STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Timothy Jones as the Personal Representative for Dewitt Jones, Plaintiff, vs. Innovative Scientific Solutions, LLC, J. Ryan Flanagan, Jay A. Flanagan, Jr., and Marion L. Snyder, Defendants.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT Case No. 2023-CP-23-00011 **ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

On September 17, 2025, a hearing was held on the motion of Defendants Innovative Scientific Solutions, LLC ("ISS"), J. Ryan Flanagan, Jay A. Flanagan, Jr., and Marion L. Snyder (the "Defendants") for an order granting the Defendants summary judgment. On December 17, 2025, a second hearing was held on Defendants' motion for summary judgment. Present at the hearing on behalf of Timothy Jones as Personal Representative for Dewitt Jones (the "Estate") was Devon Puriefoy of the law firm Truluck Thomason, LLC. Present at the hearing on behalf of Defendants was Adam C. Bach and Sarah K. Compton of the law firm Tonnsen Bach, LLC. Based on the submissions of the parties and the arguments of counsel, the Court finds as follows:

This action involves a dispute regarding the value of Dewitt Jones's membership units in ISS (the "Membership Units"). Dewitt Jones was a member of ISS until his death on June 16, 2021. The Amended and Restated Operating Agreement of ISS (the "Operating Agreement") provides that following the death of a member, the estate of the member is required to sell, and ISS is required to purchase, all of the deceased member's membership units in ISS. The Operating

Agreement also controls other terms, such as the process for valuation and buyout of Membership Units in ISS. Here, following the death of Dewitt Jones, the value of the Membership Units was determined per the appraisal method stated in the Operating Agreement. After the value of the Membership Units was determined, Defendant ISS executed the buyout by issuing a promissory note to the Estate as provided in the Operating Agreement. The Estate disputed the value of the Membership Units. This lawsuit was filed on January 3, 2023. Defendants moved for summary judgment as to all of the Estate's claims on July 16, 2025.

A party can seek summary judgment on all claims, any claim, or part of any claim. S.C. RULE CIV. P. 56(a). The Court must grant summary judgment if the discovery and any affidavits "show that there is no genuine dispute of material fact and that the moving party is entitled to a judgment as a matter of law." S.C. RULE CIV. P. 56(c).

In August 2023, the Supreme Court of South Carolina clarified that the "mere scintilla" of evidence standard is insufficient to withstand a motion for summary judgment. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023). That Court held, "[r]ather, the proper standard is the genuine issue of material fact standard set forth in the text of the Rule. As we stated in Town of Hollywood v. Floyd, 'it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Id. at 463-64, 892 S.E.2d at 301 (citation omitted). Summary judgment should be granted when the evidence and all reasonable inferences viewed in a light most favorable to the non-moving party lead to one reasonable conclusion so that the moving party is entitled to judgment as a matter of law. See Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 564 S.E.2d 94 (2002); Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001).

Both the Estate and Defendants agree that the process for redeeming the Estate's Membership Units by ISS is governed by ISS's Operating Agreement. Compl. ¶ 10. The Operating Agreement outlines a specific process for determining the fair market value of the Membership Units and for how that value is to be paid to the Estate.

"The operating agreement of [an LLC] is a binding contract that governs the relations among the members, managers, and the company." Clary v. Borrell, 398 S.C. 287, 297, 727 S.E.2d 773, 778 (Ct. App. 2012). The main concern of the court interpreting a contract is to give effect to the intent of the parties and the best evidence of a parties' intent is the contract's plain language. North American Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015). "If a contract's language is unambiguous, the plain language will determine the contract's force and effect." Id. at 378, S.E.2d at 240. Additionally, "[i]nterpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made, rather than the subject, after-the-fact meaning one party assigns to it." Laser Supply & Servs., Inc. v. Orchard Park Assoc., 382 S.C. 326, 676 S.E.2d 139, 143-144 (Ct. App. 2009).

Here, the Operating Agreement is clear and unambiguous. The unambiguous language of Section 11.2 of the Operating Agreement states that:

> Notwithstanding anything herein to the contrary, upon the death of a Member, the Company shall purchase, and the estate of the decedent, or his successor in interest by operation of law, shall sell all of the decedent's Membership Units in the Company now owned or hereafter acquired. The purchase price of such Membership Units shall be computed in accordance with the provisions of SECTION 11.4 and paid in accordance with the provisions of SECTION 11.5.

Operating Agreement at Article XI, Section 11.2. Based upon a plain reading of Section 11.2 of the Operating Agreement, if a Member of ISS passes away, the estate or successor in interest of the Member must sell all of the Membership Units to ISS, ISS shall purchase those Membership

Units, and the purchase price of those Membership Units is governed by Sections 11.4 and 11.5 of the Operating Agreement.

Section 11.4 of the Operating Agreement provides a clear and unambiguous method for determining the purchase price of the deceased member's Membership Units. Pursuant to Article XI, Section 11.4 of the Operating Agreement, if the Offering Member (here, the Estate), and the Company (ISS) cannot agree to the Fair Market Value of the Company, then the Fair Market Value of the Company shall be determined by appraisal. Operating Agreement at Article XI, Section 11.4. According to the Operating Agreement:

> If the Company, by a vote of those Members who own more than fifty (50%) percent of the Membership Units in the Company (without regard to the Membership Units of the Offering Member), and the Offering Member (or his estate or other legal representative, as the case may be) cannot agree upon the Fair Market Value of the Company within twenty-one (21) days after the date a written offer or notice of a Deemed Offer is received by the Company, then the Fair Market Value of the Company shall be determined by appraisal. The Company, by a vote of those Members who own more than fifty (50%) percent of the Membership Units in the Company (without regard to the Membership Units of the Offering Member), and the Offering Member (or his estate or other legal representative, as the case may be) shall within thirty (30) days . . . each appoint one (1) appraiser qualified to appraise the type of business (or businesses) in which the Company is engaged and notify the other party of the name of such appraiser appointed by them. If the two (2) appraisers cannot agree on the Fair Market Value of the Company within such thirty (30) days after the last of them is appointed, then within seven (7) days following such thirty (30) day period, the Offering Member and the Company shall appoint a third qualified appraiser . . . .

Operating Agreement at Article XI, Section 11.4.

The evidence shows that the Estate appointed Mark Swanson of Moore Beauston & Woodham. ISS appointed Alex Hartel, then of HDH Advisors as its appraiser. Both Mark Swanson and Alex Hartel testified in their depositions that they agreed upon a valuation of the Membership Units. There is no genuine issue of material fact that the two appraisers agreed upon

a value. Once the appraiser for the Estate and the appraiser for ISS agreed on a valuation, that valuation controls per the plain language of the Operating Agreement.

The Estate's primary argument in response is that the representative of the Estate, Timothy Jones, did not authorize Mark Swanson to agree to the value of the Membership Units. The Estate does not point to any language in the Operating Agreement requiring the Estate's agreement to a valuation amount before it becomes binding on the Estate. Further, the appraisal process outlined in the Operating Agreement is expressly meant to apply where the parties are unable to agree to a fair market valuation of the Company, thereby resolving an impasse created by the parties' differing opinions on value. Allowing a member to dispute their appraiser's valuation of the Company, or permitting a member to dictate an acceptable valuation, would defeat the purpose of the Operating Agreement. It would *ispo facto* lead right back to where the parties started – at an impasse over the parties opinions of value.

The Estate also points to the provisions of the Operating Agreement providing for appointment of a third appraiser if his appraiser and ISS's appraiser fail to agree to a valuation. But the plain language of the Operating Agreement makes clear that a third appraiser is only appointed if the appraiser appointed by the Estate and ISS cannot agree. If they do agree, both the Estate and ISS are bound by that valuation. Operating Agreement at Article XI, Section 11.4. This is clear both from the plain language of the Operating Agreement and from the next step if the two appraisers fail to agree. The Operating Agreement provides that if a third appraiser is appointed, "the third appraiser shall determine the Fair Market Value of the Company…the Fair Market Value shall be the average of the <u>two (2) appraisals which are closest to each other</u>." Operating Agreement at Article XI, Section 11.4 (emphasis added). If Mark Swason and Alex Hartel's valuations are identical, which they are, then a third appraiser's determination would be

disregarded. Numerically, two numbers cannot be closer than equal. The average of two identical numbers is the same number. Alex Hartel and Mark Swanson's appraisal controls.

Once a Fair Market Value is determined, Section 11.5 of the Operating Agreement provides clear and unambiguous instructions for how the purchase price is to be paid to a deceased member's estate for the deceased member's Membership Units. Section 11.5 of the Operating Agreement clearly and unambiguously provides that following payment of the purchase price, or tender of an executed note for the purchase price, the Membership Units of a deceased member are transferred to ISS regardless of whether or not the deceased member's estate tenders the Membership Units.

Pursuant to Article XI, Section 11.5 of the Operating Agreement:

> At the closing, the purchaser(s) shall execute and deliver to the seller a negotiable promissory note made payable to the order of the seller . . . . .Upon execution and delivery of the note, the Membership Units shall be endorsed and conveyed to the purchaser(s). If, after receiving the executed note, the Offering Member or the personal representative of his estate does not tender the Membership Units so purchased, as provided herein, the Company shall cause the records of the Company to reflect that such Membership Units have been canceled or transferred, as the case may be. After the records of the Company have been so modified and after the tender of such payment has been made (whether or not accepted by the Offering Member, his estate, or his personal representative) neither the Offering Member, his estate nor his personal representative shall be considered to own such Membership Units and shall have no right as a Member to the extent of the Membership Units so canceled or transferred.

Operating Agreement at Article XI, Section 11.5. Here, ISS executed a negotiable promissory note to the Estate for the value of Dewitt Jones's Membership Units in ISS. Upon execution and delivery of the promissory note, Dewitt Jones (including his Estate) had no more rights as a Member for the Membership Units that were canceled or transferred.

In summary, ISS was required to buy, and the Estate was required to sell, Dewitt Jones's Membership Units in ISS after he passed away. The Estate and ISS both obtained an appraiser to

value the Membership Units. Those appraisers then agreed upon the value of the Membership Units in ISS. This value became the controlling value for the purchase of the Estate's membership interest. ISS then issued a promissory note for Dewitt Jones's Membership Units in ISS. Once the promissory note was issued, the Estate's Membership Units were redeemed and the Estate was no longer a member of ISS.

Because the provisions of the Operating Agreement are plain, clear, and unambiguous, and the Defendants followed the provisions of the Operating Agreement, there is no genuine issue of material fact. The Estate has produced no evidence showing the Defendants failed to follow any provision of the Operating Agreement. As such, the Court finds that there is no genuine issue of material fact and the Defendants are entitled to summary judgment as a matter of law.

The Estate raises "ongoing discovery" as a reason to deny the motion citing a "forthcoming" report from a newly hired valuation expert. But, as explained above, given the plain language of the Operating Agreement, any new valuation is irrelevant. This is particularly true where, as here, pursuant to the courts allowance of a deposition to be taken after the September 17, 2025 hearing, Plaintiff's original valuation expert, Mark Swanson, continues to stand by his valuation even after three years of discovery in this matter. This case was filed more than three years ago and the record shows that this Court has repeatedly denied the Estate's efforts to expand the scope of discovery beyond what is relevant. Based on the record in this case and on the arguments of counsel, the court finds that both parties have been afforded more than sufficient time to conduct whatever discovery they deem necessary and this is not a basis for denying summary judgment.

Turning to the complaint, the Estate brings an action pursuant to S.C. CODE ANN. §§ 33-44-408 and 33-44-410. S.C. CODE ANN. § 33-44-408 concerns a Member's right in an LLC to

access a limited liability company's records. Pursuant to that statute, a company shall furnish to a legal representative of a deceased member, ". . . information concerning the company's business or affairs reasonably required for the proper exercise of a member's rights and performance of the member's duties under the operating agreement or this chapter." S.C. CODE ANN. § 33-44-408(b)(1). The company shall also furnish ". . . other information concerning the company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances." S.C. CODE ANN. § 33-44-408(b)(2).

As discussed above, additional information is irrelevant because the appraisers agreed upon the value. If the Estate's appraiser needed additional information to perform his valuation, the time to raise that issue was before agreeing to a valuation. Once an agreement was reached, it is binding on the parties. Additional information post-lawsuit does not change these facts. And, as noted previously, Plaintiffs have sought well beyond what is "reasonably required for the proper exercise of a member's rights" in this lawsuit, which is the financial information available to Company as of the date of Dewitt Jones' death. And even with additional information gathered in this lawsuit, the Estate's chosen appraiser, Mark Swanson, stands by his valuation.

In addition to S.C. CODE ANN. § 33-44-408, the Estate also makes a claim pursuant to S.C. CODE ANN. § 33-44-410. S.C. CODE ANN. § 33-44-410 concerns an LLC member or manager's right to maintain an action against a limited liability company or another member or manager for legal or equitable relief. Here, the Estate ceased to be a member of ISS as of the execution of the promissory note, which occurred before this lawsuit was filed.[1] Operating Agreement at Article XI, Section 11.5. Once ISS executed the note and reflected the transfer or cancellation of the

[1] The Negotiable Promissory Note is dated October 1, 2022 and this action was brought on January 3, 2023.

Membership Units, the Estate ceased to have rights as a Member of ISS. Because the Estate ceased to be a Member prior to bringing this lawsuit, the Estate has no action pursuant to this section.

Finally, the Estate requests that this Court ". . . order ISS to purchase Mr. Jones [sic] membership interest or in the alternative dissolve ISS," referencing S.C. Code Ann. § 33-44-801 in his request for relief. Compl. ¶ 29. The basis for this action is ISS's alleged refusal to allow the Estate to access the company's financials and that ISS has failed to purchase the Estate's distributional interest after giving effect to the provisions of the Operating Agreement. Compl. ¶¶ 25-26. The Estate additionally alleges that the economic purpose of the company is likely to be unreasonably frustrated due to conduct that makes it not reasonably practicable to carry on the business, that the majority of owners have acted unfairly prejudicial to the Estate, and that it is equitable to wind up ISS. Compl. ¶ 27. The Estate further alleges that it is not otherwise practicable to carry on the company's business in conformity with the articles of organization and the Operating Agreement." Compl. ¶ 28.

For the reasons discussed above, the Court finds that the Defendants properly valued and purchased the decedent's Membership Units. Therefore, there is no reason to order the Company to purchase that same interest and no reason to dissolve the company.

Finally, Defendants brought a counterclaim in this action seeking a declaratory judgment that (1) the buyout of the Estate's membership interest complied with the terms of the Operating Agreement, (2) that the Estate had no ability to dispute the buyout amount agreed-to by his appraiser and this value is binding on it, (3) that the Estate is not entitled to any additional compensation for his interest in ISS beyond the amount stated in the promissory note, (4) that the Estate ceased to be a member of ISS upon execution of the promissory note, (5) and that the Estate

has no more rights or privileges as a member of ISS. For the reasons stated above, Defendants are granted judgment in their favor as to their declaratory judgment action.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that Defendants' motion for summary judgment is GRANTED. It is further ordered that Defendants are GRANTED summary judgment in their favor as to their counterclaim seeking declaratory judgment. Defendants are awarded costs in the amount of $3,428.96, as established by the bill of costs filed by Defendant. See, Rule 54(d), SCRCP and S.C. Code 15-53-100.

IT IS SO ORDERED!

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW

Greenville Common Pleas

Case Caption: Dewitt Jones , plaintiff, et al vs. Innovative Scientific Solutions LLC , defendant, et al

Case Number: 2023CP2300011

Type: Order/Summary Judgment

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)