19 (citing JA 0009).

The District of Columbia applies the objective law of contracts. *See 2301 M. St. Coop. Ass'n v. Chromium LLC*, 209 A.3d 82, 86 (D.C. 2019). Under the objective law of contracts, the contracting parties unexpressed intent at the time the contract was entered into is irrelevant if the contractual terms are otherwise unambiguous or there is fraud, duress, or mutual mistake. *See id.*; *see also Sahrapour v. Lesron, LLC*, 119 A.3d 704, 708 (D.C. 2015) ("We interpret contracts and deeds under the 'objective' law of contracts, meaning that the written language of the contract 'govern[s] the rights and

liabilities of the parties, regardless of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite under[stand]ing, or unless there is fraud, duress, or mutual mistake.'") (internal citations omitted).

The Capital River Parties point to a subsequent amendment to the Operating Agreement and hearsay statements allegedly made by Ibiezugbe and Falkner to support the proposition that the plain language of the Memorandum of Understanding did not give them the actual authority to enter into the transaction at issue. Appellants' Br. at 19. First, the subsequent amendment to the Memorandum of Understanding was not the document in effect at the time of the transaction at issue in this matter. JA 0279; 0181. Second, The Capital River Parties' citations to hearsay discussions with Ms. Liu's agents cannot defeat the plain language of the Memorandum of Understanding. *See 2301 M St. Coop. Ass'n*, 209 A.3d at 86 (noting that under the objective law of contracts, the contracting parties unexpressed intent at the time the contract was entered into is irrelevant if the contractual terms are otherwise unambiguous or there is fraud, duress, or mutual mistake). Third, despite the Capital River Parties' assertions to the contrary, the plain language of the MOU does not allocate voting power based on investment. *Compare* Appellants' Br. at 19 n. 4 ("This was the intent of the Capital River members given the fact that Ms. Liu put up all of the $1.6 million used to purchase the Property"); *with* JA 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").

Further, the Capital River Parties' assertions regarding Abod, Roupas, BCJCl and Premium Title having never seen or relied on the MOU is a red herring and irrelevant to the issue of whether the Capital River Parties gave Ibiezugbe and Falkner actual authority to enter into the transactions at issue in this matter. *See* Appellants' Br. at 20. The Capital River Parties point out that Abod, Roupas, BCJCL, and Premium Title had to request a copy of the MOU from counsel for the Capital River Parties, which is belied by the Capital River Parties not attaching it to the Complaint in the first place, which spans over 100 pages with attachments. *Id.* at 20-21.

The language at issue is clear and the Capital River Parties should not be allowed to present extrinsic evidence to undermine its plain terms. *Compare* Appellants' Br. at 21 ("For example, there is no definition of what constitutes a 'major decision' or whether such decisions were limited to 'investments' in the Property" *with* MOU ¶ 10 ("All major decision 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."). Indeed, by the Capital River Parties' interpretation, each word in this commercial contract would need to be given a definition in order to be susceptive of a clear meaning. This is contrary to common sense and applicable case law. *See, e.g., Quadrangle Dev. Corp. v. Hartford Ins. Co*, 645 A.2d 1074, 1076 (D.C. 1994)

(noting that the Court gives the words in an insurance contract "their common, ordinary, and . . . 'popular' meaning."); *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 1170 (D.C. 2004) ("A court must honor the intentions of the parties as reflected in the settled usage of the terms they accepted in the contract.") *id.* (noting that a court "will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity."). Plainly, Ibiezugbe and Falkner had authority to enter into these transactions pursuant to the plain language of the MOU.

C. THE SUPERIOR COURT DID NOT ERR IN GRANTING PREMIUM TITLE'S MOTION FOR SUMMARY JUDGMENT AS TO NEGLIGENCE BECAUSE THE CAPITAL RIVER PARTIES ARE RESPONSIBLE FOR IBIEZUGBE AND FALKNER'S ACTIONS.

The Capital River Parties engage in obfuscation regarding the applicable duty of care and proximate causation. The fact remains that they made the decision to entrust Ibiezugbe and Falkner with the ability to make major decisions regarding the Property. JA 0124. The Capital River Parties identify secondary authorities, none of which articulate a duty of care for a title company to review previously closed files before competing and closing out a transaction. Appellants. Br. at 24 n.7 (citing Title and Escrow Claims Guide; Restatement (Second) of Agency; and 2 Title Ins. Law). Further, the District of Columbia case offered by the Capital River Parties articulates no such duty and is wholly distinguishable. *See Aronoff v. Lenkin Co.*, 618 A.2d 669, 687 (D.C. 1992) (noting that the sellers' title was uninsurable, and, according to the complaint, the title company knew both that fact and the sellers' ignorance of the

same); *see also id.* at 685 ("In short, the underlying theory of recovery is that if the sellers breached the contract of sale, that breach proximately resulted from the breach of duties owed to them by [title company], and, depending on whether the sellers are liable to return the purchasers' down payment, [title company's] breach will have caused that harm.")

The basic elements of a claim of negligence are the existence of a duty, violation of a standard of care, and injury resulting as a proximate cause of the violation. *See, e.g., Jarrett v. Woodward Bros.*, 751 A.2d 972, 977 (D.C. 2000). One employed to examine title to real estate assumes the responsibility of discharging that duty with a reasonable degree of skill and care. *Doonis v. Mutual Title Co.*, 196 A.2d 480, 482 (D.C. 1964). There is no affirmative duty for a title company to review previously closed filed before competing a closing out a transaction, nor have the Capital River Parties pointed to one in the Complaint or briefing. *See* Compl. ¶¶ 46-59; Appellants' Br. at 22-30.

No amount of expert testimony regarding the applicable standard of care would change the fact that the Capital River Parties expressly authorized Ibiezugbe and Falkner to enter into the transactions at issue in this matter. Indeed, the Capital River Parties invent duties of care and related breaches out of whole cloth. *See* Appellants' Br. at 25 ("Premium Title breached that standard of care by, among other things, failing to check its records for prior transactions . . . failing to obtain an affidavit . . . failing to

obtain a resolution of all members . . . failing to confront Ibiezugbe and Falkner about their submission of a fraudulent operating agreement, failing to stop the transaction involving the Deeds of Trust, and failing to notify Capital River and Ms. Liu about the submission of a forged operating agreement.").

The Capital River Parties rely on conclusion and innuendo for the proposition that Premium Title knew or should have known of Capital River's ownership status. Appellant's Br. at 26. First, the Capital River Parties assume that an agent would remember the contents of an operating agreement received ***two calendar years*** before the deed of trust transactions. Second, the Capital River Parties conclude that this same agent would remember the purchase price and the source of those funds. Appellants' Br. at 26. The Capital River Parties make much of Ms. Liu's funding of the original purchase yet offer no explanation as to why she chose to entrust the members of Capital River with the ability to make purchases with a simple two-thirds majority.

The Capital River Parties' business decision to entrust Ibiezugbe and Falkner with major decisions regarding the Property led to the alleged harm suffered by the Capital River Parties, not any conduct by Premium Title. Again, the Capital River Parties point to hearsay statements made after the Memorandum of Understanding was entered into in an attempt to undermine its plain language. Appellants' Br. at 27. Because Ibiezugbe and Falkner were authorized to enter into the transaction at issue in this matter, there was no "fraud" against the Capital River Parties. *See* JA 221-22.

Further, the Capital River Parties cite their own complaint for the assertion that the loans would have gone to Capital River and Ms. Liu, not directly and solely to Ibiezugbe and Falkner. Appellants' Br. at 27 (citing JA 0007 and 0124). This is also unsupported by the Memorandum of Understanding. The plain language of the Memorandum of Understanding discusses profits, not loan proceeds. JA 0124 ¶ 8; ("Net profits will be distributed among the Members in accordance with the percentages set forth in the Operating Agreement for the Company.") *id.* ¶ 7 ("For purposes of this Agreement, Net Profits shall be defined as the cash proceeds received from the Company upon EITHER the sale and settlement of the undeveloped Property with approved plans, specifications and building permit for the Project OR the assignment of Liu's Member interests to a new or existing Member in exchange for cash OR the sale and settlement of the finished, completed and built Project, should the Company choose to continue its investment as provided for in this Agreement.").

The Capital River Parties offer no authority for the proposition that "[t]he submission of a forged and fraudulent operating agreement of Capital River that completely omits a 50 percent owner is fraud." Appellants' Br. at 28. Again, the Capital River Parties' assertion that Premium Title did not have a copy of the Memorandum of Understanding is a red herring that has no impact on the issue of whether the Capital River Parties authorized Ibiezugbe and Falkner to enter into the transactions at issue in this matter. Further, it is belied by the fact that the Capital River Parties failed to attach

the Memorandum of Understanding both to their Complaint in this matter and in the Benning Road matter. Recognizing this, the Capital River Parties pivot to the argument that "[t]hose loans rightfully belonged to Capital River and Ms. Liu, as Ms. Liu is entitled to recoup her $1.6 million investment plus 10 percent profit before Ibiezugbe and Falkner realize any return." The Capital River Parties conflate profit and return. *See* JA 0124.

The Capital River Parties seek to muddy the waters regarding the applicable duty of care. Appellants' Br. at 29-30. The fact remains that this appeal revolves around a business decision to entrust Ibiezugbe and Falkner to make major decisions regarding an investment. The Capital River Parties have not identified a duty of care that Premium Title breached. The Capital River Parties cannot overcome the fact that the alleged harm was caused by the Capital River Parties themselves, not Premium Title. The Superior Court correctly relied on the plain language of the Memorandum of Understanding. No amount of expert testimony or discovery could rescue the Capital River Parties deficient claims.

VI. CONCLUSION

For the foregoing reasons, this Honorable Court should uphold the reasoned decision of the Superior Court.

Dated: December 20, 2022

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

/s/ Spencer B. Ritchie

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2022, a true copy of the foregoing Brief of Premium Title & Escrow, LLC was filed electronically, and a notice of filing should be served upon all counsel of record in this case. Service by USPS where indicated by the *.

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District of Columbia
Court of Appeals

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.

Signature

22-CV-0548

Case Number(s)

SPENCER B. RITCHIE, ESQ.

Name

12-20-2022

Date

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