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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Charles B. Simmons, Jr., Circuit Court Judge
The Honorable Alex Kinlaw, Jr., Circuit Court Judge
The Honorable William C. McMaster, III

Appellate Case No. 2026-000524

Timothy Jones as the Personal Representative for Dewitt Jones..........................Appellant,

v.

Innovative Scientific Solutions, LLC, J. Ryan Flanagan, Jay A. Flanagan, Jr., and Marion L. Snyder...Respondents.

APPELLANT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

SUGGESTED ANSWER TO ALL QUESTIONS: *Yes.*

1. **Did the trial judge err in granting Defendants summary judgment where Plaintiff presented evidence that he did not consent to Mr. Swanson agreeing to the appraisal prepared by Mr. Hartel/HDH?**

2. **Did the trial judge err in granting Defendants summary judgment where the appraisal prepared by Mr. Hartel/HDH—and allegedly agreed to by Mr. Swanson—did not determine the fair market value of Mr. Jones's Membership Units in ISS at the time of his death?**

3. **Did the trial judge err in granting Defendants summary judgment where Plaintiff needed to conduct additional discovery to address the motion for summary judgment?**

4. **Did the trial court err in denying Plaintiff's Motion to Compel (and granting Defendants' Motion for Protective Order) with regard to the discovery of information about ISS's actual finances and performance after the death of Mr. Jones?**

STATEMENT OF THE CASE

Plaintiff Timothy Jones, as the Personal Representative for Dewitt Jones ("Plaintiff"), commenced this action in the Court of Common Pleas of Greenville County, South Carolina, on January 3, 2023. (*See generally* Pl.'s Jan. 3, 2023 Compl.). The Complaint named as Defendants: (a) Innovative Scientific Solutions, LLC ("ISS"); (b) J. Ryan Flanagan; (c) Jay A. Flanagan, Jr.; (d) Marion L. Snyder. As discussed below, Plaintiff files this appeal because the trial court erred in: (a) granting Defendants' Motion for Summary Judgment; and (b) denying Plaintiff's motion to compel and granting Defendants' motion for protective order.

A. Statement of the Case as to Summary Judgment Order

1. Procedural History

Plaintiff alleges that on or about January 1, 2021, Dewitt Jones ("Mr. Jones") entered into an Amended and Restated Operating Agreement ("Operating Agreement") with ISS and the individual Defendants, in which he received 253.37 Membership Units ("Membership Units") in ISS, representing an approximate 19.05% ownership interest. (*See* Pl.'s Compl. ¶ 10). On or about June 16, 2021, Mr. Jones passed away, and his estate is in probate in Greenville County, South Carolina. (*See* Pl.'s Compl. ¶ 12). Plaintiff alleged in his Complaint that, following his death, Section 11.4 of the Operating Agreement required that ISS purchase Mr. Jones's Membership Units. (*See* Pl.'s Compl. ¶ 13). Section 11.4 required that ISS purchase Mr. Jones's Membership units for their fair market value. (*See* Pl.'s Compl. ¶ 14). Plaintiff alleged that, since Mr. Jones's death, ISS has refused to grant his estate access to the company's financials; this has prevented Plaintiff from accurately determining the fair market value of Mr. Jones's Membership Units. (*See* Pl.'s Compl. ¶ 15). Plaintiff alleged that, as a result, the fair market value of Mr. Jones estate cannot be determined through reasonable diligence. (*See* Pl.'s Compl. ¶ 16).

Plaintiff commenced this matter as an action in equity to require ISS to render a full accounting and for the judicial dissolution of ISS. (*See* Pl.'s Compl. ¶ 17). He asserted the following causes of action against Defendants:

- Count I (Accounting): This cause of action alleges that Mr. Jones had repeatedly asked to inspect and copy records of ISS, but was denied an opportunity to do so. (*See* Pl.'s Compl. ¶ 20).

- Count II (Judicial Dissolution of ISS): This cause of action asserts that ISS "has failed to purchase Mr. Jones distributional interest after giving effect to the provisions of the Operating Agreement" and that the Court should "order ISS to purchase Mr. Jones membership interest or in the alternative dissolve ISS." (*See* Pl.'s Compl. ¶¶ 26, 29).

On September 15, 2023, Defendants filed their Answer and Counterclaims. (*See generally* Sept. 15, 2023 Ans. and Counterclaims to Pl.'s Compl.). Defendants' counterclaims sought the following relief:

> a. The buyout of Plaintiff's shares was fully compliant with the terms of the Operating Agreement;
>
> b. Plaintiff had, and has, no standing to dispute the buyout amount approved by his appraiser, which was binding on him pursuant to the Operating Agreement;
>
> c. Plaintiff is not entitled to any compensation for his interest in Innovative Scientific Solutions, LLC, beyond the purchase price agreed to by his appraiser and paid according to the terms of the Operating Agreement;
>
> d. Defendants properly executed the buyout of Plaintiff's interest in Innovative Scientific Solutions, LLC, pursuant to the terms of the Operating Agreement and the appraisers' agreed-upon buyout price;
>
> e. Plaintiff ceased to be a member of Innovative Scientific Solutions, LLC, as of the execution of the buyout, which was prior to the filing of this lawsuit; and
>
> f. Plaintiff may not exercise the legal rights and privileges of a member of Innovative Scientific Solutions, LLC.

(*See id.* ¶ 17).

On July 16, 2025, Defendants filed their Motion for Summary Judgment, which is at issue in this appeal. (*See generally* July 16, 2025 Defs.' Mot. for Summ. J.). Defendants asserted that:

> In sum, (1) the Plaintiff had, and has, no standing to dispute the buyout amount approved by his appraiser because it was binding upon him pursuant to the Operating Agreement, (2) the Plaintiff is not entitled to any compensation for his interest in ISS beyond the purchase price agreed by his appraiser and paid according to the terms of the Operating Agreement, (3) there is no genuine issue of material fact that Defendants properly executed the buyout of Plaintiff's interest in ISS pursuant to the terms of the Operating Agreement and the appraisers' agreed-upon

> buyout price, (4) Plaintiff ceased to be a member of ISS as of the execution of the buyout, and (5) Plaintiff's claims fail.

(*See id.*, at 4). The continued that "[t]here is no genuine issue of material fact that the Defendants complied with the plain and clear provisions of the Operating Agreement." (*See id.*). Defendants asked the trial court to enter "an order granting them summary judgment and dismissing the claims against them with prejudice." (*See id.*).

The parties briefed the motion for summary judgment, and the trial court conducted arguments on same. On January 21, 2026, the Honorable Charles B. Simmons entered an Order Granting Defendants' Motion for Summary Judgment ("MSJ Order"). (*See* Jan. 21, 2026 Order). The MSJ Order noted that the parties agreed that the Operating Agreement governed the redemption of Mr. Jones's ISS Membership Units. (*See id.*, at 3). It stated that 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." (*See id.*). The trial court held that:

> 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.

(*See id.*, at 4-5). The Court rejected Plaintiffs' argument that he never accepted Mr. Hartel's appraisal (or authorized Mr. Swanson to accept it):

> 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* (sic) *facto* lead right back to where the parties started – at an impasse over the parties['] opinions of value.

(*See id.*, at 5). The Court concluded that no genuine issues of material fact existed for trial "[b]ecause the provisions of the Operating Agreement are plain, clear, and unambiguous, and the

Defendants followed the provisions of the Operating Agreement." (*See id.*, at 7).

On January 30, 2026, Plaintiff filed a timely Motion to Reconsider and Request for Clarification ("Motion for Reconsideration"). (*See generally* Jan. 30, 2026 Mot. Reconsider and Req. for Clarif.). In his Motion for Reconsideration, Plaintiff first argued that a genuine issue of material fact existed as to "whether Mark Swanson maintained the authority to bind Plaintiff to the valuation provided by Defendants' appointed appraiser, Alex Hartel, despite Plaintiff's revocation of said authority." (*See id.*, at 2). Plaintiff asserted that his revocation of Mr. Swanson's authority, at the very least, created an issue of fact "as to whether the Operating Agreement granted Mark Swanson irrevocable authority to bind Plaintiff contractually, even when doing so would require him to ignore the unambiguous directives of Plaintiff, acting as his principal." (*See id.*, at 3).

Additionally, Plaintiff argued in his Motion for Reconsideration that the grant of summary judgment denied "Plaintiff the benefit that Dewitt Jones bargained for when he agreed to the terms of the Operating Agreement." (*See id.*, at 5). Plaintiff contended that Mr. Jones had retained the right in the Operating Agreement "to appoint an appraiser that would carefully work to develop an evaluation of his Membership Units in ISS. What his estate has received is far afield from the benefit that he bargained for." (*See id.*). Finally, Plaintiff' Motion for Reconsideration requested clarification as to whether the MSJ Order "set forth the final purchase price for Defendants to buy back Plaintiff's Membership Units in ISS." (*See id.*, at 6).

On February 4, 2026, Judge Simmons entered a Form 4 Order denying Plaintiff's Motion for Reconsideration, stating:

> The matter is before the Court pursuant to Plaintiff's Motion to Reconsider filed January 30, 2026. From the Court's review of the record, there appears to be no issues raised not previously ruled upon. As such, the Motion is denied. Notwithstanding the above, if there are any issues as to the exact amount due Plaintiff under the Operating Agreement and the Order filed January 21, 2026, either party may petition the Court for a ruling on the same.

(*See* Feb. 4, 2026, Form 4 Order).

Plaintiff filed a timely notice of appeal from the trial court's granting of Defendants' Motion for Summary Judgment and denial of Plaintiff's Motion for Reconsideration. (*See generally* Notice of Appeal).

2. **Relevant Factual Background Relating to Motion for Summary Judgment**

Accepting as true all of Plaintiff's evidence and resolving all inferences in Plaintiff's favor, the following facts are relevant to the instant appeal.

When Mr. Jones passed away, he left behind 253.37 Membership Units in ISS, which is approximately a 19.05% ownership interest in ISS. (*See* Sept. 15, 2025 Sworn Aff. of Timothy Jones, at 1).

The ISS Operating Agreement, filed with the trial court under seal, addressed what would happen to Membership Units in the event of the death of a member:

> 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.

(*See* Op. Agr't ¶ 11.2). Under Section 11.4 of the Operating Agreement, "[t]he purchase price of each Membership Unit shall be the Fair Market Value (as defined below) of the entire Company divided by the total number of Membership Units." (*See id.* ¶ 11.4).

If the deceased member's estate and ISS cannot agree on a price within 21 days after an offer is made, ISS and member's estate "shall within thirty (30) days . . . each appoint one (1) appraiser . . . and notify the other party of the name of such appraiser appointed by them." (*See id.*). After the parties select their appraisers, the Operating Agreement provides for the following procedure:

> If the two (2) appraisers cannot agree on the Fair Market Value of the Company within 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. If the Offering Member and the Company cannot agree upon a third appraiser within such seven (7) day period, then the other two (2) appraisers shall appoint a third qualified appraiser. The third appraiser shall determine the Fair Market Value of the Company within thirty (30) days after his appointment. The Fair Market Value shall be the average of the two (2) appraisals which are closest to each other.

(*See id.*).

This appeal relates to the parties' efforts to value Mr. Jones's Membership Units in ISS under Section 11.4 of the Operating Agreement. Plaintiff initially sought to use Meilinger Consulting, PC as his selected appraiser to value Mr. Jones's ownership units in ISS. (*See* Sept. 15, 2025 Mem. Supp. Defs.' Mot. Summ. J. Ex. B, at 37:13-15; Sept. 17, 2025 Hrg. Transcr., at 3:4-13). However, because Meilinger did not produce a report, Plaintiff's appraiser was Mark Swanson ("Mr. Swanson"). (*See id.*). Plaintiff's retainer agreement with Mr. Swanson provided that "[w]e will work with you and the finance team at Innovative Scientific Solutions, LLC to derive a reasonable fair market value for the estates membership interest in the company." (*See* Defs.' Dec. 12, 2025 Suppl. Mem. Supp. Mot. Summ. J. Ex. B). Mr. Swanson testified that, because Plaintiff had retained him, Plaintiff could "challenge how you arrive at your number." (*See* Defs.' Dec. 12, 2025 Suppl. Mem. Supp. Mot. Summ. J. Ex. A, at 33:18-34:11). ISS appointed Alex Hartel ("Mr. Hartel"), then of HDH Advisors, as its appraiser. (*See* Sept. 15, 2025 Defs.' Mem. Supp. Mot. Summ. J. Ex. A, at 46:20-22).

Plaintiff had previously retained Mr. Swanson to appraise Mr. Jones's Membership Units and the value of all Membership Units for estate administration purposes. Specifically, Mr. Swanson appraised the fair market value of Mr. Jones's interest in ISS as of the date of his death (June 11, 2021). Mr. Swanson had concluded, based on the information available at the time of Mr. Jones's death, that the value of all combined Membership Units in ISS was "much" higher than the later valuation that the trial court endorsed. (*See* Dec. 12, 2025 Defs.' Suppl. Mem. Supp. Mot. Summ. J. Ex. A, at 9:8-12).

In a June 28, 2022, Summary Valuation Report as of June 11, 2021 ("HDH Report"), HDH Advisors opined that the fair market value of 100% of the stock of ISS on June 11, 2021 was $8,934,000.00:

4896-2879-8126

Appraisal Approach	Exhibit Reference	Indicated Enterprise Value	Weighting [1]		Concluded Value
Income Approach (Discounted Cash Flow Method)	Exhibit 2	$ 3,093,000	100.0%		
Market Approach (Guideline Transaction Method)	Exhibit 4	N/A	0.0%		
Market Approach (Guideline Public Company Method)	Exhibit 7	N/A	0.0%		
Asset Approach (Adjusted Net Asset Method)	N/A	N/A	0.0%		
Concluded Business Enterprise Value, rounded					**$ 3,093,000**
Less: Interest-Bearing Debt				[2]	(99,795)
Plus: Cash & Cash Equivalents				[2]	5,911,592
Plus: Cash-Free Net Working Capital Surplus				[3]	29,479
Fair Market Value of One Hundred Percent (100%) Membership Interest in Innovative Scientific, LLC, rounded					**$ 8,934,000**

(*See* Oct. 24, 2024 Pl.'s Mem. Supp. Mot Ex. A at Ex. 1 to HDH Report). The HDH Report calculated the indicated business enterprise value using projections of ISS's future revenue:

	Actual [1]		Projected [1]					
	FYE 31-Dec-20	LTM 31-May-21	7ME 31-Dec-21	FYE 31-Dec-22	FYE 31-Dec-23	FYE 31-Dec-24	FYE 31-Dec-25	Terminal Year
Revenue	$ 19,445,646	$ 44,001,830	$ 14,860,533	$ 19,136,767	$ 8,372,766	$ 9,210,043	$ 9,670,545	$ 9,960,661
Annual Growth %	*323.2%*	*n/a*	*n/a*	*-54.0%*	*-56.2%*	*10.0%*	*5.0%*	*3.0%*
EBITDA	4,539,553	17,484,519	4,206,788	1,438,525	(148,811)	346,308	618,623	637,182
EBITDA Margin	*23.3%*	*39.7%*	*28.3%*	*7.5%*	*-1.8%*	*3.8%*	*6.4%*	*6.4%*
Depreciation	585,552	-	89,162	295,403	410,675	444,010	399,881	500,000
Amortization	-	-	-	-	-	-	-	-
EBIT	3,954,001	17,484,519	4,117,625	1,143,123	(559,487)	(97,702)	218,742	137,182
EBIT Margin	*20.3%*	*39.7%*	*27.7%*	*6.0%*	*-8.7%*	*-1.1%*	*2.3%*	*1.4%*
Income Taxes @ 25.0%			1,027,348	285,209	-	-	10,915	34,227
Net Operating Profit After Tax			3,090,278	857,914	(559,487)	(97,702)	207,827	102,955
Cash Flow Adjustments:								
Plus: Depreciation & Amortization			89,162	295,403	410,675	444,010	399,881	500,000
Less: Capital Expenditures			(292,000)	(500,000)	(750,000)	(750,000)	(500,000)	(500,000)
Less: Change in CFNWC			11,760	128,473	60,706	(4,722)	(2,597)	(1,636)
Invested Capital Net Cash Flow			$ 2,899,200	$ 781,789	$ (838,105)	$ (408,414)	$ 105,111	$ 101,319
[2] **Terminal Value**								$ 827,092
Partial Period Adjustment			1.000					
[3] Present Value Period			0.278	1.056	2.056	3.056	4.056	4.056
Present Value Factor			0.961	0.861	0.747	0.648	0.562	0.562
Present Value of Net Cash Flow			$ 2,787,000	$ 672,956	$ (625,971)	$ (264,677)	$ 59,105	$ 465,081
Present Value of Net Cash Flows			$ 2,628,412					
Plus: PV of Terminal Value			465,081					
Indicated Business Enterprise Value (rounded)			$ 3,093,000					

(*See id.*, at Ex. 2 to HDH Report).

On August 3, 2022, attorney Doug O'Neal emailed the HDH Report to Alex Kendall

(Plaintiff's attorney), Plaintiff, Defendant Mr. Flanagan, and Chris Rawlings, noting that: "The next step (according to the Operating Agreement) is for Mark Swanson and Alex Hartel to confer over their differences and come up with a number that they can agree upon. If they cannot agree, then the two of them will appoint a third appraiser to determine the value." (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. A thereto). Later that day, Plaintiff emailed Mark Swanson (and others) noting that the HDH Report valued *the entire company* for only slightly more than what Mr. Swanson had appraised Mr. Jones's Membership Units as of the date of his death:

> Attached is the HDH ISS's valuation report. Per your appraisal, Dewitt's 19.05% interest was appraised at $8,732,300, as of 6-11-2021. The attached appraisal from Alex Hartel valued the entire company at $8,934,000, as of June 11, 2021. If you could take a look at his valuation report and schedule a time to discuss, I would appreciate it.

(*See* Sept. 17, 2025 Letter filing Exhibits, Ex. A thereto).

On August 10, 2022, Douglas O'Neal emailed that he was "connecting" Alex Hartel and Mark Swanson:

> I wanted to put the two of you together, so that you can work to resolve the differences in your valuations[,] copies of which are attached. Please let me know If you would like to set up a call with each other, or Alex Kendall and me, to move things forward. If the two of you cannot agree on the value of ISS within the next 30, then Tim Jones (on behalf of Dewitt's estate) and Ryan Flanagan (on behalf of ISS) must appoint a 3d appraiser. If a third appraiser is appointed, the purchase price for this transaction will be the average of the two appraisals that are closest to each other.
>
> I have attached the Operating Agreement for ISS for reference. Also, Chris Rawlings (the accounting for ISS) is copied on this email and will provide any additional information that either of you may need.

(*See* Sept. 17, 2025 Letter filing Exhibits, Ex. D thereto).

On September 8, 2022, Alex Hartel emailed Mark Swanson attaching "the revised valuation that you and I discussed today." (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. B thereto). Less than an hour later, Mr. Swanson emailed Plaintiff, enclosing Mr. Hartel's appraisal. (*See id.*). Plaintiff testified that, following this email, he met with Mr. Swanson and expressed his displeasure with that appraisal. (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. C thereto).

On September 9, 2022, Mr. Hartel (ISS's appraiser) wrote, without Plaintiff's approval or agreement, that the "agreed" valuation between himself and Mr. Swanson of ISS *in its entirety*—not merely Mr. Jones's 19.05% Membership Units—was $9,078,000 (a slight increase from the valuation in the HDH Report). (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. D thereto). Plaintiff testified that he ***never*** received or agreed to that valuation. (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. E thereto). Moreover, he never told Mr. Hartel or Mr. Swanson that their valuation was correct and never authorized them to accept the HDH Report's appraisal (even as slightly adjusted upwards) or methodology. (*See id.*). Plaintiff has made clear that he never agreed to any specific valuation of Mr. Jones's ownership interest in ISS. (*See* Sept. 15, 2025 Sworn Aff. of Timothy Jones, at 1-2). Nevertheless, the Court found that Mr. Hartel's valuation (that Mr. Swanson purportedly agreed to) controlled.

During the litigation (and before filing his appeal), Plaintiff retained an expert witness to value Mr. Jones's interest in ISS and "anticipate[s] that there will be a significant difference between the valuations produced by our expert witness" and the valuation set forth above. (*See id.*, at 2).

B. Statement of the Case as to Discovery Orders

On March 4, 2024, Plaintiff filed Motion to Compel complete responses to his First Set of Interrogatories to Defendants and First Set of Requests for Production to Defendants. (*See generally* March 4, 2024 Mot. to Compel). Plaintiff's discovery requests sought the production of, *inter alia*, financial documents relevant to the value of ISS:

> 11. Defendant's State and Federal tax returns for the years 2016-Present (if filed), including all attachments and schedules.
>
> 12. Provide the following financial information:
>
> a. All balance sheets, profit and loss statements, ledger sheets, income statements, and annual reports for each fiscal year ending during any calendar year between January 1, 2016 and the present;
>
> b. The membership transfer ledger or other documentation showing the members of record during the time period from January 1, 2016 to present;

c. The minutes from any meeting of the board of directors, partners, members, officers, or management committee for the time period January 1, 2016 to present;

d. A list of all accounts receivable owed to the entity as of June 11, 2021;

e. A list of all accounts receivable owed to Defendant as of the date of these requests;

f. Quarterly reports (showing all wages paid) submitted to the South Carolina Employment Security Commission between January 1, 2016 and the present;

g. Any appraisal of the business, whether formal or informal (written or otherwise). . . .

16. Bank statements for any account on which Defendant is an owner, signatory or has readily available access to for the years 2016 - present, including, but not limited to: business checking accounts, savings accounts, credit union accounts, savings and loan or homestead accounts, money market accounts, and investment accounts.

17. For each property listed in response to Plaintiffs interrogatory number 10, provide copies of all financing/closing documents, including deeds and mortgages, related to the purchase of each property and any sale documents related to the same.

(*See e.g., id.* Ex. A thereto ¶¶ 11-12, 16-17). Plaintiff's Motion to Compel ultimately focused on his requests for post-2021 information about ISS's financial condition and performance. These requests were intended to allow Plaintiff to verify the information and projections underlying Mr. Hartel's appraisal of Plaintiff's Membership Units.

On October 7, 2024, the trial court heard Plaintiff's Motion to Compel. (*See* Transcript of October 7, 2024 Hearing). At that hearing, Plaintiff's counsel argued that he was entitled to discover ISS's bank statements and tax returns from 2021 through the present. (*See* Oct. 7, 2024 Transcr., at 4:25-5:5). Plaintiff's counsel argued:

> I suspect the defendants in this case are going to argue that because the valuation date is based on the date of Mr. Dewitt's death, that the plaintiffs aren't entitled to financial information post death. But the--the problem is--is--he, the valuation method that was used by the defendants to value these shares were based on projected revenues between 2021 and 2025.
>
> Our position is, in order to challenge the sufficiency of that valuation, we need to know how closely those projected revenues are to the actual revenues. I--I think

> that their valuation method brought into question directly finances of the company, that post-date, Mr. Dewitt's death, and that's essentially all we're asking for.
>
> Is if their valuation is going to be based on projected revenues from 2021 through 2025, I believe that we should be entitled to--to get the financial information from 2021, 2022, 2023, and of course, 2024 bank statements, those tax returns aren't going to be available. But I think that their valuation method brings that squarely into question and--and certainly becomes relevant.

(*See id.*, at 5:9-6:3).

By Order dated October 14, 2024, the Honorable Alex Kinlaw, Jr. denied Plaintiff's Motion to Compel, stating in relevant part:

> The parties agree that the relevant date for the valuation of Dewitt Jones's membership units in ISS is the date of his death. Dewitt Jones passed away on June 16, 2021. The relevant financial information that Defendants are required to produce under Rule 26 is financial information known at the time of Dewitt Jones's death. The Estate failed to articulate a sufficient reason why financial records and tax records after June 2021 are relevant to the valuation of Dewitt Jones's membership units in ISS.
>
> Therefore, Plaintiff's motion to compel Defendants' financial records and tax returns after June 2021 is denied.

(*See* Oct. 14, 2024 Order, at 1-2). In other words, because it agreed with Defendants that the relevant date for appraisal of Fair Market Value under the Operating Agreement was June 11, 2021, the Court refused to allow discovery of information concerning ISS's actual financial performance after Mr. Jones's death.

On October 24, 2024, Plaintiff filed a Motion to Alter and Amend, seeking reconsideration of the October 14 Order denying his Motion to Compel. (*See generally* Oct. 24, 2024 Mot. to Alter or Amend). On the same date, Plaintiff filed a Memorandum in Support of Plaintiff's Motion to Alter or Amend, in which he contended that—although the relevant date for the valuation of Mr. Jones's ownership units was the date of his death—the parties "disagree[d] with the manner with which the company was valued at the time of Mr. Jones death." (*See* Oct. 24, 2024 Mem. Supp. Mot. to Alter and Amend, at 2-3). Plaintiff argued:

> At the time of Mr. Jones' death, ISS's expert, HDH valued ISS at a fair market value of 100% membership interest at $8,934,000.00. *See* HDH Advisors LLC, Summary Valuation Report as of June 11, 2021. (Exhibit A). However, these

calculations were made using projected revenue for the years 2021-2025. The last financial record that Plaintiff was able to access before Dewitt Jones' death, displayed $44,001,830.00 in revenue from the period of December 2020 to May 2021. If Defendants had relied on these numbers to determine ISS at fair market value at the time of Mr. Jones' death, Plaintiff would not be disputing the fair market value of the membership interest. However, since Defendants elected to determine the fair market value of Mr. Dewitt's interest in ISS based on *projected revenue growth*, Plaintiff is entitled, as Mr. Jones' personal representative, to access the company's financial statements to verify the projected values.

(*See id.*, at 3 (emphasis added)). On November 6, 2025, Judge Kinlaw entered an Order Denying Plantiff's (sic) Rule 59(e) Motion.

On February 12, 2025, Defendants filed their Motion for Protective Order. The crux of this Motion for Protective Order was that the October 14, 2024, Order precluded certain topics included in Plaintiff's Amended Notice of 30(b)(6) Topics Innovative Scientific Solutions. (*See generally* Defs.' Mot. for Prot. Order). Defendants further argued:

7. On February 11, 2025, the 30(b)(6) deposition proceeded. Despite Judge Kinlaw's ruling and the defendants' objections consistent with that ruling, the plaintiff's counsel asked numerous questions concerning ISS's financial information previously determined to be irrelevant by Judge Kinlaw. Consistent with Rule 30(j)(3), counsel for ISS instructed the witness not to answer these questions.

8. This Court's limitation on evidence and relevancy determination pursuant to the October 14, 2024 order is meaningless if the plaintiff is simply able to use other discovery devices to obtain the same information. The court should issue a protective order pursuant to Rules 26, 30, and 37, SCRCP, sustaining the defendants' objections and forbidding the plaintiff from further questioning or inquiry into subject matters ruled irrelevant by this court.

(*See id.*, at 2-3 (footnote omitted)).

On April 1, 2025, the Honorable William C. McMaster, III entered a Form 4 Order granting Defendants' Motion for Protective Order and requested that Defendants provide a draft of a formal order and an affidavit of attorneys' fees. (*See* April 1, 2025 Form 4 Order). On April 16, 2025, Judge McMaster entered a formal Order granting Defendants' Motion for Protective Order and awarding Defendants attorneys' fees. (*See* April 16, 2025 Order). On April 28, 2025, Plaintiff filed a Motion to Reconsider the Court's April 16, 2025 Order, addressing both the substantive ruling in the Order and the amount of attorneys' fees awarded. (*See* April 28, 2025 Mot. to Reconsider). On May 23, 2025, Judge McMaster entered a Form 4 Order granting, in part, Plaintiff's Motion to Reconsider. (*See* May 23, 2025 Form 4 Order). He reduced the amount of attorneys' fees awarded to Defendants to $3,000 and $31.74 in costs. (*See id.*, at 2). Otherwise, he denied reconsideration of the April 16, 2025 Order. (*See id.*).

As discussed below, the Court should reverse the trial judge's denial of Plaintiff's Motion to Compel and should vacate the trial court's grant of Defendants' Motion for Protective Order (and award of sanctions).

C. <u>Notice of Appeal</u>

On March 4, 2026, Plaintiff filed a timely Notice of Appeal attaching and appealing from the following Orders:

- October 14, 2024 Order (Honorable Alex Kinlaw, Jr.)
- November 6, 2024 Order Denying Plantiff's (sic) Rule 59(e) Motion (Honorable Alex Kinlaw, Jr.)
- April 16, 2025 Order (Honorable William C. McMaster, III)
- May 23, 2025 Form 4 Order (Honorable William C. McMaster, III)
- January 21, 2026 Order Granting Defendants' Motion for Summary Judgment (Honorable Charles B. Simmons)
- February 4, 2026 Form 4 Order (Honorable Charles B. Simmons)

(*See* March 4, 2025 Notice of Appeal).

For the following reasons, the Court should reverse the trial court's orders: (a) granting Defendants' summary judgment; and (b) denying Plaintiff's Motion to Compel and granting Defendants' Motion for Protective Order.

ARGUMENTS

A. Standard of Review

1. Standard of Review Governing Grant of Summary Judgment

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court." *Jackson v. Swordfish Invs., LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005) (*citing George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001)). "Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Id.* at 611, 620 S.E.2d at 55-56 (*citing Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 406 S.E.2d 162 (1991)).

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* (*citing Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995)). "'The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.'" *Harbit v. City of Charleston*, 382 S.C. 383, 390, 675 S.E.2d 776, 779 (Ct. App. 2009) (*quoting George*, 345 S.C. at 452, 548 S.E.2d at 874)). Summary judgment is proper when no issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. *See Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009) (*citing* S.C.R. Civ. P. 56(c)). "[S]ummary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusion to be drawn therefrom." *Jackson*, 365 S.C. at 608, 611-12, 620 S.E.2d at 56 (*citing MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980)).

Summary judgment can only be granted "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *See Moore v. Barony House Restaurant, LLC*, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009) (citation omitted). Stated otherwise, "when the evidence is susceptible of only one reasonable interpretation, summary judgment may be granted." *Brooks v. Northwood Little League, Inc.*, 327 S.C. 400, 403, 489 S.E.2d 647, 648 (Ct. App. 1997).

2. **Standard of Review Governing Discovery Orders**

"'A trial court's rulings in matters related to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion.'" *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC,* 422 S.C. 544, 576, 813 S.E.2d 292, 309 (Ct. App. 2018) (*quoting Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016)). "'An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions.'" *Id.*

With regard to the award of attorneys' fees as a discovery sanction, the appropriate standard of review is the same as the standard of review over an equitable determination. "An action for attorneys' fees is one in equity." *See In re Beard,* 359 S.C. 351, 357, 597 S.E.2d 835, 838 (Ct. App. 2004). In other sanction contexts, this Court has applied an equitable standard of review to factual findings:

> The determination of whether attorney's fees should be awarded under Rule 11 or under the Act is treated as one in equity. *In re Beard*, 359 S.C. 351,357,597 S.E.2d 835, 838 (Ct. App. 2004) (applying an equitable standard of review of factual findings in action for sanctions under Rule 11 and the Act). In an action in equity tried by the judge alone, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Id.* "However, the abuse of discretion standard plays a role in the appellate review of a sanctions award." *Ex parte Gregory,* 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). Where the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions under an abuse of discretion standard. *Id.* Under the abuse of discretion standard, the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions. *Id.*

See Southeastern Site Prep, LLC v. Atlantic Coast Bldrs. and Contractors, LLC, 394 S.C. 97, 104, 713 S.E.2d 650, 653-54 (Ct. App. 2011).

B. The Court Should Reverse the Trial Court's Grant of Summary Judgment to Defendants

1. The Trial Court Erred in Granting Defendants Summary Judgment Because There Exist Genuine Issues of Material Fact as to Whether Plaintiff Revoked Mr. Swanson's Authority to Bind Him.

The trial judge erred in granting Defendants summary judgment, because there exist genuine issues of material fact for trial as to whether Plaintiff revoked any authority granted to Mr. Swanson to act on his behalf with regard to the valuation of Mr. Jones's Membership Units. In fact, Plaintiff presented significant evidence that he had revoked Mr. Swanson's ability to bind him—if such authority ever existed—when Mr. Swanson had materially departed from the methodology used (and conclusions reached) in his prior appraisal of Mr. Jones's Membership Units for estate purposes. Instead, Mr. Swanson blindly accepted the representations of Mr. Hartel—ISS's appraiser—without conducting any research to confirm or test Mr. Hartel's projections and the bases for his valuation. Mr. Swanson did not interview any ISS management or even investigate the accuracy of Mr. Hartel's projections of ISS's revenues. As a result, the Court should reverse the trial court's grant of summary judgment to Defendants and permit Plaintiff to proceed to a trial on the merits.

Under the ISS Operating Agreement, "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[1] in the Company now owned or hereafter acquired." (*See* Op. Agr't ¶ 11.2). "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." (*See id.*).

"The purchase price of each Membership Unit shall be the Fair Market Value (as defined below) of the entire Company divided by the total number of Membership Units." (*See id.* ¶ 11.4). "Fair Market Value" under the Operating Agreement is defined as:

> Fair Market Value means the cash equivalent price at which property would change

[1] The Operating Agreement defines "Membership Units" as "the rights of a Member under this Agreement and under the [South Carolina Uniform Limited Liability Company] Act." (*See* Operating Agr't ¶ I(p)).

> hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and to be well informed about the property and concerning the market for such property. The Fair Market Value of the Company shall be determined on a control-marketable basis, and any control premiums, lack of control discounts, lack of marketability discounts, and other similar premiums or discounts, which might otherwise be associated with the Membership Units themselves shall not be taken into account.

(*See id.*).

If the deceased member's estate and ISS cannot agree on a price within 21 days after an offer is made, ISS and member's estate "shall within thirty (30) days . . . each appoint one (1) appraiser . . . and notify the other party of the name of such appraiser appointed by them." (*See id.*). After the parties select their appraisers, the procedure is as follows:

> If the two (2) appraisers cannot agree on the Fair Market Value of the Company within 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. If the Offering Member and the Company cannot agree upon a third appraiser within such seven (7) day period, then the other two (2) appraisers shall appoint a third qualified appraiser. The third appraiser shall determine the Fair Market Value of the Company within thirty (30) days after his appointment. The Fair Market Value shall be the average of the two (2) appraisals which are closest to each other.

(*See id.*).

The trial court granted summary judgment, concluding that Mr. Swanson's agreement with Mr. Hartel's valuation of the value of Mr. Jones's Membership Units bound Plaintiff. Specifically, the trial judge stated that "[o]nce an agreement was reached [between appraisers], it is binding on the parties." (*See* Jan. 21, 2026 Order, at 8). However, there exist genuine issues of material fact as to whether—assuming Mr. Swanson was Plaintiff's agent for purposes of Section 11.4 of the Operating Agreement—Plaintiff to revoked and ended Mr. Swanson's status as his agent.

As Plaintiff contended in the trial court, the real issue in this case "is a question of agency." (*See* Dec. 17, 2025 Hrg. Transcr., at 12:20-25). In other words, the issue is whether Mr. Swanson was acting as Plaintiff's agent, with the authority to bind him, when he allegedly "agreed" to a valuation with Mr. Hartel. "Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control." *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 564, 813 S.E.2d 292, 303 (Ct. App. 2018) (citation omitted). "'[A]gency is a question of fact.'" *Royal v. Free Kindergarten Ass'n of Charleston,* 445 S.C. 436, 448, 914 S.E.2d 856, 862 (Ct. App. 2025) (*quoting R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 432, 434, 540 S.E.2d 113, 117-18 (Ct. App. 2000)). "The issues of agency relationship and scope of employment are generally for the jury." *See Murphy v. Jefferson Pilot Communs. Co.*, 364 S.C. 453, 463, 613 S.E.2d 808, 813 (Ct. App. 2005).

"An agency relationship may be established by evidence of actual or apparent authority." *Cowburn v. Leventis*, 366 S.C. 20, 39, 619 S.E.2d 437, 448 (Ct. App. 2005).

"The elements which must be proven to establish apparent agency are: (1) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to the relying party's detriment." *Graves v. Serbin Farms, Inc.,* 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991). Apparent authority "is established based upon manifestations by the principal, not the agent." *See Roberson v. Southern Fin. of S.C., Inc.*, 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005) (*citing Shropshire v. Prahalis*, 309 S.C. 70, 419 S.E.2d 829 (Ct. App. 1992)). The declarations and actions of the alleged agent cannot create an apparent agency. *Roberson*, 365 S.C. at 11, 615 S.E.2d at 115 (*citing Frasier v. Palmetto Homes*, 323 S.C. 240, 473 S.E.2d 865 (Ct. App. 1996)). "Thus, the concept of apparent authority depends upon manifestations by the principal to a third party and the reasonable belief by the third party that the agent is authorized to bind the principal." *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.,* 343 S.C. 424, 429, 540 S.E.2d 113, 116 (Ct. App. 2000).

In agency relationships, principals are generally free to revoke or modify the scope of the agent's authority to bind them:

> "As between principal and agent, authority is revocable at any time, if not coupled with an interest. The authority of an agent to represent the principal depends upon

> the will and license of the latter. It is the act of the principal which creates the authority; it is for his benefit and to subserve his purposes, that it is called into being; and unless the agent has acquired with the authority, an interest in the subject matter, it is in the principal's interest alone, that the authority is to be exercised. The agent, obviously, except in the instance mentioned, can have no right to insist upon a further execution of the authority, if the principal himself desires it to terminate. It is the general rule of law, therefore, that as between the agent and his principal, ***the authority of the agent may be revoked by the principal at his will at any time, and with or without good reason therefor, except in those cases where the authority is coupled with sufficient interest in the agent***. And this is true, even though the authority be in express terms, declared to be exclusive' or irrevocable.' But although the principal has the power thus to revoke the authority, he may subject himself to a claim for damages if he exercises it, contrary to his express or implied agreement in the matter. An agency is sometimes said to be irrevocable when it is conferred for a valuable consideration. It is believed, however, that this is only another form of stating the general rule that it must be coupled with an interest." Mechem on Agency, sec. 204.

See McCallum v. Grier, 86 S.C. 162, 166, 68 S.E. 466, 468 (1910) (emphasis added). "[A] mere agency relationship may be terminated at the will of the principal unless the agency is coupled with an interest." *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (Ct. App. 1994). There existed, at the very least, a genuine issue of material fact as to whether Plaintiff revoked Mr. Swanson's authority to unilaterally agree to a valuation of Mr. Jones's membership units in ISS.

In response to Defendants' Motion for Summary Judgment, Plaintiff presented voluminous evidence showing that he did not authorize Mr. Swanson to agree to Mr. Hartel's woefully low valuation. For example, as early as August 3, 2022, Plaintiff communicated to Mr. Swanson his concern about the massive discrepancy between Mr. Swanson's initial appraisal for the estate and the HDH Report:

4896-2879-8126

From:	Timothy Jones <fdicjones@comcast.net>
Sent:	Wednesday, August 3, 2022 12:32 PM
To:	Mark Swanson
Cc:	Alex Kendall; Chace Campbell; Darlene Lewis; Tim Jones; Jones, Timothy (CFPB)
Subject:	Fwd: Membership Units in Innovative Scientific Solutions, LLC Owned by the Estate of Dewitt A Jones
Attachments:	Innovative Scientific Solutions, LLC - Business Appraisal - FINAL.pdf

Mark,

Attached is the HDH ISS's valuation report. Per your appraisal, Dewitt's 19.05% interest was appraised at $8,732,300, as of 6-11-2021. The attached appraisal from Alex Hartel valued the entire company at $8,934,000, as of June 11, 2021. If you could take a look at his valuation report and schedule a time to discuss, I would appreciate it.

Best regards,
Tim
815-218-9093

(*See* Sept. 17, 2025 Letter filing Exhibits, Ex. A thereto). Thus, more than a month before the alleged "agreement" on the appraisals, Plaintiff was already notifying Mr. Swanson of the need to discuss the appraisal before acting.

On September 8, 2022, Mr. Hartel (Defendant's appraiser) emailed Mr. Swanson with "the revised valuation that you and I discussed today." (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. B thereto). Less than an hour later, Mark Swanson emailed Plaintiff, stating:

> Tim: I have been working with Alex, the gentlem[a]n that prepared the valuation for ISS. He and I have worked together and prepared an adjusted valuation. Here is what I believe is a reasonable approach to the valuation. While the numbers are dramatically different then (sic) my report these make sense. The valuation group in Atlanta was provided with much more accurate projections for future revenues than I was provided when I did my report.
>
> I made assumptions based on future revenues that really can't be supported based on the elimination of the majority of the company's COVID revenues.

(*See id.*). At no time did Plaintiff authorize Mr. Swanson to agree to Mr. Hartel's "revised valuation."

Instead, Plaintiff testified that, following this email, he met with Mr. Swanson and expressed his disagreement with Mr. Hartel's appraisal:

> Q: Did you ever come in and discuss it with him [Mr. Swanson]?

A: I did.

Q: What did y'all discuss?

A: I thought it was ridiculously low.

Q: Why?

A: Because the company was generating more in 2021 in income than the whole value.

Q: But Mark explained in a previous email to you that that was because of incorrect assumptions about COVID revenue. Did you have any basis to disagree with him about that?

A: I do now, because I know the COVID revenue went up in 2021.

Q: Is it still going up?

A: Not today, but it did in -- 2022 was really good, too.

Q: Is it still there?

A: No, of course not. But you're looking -- this is the most ridiculous part of this. They're saying my brother's interest was worth 1.7 million when his income after his death in 2021 per K-1 was 1.5 million, the next year for 2022, and what my understanding was, that was nine months, it was over a million dollars.

(*See* Sept. 17, 2025 Letter filing Exhibits, Ex. C thereto).

On September 9, 2022, Mr. Hartel—ISS's appraiser—wrote that the "agreed upon" valuation of ISS was $9,078,000 (speaking for Mr. Swanson):

> Mark and I have discussed the valuation in detail and have agreed upon the valuation contained in the attachment to this email.
>
> According to our Joint valuation as attached, the fair market value of a 100% membership interest In Innovative Scientific Solutions, LLC, as of June 11, 2021, was $9,078,000.

(*See* Sept. 17, 2025 Letter filing Exhibits, Ex. D thereto). However, there is no evidence that Mr. Swanson, at that time, conveyed that Plaintiff agreed with Mr. Hartel's appraisal. To the contrary, Plaintiff promptly notified Mr. Swanson of his strenuous disagreement with Mr. Hartel's appraisal.[2]

Plaintiff testified unequivocally that he never received or agreed to the purported "agreed upon" valuation referenced in Mr. Hartel's September 9, 2022 email:

Q: Did you ever receive a revised report from Mr. Swanson on the new valuation methodology he was using?

A: Not that recall at all.

Q: So, just to clarify, at the time that Mark and Alex are sending an email that they agreed with the approximate $ 9 million total corporate valuation, you had not seen a revised report of Mark Swanson breaking out how they landed on that number?

A: That's right.

Q: Did you ever authorize Mark Swanson or Alex Kendall (sic), I believe, to accept a $ 9 million valuation?

A: I did not.

Q: Would you have if Mark was serving as your valuation expert, would you have expected, before accepting the $ 9 million, that Mark would have provided you with the revised valuation for you to review?

A: Absolutely.

Q: And did he do that?

A: No.

Q: And so at no time, despite receiving HDH's evaluation, did you tell Mark or Alex that you thought that the valuation of HDH was sufficient?

A. No.

(*See* Sept. 17, 2025 Letter filing Exhibits, Ex. E thereto). In his Affidavit, Plaintiff reiterated that he never agreed to—or authorized anyone else to agree to—Mr. Hartel's valuation of Mr. Jones's ownership interest in ISS under the Operating Agreement:

I, as personal representative of Dewitt's estate, and my attorneys, have tried to come

[2] In fact, on October 21, 2022, Plaintiff's attorney emailed Plaintiff and Mr. Swanson indicating that there were still open issues with regard to amount of the valuation of ISS. (*See* Defs.' Dec. 12, 2025 Suppl. Mem. Supp. Mot. Summ. J. Ex. A, at 39:10-41:7).

> to an agreement with ISS and its Members on what the fair market value of Dewitt's membership interest is. Unfortunately, we have not been able to do so. I have at no point authorized any of my representatives, including any lawyers, to agree to a valuation of the fair market value of Dewitt's membership interest in ISS.

(*See* Sept. 15, 2025 Sworn Aff. of Timothy Jones, at 1-2).

As the Supreme Court has cautioned, "[q]uestions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to an inference of an agency relationship." *See Fernander v. Thigpen*, 278 S.C. 140, 142, 293 S.E.2d 424, 425 (1982) (*quoting Reid v. Kelly & Play Air, Inc.*, 274 S.C. 171, 174, 262 S.E.2d 24, 26 (1980)). As the Court explained, when confronted with a dispute over the existence of an agency relationship, courts must consider not only contractual and documentary evidence of such a relationship, but also testimonial evidence demonstrating or refuting its existence. *See id.* "'[I]t is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority.'" *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 565, 813 S.E.2d 292, 304 (Ct. App. 2018) (*quoting McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987)).

When determining whether Mr. Swanson maintained the authority to bind Plaintiff to Defendants' valuation, the trial court should have considered and credited Plaintiff's deposition testimony. Because the trial judge did not consider Plaintiff's deposition testimony that he revoked Swanson's authority, the trial court's analysis of whether a genuine issue of material fact existed was incomplete and in error. The trial judge ignored evidence creating a genuine issue of material fact as to whether Plaintiff revoked Mr. Swanson's authority to agree to a valuation of Mr. Jones's Membership Units under the Operating Agreement. This evidence was more than sufficient to create a genuine issue of material fact for trial.

For the foregoing reasons, the Court should reverse the trial court's grant of Defendants' Motion for Summary Judgment.

2. Messrs. Hartel and Swanson Did Not Determine Fair Market Value as Defined in the Operating Agreement.

Before the purported valuation at issue in this appeal, Plaintiff retained Mr. Swanson to perform a valuation of Mr. Jones's Membership Units in ISS. He did so as of the date of

Mr. Jones's death. Mr. Swanson's initial valuation was several orders of magnitude higher than Mr. Hartel's later appraisal on behalf of ISS. Defendants have argued that this differential was the result of "more accurate" information about ISS's projected revenues. However, even assuming this to be the case, the use of this later information—irrespective of its accuracy—violated the terms of the Operating Agreement, which required a determination of the fair market value of Mr. Jones's Membership Units based upon the information existing at the time he died in June, 2021.

Under Section 11.2 of the Operating Agreement, following Mr. Jones's death, the purchase price of his "Membership Units shall be computed in accordance with the provisions of SECTION 11.4." (*See* Op. Agr't ¶ 11.2). Section 11.4 of the Operating Agreement provides that "[t]he purchase price of each Membership Unit shall be the Fair Market Value (as defined below) of the entire Company divided by the total number of Membership Units." (*See* Op. Agr't ¶ 11.2). The Operating Agreement defines "Fair Market Value" as:

> For purposes of this Section, Fair Market Value means the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and to be well informed about the property and concerning the market for such property. The Fair Market Value of the Company shall be determined on a control-marketable basis, and any control premiums, lack of control discounts, lack of marketability discounts, and other similar premiums or discounts, which might otherwise be associated with the Membership Units themselves shall not be taken into account.

(*See id.*). Plaintiff submits that this Fair Market Value must be determined as of the time of Mr. Jones's death, not months later. In other words, the proper value of Mr. Jones's Membership Units under the Operating Agreement is "the cash equivalent price at which [the Membership Units] would change hands between a hypothetical willing buyer and a hypothetical willing seller" on June 11, 2021. This means that all assumptions and projections used to value the Membership Units must be those that would have existed on June 11, 2021.

Defendants cannot dispute that the relevant value of the Membership Units under Section

11.4 of the Operating Agreement was the fair market value on June 11, 2021. They have consistently taken that position in the lawsuit and obtained an advantage in this litigation as a result. In opposing Plaintiff's Motion to Compel (discussed in detail below) seeking financial information about ISS postdating Mr. Jones's death, Defendants argued that such information was not discoverable because it "doesn't have anything to do with valuing his [Mr. Jones's] shares ***as of the date of June, 2021***." (*See* Oct. 7, 2024 Hrg. Transcr., at 9:3-5 (emphasis added)). Defendants further asserted that "the relevant analysis is to value it ***as of the day of death*** . . . and that would include projected revenues for a certain period of time." (*See id.*, at 11:1-3 (emphasis added)). Defendants' counsel continued: "The operating agreement says you ***value it as of the date of death***." (*See id.,* at 11:9-10 (emphasis added)). Plaintiff reiterated that "you have to ***look . . . at the date of death and look at the financials then***, which will include projections regardless." (*See id.*, at 9:14-17 (emphasis added)). The trial court agreed with Defendants and denied Plaintiff's Motion to Compel, holding that "[t]he parties agree that the relevant date for the valuation of Dewitt Jones's membership units in ISS is the date of his death. Dewitt Jones passed away on June 16, 2021." (*See* Oct. 14, 2024 Order, at 1-2).

In light of the foregoing, Defendants are judicially estopped from denying that, under Section 11.4 of the Operating Agreement, the fair market value of Mr. Jones's Membership Units must be measured as of June 11, 2021. "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). That doctrine consists of the following elements:

> For the doctrine of judicial estoppel to apply, the following elements must be satisfied: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

See Auto-Owners Ins. Co. v. Rhodes, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013).

Defendants argued strenuously that Plaintiff was not entitled to discover information about ISS after 2021 because the relevant date for measuring fair market value under the Operating Agreement was June, 2021. Defendants contended that what actually occurred after Mr. Jones's death was not relevant to Plaintiff's claims. The Court agreed with Defendants and denied Plaintiff the discovery of such information. This substantially benefitted Defendants, protecting information relating to ISS's performance or financial status after June 2021 from discovery. This is ironic since the trial court granted Defendants summary judgment based on supposedly more accurate projection information learned after June 11, 2021. In any event, for purposes of this argument, the Court must presume that the Operating Agreement required the determination of the Fair Market Value of Mr. Jones's Membership Units *as of the date of his death.* This means that the appraisals at issue should have focused on what a buyer would have paid Mr. Jones for his ownership interest on June 11, 2021—with the knowledge available at that time.

Mr. Swanson testified that his original valuation of Mr. Jones's ownership interest in ISS—which was significantly higher than Mr. Hartel's appraisal—reflected the value of the ownership based on projections *as they existed at the time of Mr. Jones's death;* this was the proper date of measurement under the Operating Agreement as Defendants have admitted:

> Q. But you understand that for purposes of this valuation, the parties have all agreed that the date of death would be the date of valuation, which was June 11th of 2021, correct?
>
> A. Correct.
>
> ***Q. And so the original number that you came up with for your January 2022 report were based on projections as of that date, June 11, 2021, correct?***
>
> ***A. Correct.***
>
> Q. And it's your position now, though, that you believe that the accuracy of the information changed between June 11, 2021, and December of 2021, correct?
>
> A. I am not sure when those updated projections were prepared.
>
> Q. Okay. But you were--you were provided with post-death projections by Alex Hartel; is that right?

A. Correct.

Q. And it was your position that those projections were significantly different from the projections that you were reviewing back as of the date of death; is that fair?

A. Correct.

Q. Okay. But as you sit here today, if you were to use simply the projections as of June 11, 2021, would your position be that the value would be more than that [REDACTED] or less, just based on the June 2021 projections.

A. So, I can't--I'm not positive when the updated projections were done. I mean, they could have been done prior to June 11th. I don't know that. I did not receive those as of the date that I did my evaluation.

(*See* Defs.' Dec. 12, 2025 Suppl. Mem. Supp. Mot. Summ. J. Ex. A, at 22:25-24:7 (emphasis added)). In preparing his original estate valuation, Mr. Swanson relied solely on the information that existed at the time of Mr. Jones's death. (*See id.*, at 49:25-50:6). This estate valuation would have involved similar methodology to that envisioned under Sections 11.2 and 11.4 of the Operating Agreement. (*See id.,* at 24:11-21).

Mr. Swanson testified that, with regard to the appraisal at issue in this appeal, Mr. Hartel subsequently provided him with "post-death projections" (the dates of which he did not know) that were "significantly different" from the ones he relied upon to arrive at his initial appraisal of Mr. Jones's Membership Units in ISS. (*See id.*, at 23:14-24:9). While Mr. Swanson testified that he felt Mr. Hartel's projections were more accurate, he had absolutely no idea what substantive information Mr. Hartel obtained through interviews of ISS employees supported those projections. (*See* Defs.' Dec. 12, 2025 Suppl. Mem. Supp. Mot. Summ. J. Ex. A, at 28:24-31:1). Mr. Swanson never took any steps to verify or analyze the data underlying the HDH Report or Mr. Hartel's appraisal of the Membership Units.

It is indisputable that Mr. Swanson's original (much higher) appraisal done for estate purposes was based on the information existing at the time of Mr. Jones's death. That appraisal is what should have been done under Section 11.4 of the Operating Agreement. On the other hand, Mr. Hartel's valuation was based on allegedly updated information and post-death projections of

ISS's future revenues. This is not what the Operating Agreement required.

The Operating Agreement required that the appraisers determine fair market value at the time of Mr. Jones's death. In other words, they needed to arrive at the amount that a reasonable buyer and seller have agreed to as a purchase price for 19.05% of the Membership Units of ISS ***on June 11, 2021***. This means that the analysis must be based only on information available on June 11, 2021, including then-existing projections. While later obtained projections of revenues might have been more "accurate," they would not be relevant to the inquiry at issue. They would not impact what the fair market value was on the date of Mr. Jones's death.

As a result, the HDH Report and the approximately $9 million valuation of the entire company did not represent the fair market value at the time of Mr. Jones's death. Instead, it represents the fair market value at some later time, relying on later acquired information. The *only* appraisal of the value at the time of Mr. Jones's death was Mr. Swanson's original appraisal, which was ***much higher*** than Mr. Hartel's valuation. Mr. Hartel's valuation was erroneous from the onset, as it was not what the Operating Agreement required. Even if Mr. Swanson felt that Mr. Hartel's appraisal was based on more accurate projections, it was not what Section 11.4 of the Operating Agreement required. Mr. Swanson *could not have* agreed to that number, as it does not reflect fair market value on the date of Mr. Jones's death. As a result, it was a fundamental error for the trial court to conclude that ISS had complied with the requirements of the Operating Agreement. At a bare minimum, there are genuine issues of material fact for trial.

In light of the foregoing, the trial court erred in granting Defendants' Motion for Summary Judgment.

3. Summary Judgment Was Procedurally Premature at the Time the Trial Judge Granted Such Relief.

Among other things, Plaintiff argued before the trial court that "summary judgment is unsuitable where an opposing party has been denied a full and fair opportunity to conduct discovery, particularly when that party can establish the probability that further discovery would unveil additional pertinent evidence." (*See* Pl.'s Mem. Opp. Defs.' Mot. Summ. J., at 3). Plaintiff further argued: "Granting Defendant's motion for summary judgment at this juncture would be an egregious and fundamental misstep, directly undermining the Plaintiff's right to a fair adjudication. Critical discovery remains outstanding, making a just resolution utterly impossible at this stage." (*See id.*, at 4). The trial court erred in prematurely granting summary judgment before providing Plaintiff with the opportunity to conduct sufficient discovery.

Under the Rules of Civil Procedure, "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just." *See* S.C.R.C.P., Rule 56(f). "A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case." *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54, 677 S.E.2d 32, 36 (Ct. App. 2009). Moreover, "the nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is 'not merely engaged in a 'fishing expedition.''" *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citation omitted).

Plaintiff did, in fact, submit an affidavit to the trial judge explaining that summary judgment would be premature because, among other things, he was having an independent expert review available information and submit a rebuttal to Mr. Hartel's appraisal (which was expected to be significantly different):

> My legal counsel has retained an expert witness to produce a report evaluating the fair market value of Dewitt's membership interest, but as of this time, his report is still outstanding. I and my legal counsel anticipate that there will be a significant difference between the valuations produced by our expert witness and ISS'[s] expert witness.

(*See* Sworn Aff. of Timothy Jones, at 2). Consistent with Plaintiff's Affidavit, his Memorandum in Opposition to Motion for Summary Judgment emphasized the need for more discovery before summary judgment:

> Critical discovery remains outstanding, making a just resolution utterly impossible at this stage. Specifically, the Defendants have only recently supplemented their witness list to include a new witness, requiring Plaintiff's counsel to conduct further investigation and determine the impact of this testimony on the case. More importantly, Defendants requested two additional depositions on July 9, 2025, one of which is Plaintiff's testifying expert witness. The Plaintiff's expert, a representative from Greer Walker, was not available to sit for a deposition until the end of August 2025. The testimony of these witnesses will undoubtedly be relevant and necessary to properly litigate this case, as the core question in this dispute is whether expert appraisal of Mr. Jones' membership interest was accurately calculated.
>
> Furthermore, the recent production of newly identified discovery documents has demonstrably impeded the finalization of the Plaintiff's expert report, which is now not anticipated until September 2025. This expert report is not merely supplementary; rather, it is central and unequivocally necessary for the Plaintiff to fairly and fully present its case. The crux of this litigation revolves around a conflict of expert opinions concerning the fair market valuation of Innovative Scientific Solutions, LLC ("ISS"). Crucially, without the finalized expert report, the Plaintiff would be entirely precluded from meaningfully presenting its case. The expert report is expected to provide comprehensive analysis and data directly challenging the opposing party's valuation of ISS. Consequently, because the valuation of the company is a contested issue, and the Plaintiff's expert opinion on this matter is still forthcoming, there exists a genuine issue of material fact that cannot be resolved without further discovery.

(*See* Sept. 15, 2025 Pl.'s Mem. Opp. Mot. Summ. J., at 4).

In light of the foregoing, it is clear that the trial judge prematurely granted Defendants' summary judgment. Plaintiff was entitled to conduct complete discovery—particularly discovery regarding the correct valuation of Mr. Jones's Membership Units. He was denied that opportunity. As a result, the Court should reverse the trial court's grant of Defendants' Motion for Summary Judgment.

C. **The Court Should Reverse the Trial Court's Denial of Plaintiff's Motion to Compel and Grant of Defendants' Motion for Protective Order.**

In addition to the foregoing, the trial court erred in refusing to allow Plaintiff to engage in discovery concerning Defendant ISS's financial performance and condition following Mr. Jones's death. Such evidence was reasonably calculated to lead to the discovery of admissible evidence concerning the accuracy of the projections and assumptions underlying Mr. Hartel's valuation.

Under South Carolina law, litigants are entitled to engage in discovery on a broad range of subjects:

> The scope of discovery in South Carolina is generally broad. *Oncology & Hematology Assocs. of S.C., L.L.C. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 380, 385, 692 S.E.2d 920, 923 (2010); *S.C. State Highway Dep't v. Booker*, 260 S.C. 245, 252-53, 195 S.E.2d 615, 619 (1973) ("Since dockets must be kept current largely by settlements, litigants and attorneys should be allowed liberal discovery. Such would, of course, increase the likelihood of fair trial." (alteration in original) (*quoting Hodge v. Myers*, 255 S.C. 542, 548, 180 S.E.2d 203, 206 (1971))). As a result, parties may obtain discovery regarding any matter that is not privileged so long as it is relevant to the subject matter involved in the pending claim. Rule 26(b)(1), SCRCP.

See In re Mt. Hawley Ins. Co., 427 S.C. 159, 166-67, 829 S.E.2d 707, 712 (2019). As a result, "an objection on relevance grounds is likely to limit only the most excessive discovery request." *See Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) (*citing* J. Flanagan, *South Carolina Civil Procedure* 216 (2d ed. 1996)).

"The Rules do not differentiate between information that is private or intimate and that to which no privacy interests attach. . . . Thus, the Rules often allow extensive intrusion into the affairs of both litigants and third parties." *Hamm v. South Carolina Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853-54 (1994) (*quoting Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 30 (1984)). "The gist and gravamen of the discovery rules mandate full and fair disclosure to prevent a trial from becoming a guessing game or one of ambush for either party." *Scott v. Greenville Hous. Auth.*, 353 S.C. 639, 652, 579 S.E.2d 151, 158 (Ct. App. 2003). "The person requesting protection from the court or commission must initially show good cause by alleging a particularized harm which will result if the challenged discovery is had." *Hamm*, 312 S.C. at 241, 439 S.E.2d at 854.

In opposing Plaintiff's Motion to Compel, Defendants opposed the discovery of evidence that it contended "doesn't have anything to do with valuing his shares as of the date of June, 2021." (*See* Oct. 7, 2024 Hrg. Transcr., at 9:3-5). Defendants further asserted that "the relevant analysis is to value it as of the day of death . . . and that would include projected revenues for a certain period of time." (*See id.*, at 11:1-3). Defendants' counsel continued: "The operating agreement says you value it as of the date of death." (*See id.,* at 11:9-10). Plaintiff reiterated that "you have to look . . . at the date of death and look at the financials then, which will include projections regardless." (*See id.*, at 9:14-17).

Counsel for Plaintiff countered that:

> Basically -- essentially what their expert said, your Honor, was that because the types of business that ISS does during the height of COVID, their revenues are -- don't accurately reflect what they would actually be making outside of the pandemic. So they're -- they're saying, we're going to decrease your value of your shares because we don't believe we're going to continue making that much money once--once COVID comes to an end.

(*See id.*, at 11:25-12:7).

On balance the trial judges erred in denying Plaintiff discovery concerning ISS's performance after Mr. Jones's death—and sanctioning Plaintiff for seeking such information after denial of Plaintiff's Motion to Compel. As set forth above, Plaintiff does not dispute that the relevant time for purposes of the valuation of Mr. Jones's Membership Units was the date of his death, June 11, 2021. However, as noted, Mr. Hartel's valuation (and the HDH Report) is premised upon various assumptions and projections about ISS's anticipated performance in the years following Mr. Jones's death. The discovery requested seeks merely to inquire about the foundation of Mr. Hartel's valuation. Plaintiff is certainly entitled to conduct discovery to analyze the accuracy of Mr. Hartel's assumptions, projections, and analysis. Given the broad scope of discovery under the South Carolina Rules of Civil Procedure, the trial court erred in refusing to allow discovery into this highly relevant area of inquiry.

For the foregoing reasons, the Court should: (a) reverse the trial court's denial of Plaintiff's Motion to Compel; and (b) reverse the trial court's grant of Defendants' Motion for Protective Order (and award of sanctions).

CONCLUSION

For the foregoing reasons, the Court should reverse the trial court's entry of summary judgment in favor of Defendant. The Court should also reverse the trial court's denial of Plaintiff's Motion to Compel and grant of Defendants' Motion for Protective Order.

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