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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 REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
ARGUMENT	1
A. Introduction	1
B. Genuine Issues of Material Fact Remain as to Whether Defendants' Valuation Represents Fair Market Value at the Time of Mr. Jones' Death	2
1. Defendants Have Not Shown Beyond Dispute that the Appraisal Represented Fair Market Value at the Time of Mr. Jones' Death	2
2. Defendants' Reliance on Section 11.5 of the Operating Agreement Is Misplaced	8
C. The Record Creates a Genuine Issue of Material Fact as to Whether Mr. Swanson Could Bind Plaintiff to Mr. Hartel's Valuation	9
1. Nothing in the Operating Agreement or the Record Granted Mr. Swanson Express Authority to Bind Plaintiff	9
2. Plaintiff's Testimony that He Promptly Objected to the Appraisal and Never Authorized Mr. Swanson to Accept It Creates a Genuine Dispute of Fact	12
3. Defendants' Apparent Authority and Estoppel Arguments Fail Because ISS Knew Plaintiff Had Not Approved the Valuation	13
D. Summary Judgment Was Premature Because Material Discovery and Expert Evidence Remained Outstanding	15
E. Defendants' Brief Does Not Refute That Plaintiff Sought Post-Death Discovery to Test Valuation Inputs, Not to Alter the Valuation Date	18
CONCLUSION	20

TABLE OF AUTHORITIES

CASES

<i>Callawassie Island Members Club v. Martin</i> , 437 S.C. 148, 877 S.E.2d 341 (2022)	13
<i>Fernander v. Thigpen</i> , 278 S.C. 140, 293 S.E.2d 424 (1982)	15
<i>First S. Bank v. Rosenberg</i> , 418 S.C. 170, 790 S.E.2d 919 (Ct. App. 2016).....	9-11
<i>Frasier v. Palmetto Homes</i> , 323 S.C. 240, 473 S.E.2d 865 (Ct. App. 1996).....	14
<i>Graves v. Serbin Farms, Inc.</i> , 306 S.C. 60, 409 S.E.2d 769 (1991)	14
<i>Jackson v. Swordfish Invs., LLC</i> , 365 S.C. 608, 620 S.E.2d 54 (2005)	2
<i>McCall v. Finley</i> , 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987).....	15
<i>McCallum v. Grier</i> , 86 S.C. 162, 68 S.E. 466 (1910)	14
<i>McGill v. Moore</i> , 381 S.C. 179, 672 S.E.2d 571 (2009)	9
<i>R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.</i> , 343 S.C. 424, 540 S.E.2d 113 (Ct. App. 2000).....	14
<i>Reid v. Kelly & Play Air, Inc.</i> , 274 S.C. 171, 262 S.E.2d 24 (1980)	15
<i>Roberson v. Southern Fin. of S.C., Inc.</i> , 365 S.C. 6, 615 S.E.2d 112 (2005)	14
<i>Royal v. Free Kindergarten Ass'n of Charleston</i> , 445 S.C. 436, 914 S.E.2d 856 (Ct. App. 2025).....	10
<i>Shropshire v. Prahalis</i> , 309 S.C. 70, 419 S.E.2d 829 (Ct. App. 1992).....	15
<i>South Carolina Dep't of Transp. v. M & T Enterps. of Mt. Pleasant, LLC</i> , 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).....	11
<i>Spence v. Spence</i> , 368 S.C. 106, 628 S.E.2d 869 (2006)	9

<i>Stevens Aviation, Inc. v. DynCorp Int'l LLC</i> , 407 S.C. 407, 756 S.E.2d 148 (2014)	7
<i>Town of Kingstree v. Chapman</i> , 405 S.C. 282, 747 S.E.2d 494 (Ct. App. 2013).....	14

STATUTES/RULES/REGULATIONS

Rule 11, SCRCF.....	16
Rule 26, SCRCF.....	19
Rule 30(b)(6), SCRCF	16
Rule 56, SCRCF.....	13
Rule 56(f), SCRCF.....	17

ARGUMENT

A. Introduction

Respondents/Defendants Innovative Scientific Solutions, LLC, J. Ryan Flanagan, Jay A. Flanagan, Jr., and Marion L. Snyder ("Defendants") characterize this appeal as nothing more than Plaintiff/Appellant Timothy Jones, as Personal Representative for Dewitt Jones ("Plaintiff"), refusing to accept an unfavorable appraisal. The appeal presents the questions, *inter alia*, of whether Defendants established the following beyond dispute: (a) that the appraisers actually determined Fair Market Value as defined in the Amended and Restated Operating Agreement ("Operating Agreement"); and (b) that Plaintiff's appointed appraiser had authority under the Operating Agreement to bind Plaintiff to any valuation, irrespective of whether Plaintiff authorized him to do so. Because the record permits competing inferences on each question, the Order Granting Defendants' Motion for Summary Judgment ("Order") cannot stand and should be reversed.

Defendants' Brief does not resolve those disputes. Defendants contend that appraisers Mark Swanson ("Mr. Swanson") and Alex Hartel ("Mr. Hartel") reached the same value and that Plaintiff's appointment of Mr. Swanson authorized him to bind Plaintiff. However, the record contains contrary evidence on the scope of that authority, on Plaintiff's instructions, and on whether the valuation relied on information consistent with a date-of-death determination of Fair Market Value.

The Operating Agreement required the buyout of Dewitt Jones' ("Mr. Jones") Membership Units in Innovative Scientific Solutions, LLC ("ISS") and prescribed the method for determining the purchase price. It does not expressly grant an estate's appraiser irrevocable authority to disregard Plaintiff's instructions or bind Plaintiff without regard to ordinary contract and agency principles. Nor is a valuation amount "conclusive and binding" unless it was determined according

to the Operating Agreement's procedure and represents Fair Market Value as of Mr. Jones' death. The record contains material factual disputes on both points.¹

This Court reviews the Order under the same standard the trial court applied. *See Jackson v. Swordfish Invs., LLC*, 365 S.C. 608, 612, 620 S.E.2d 54, 56 (2005). At this stage, Plaintiff need not prove his case by a preponderance of the evidence; he need only identify a genuine issue of material fact. The record presents several such issues.

B. Genuine Issues of Material Fact Remain as to Whether Defendants' Valuation Represents Fair Market Value at the Time of Mr. Jones' Death.

1. Defendants Have Not Shown Beyond Dispute that the Appraisal Represented Fair Market Value at the Time of Mr. Jones' Death.

As Plaintiff previously explained, under Section 11.2 of the Operating Agreement, the purchase price of Mr. Jones' "Membership Units" was to be determined in accordance with Section 11.4. (*See Op. Agr't* ¶ 11.2). Section 11.4 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* ¶ 11.4). "Fair Market Value" is defined as: "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." (*See id.*).

Defendants rely on Section 11.4's statement that the purchase price "as determined herein shall be conclusive and binding on the parties, their personal representatives, heirs, successors, and assigns." (*See Resps.' Br.*, at 18, 24). The limiting phrase is "as determined herein." The clause binds the parties only to a price determined in accordance with Section 11.4's definition and procedure, not to any figure two appraisers announce. If Messrs. Hartel and Swanson produced a

¹ Ironically, Defendants try to justify withholding ISS's "post-death" financial information by characterizing Plaintiff's discovery requests as an effort to value ISS through hindsight. Plaintiff instead sought to test the basis and reasonableness of the management-prepared, multi-year revenue forecasts used to calculate the disputed date-of-death Fair Market Value. Plaintiff contends that Defendants cannot rely on revenue projections through 2025 to establish value while blocking discovery into the assumptions behind those projections.

valuation that did not reflect the Fair Market Value of Mr. Jones' Membership Units as of his death, it could not bind Plaintiff. Defendants therefore had to establish beyond any genuine issue of material fact that the appraisal met that standard. The record does not permit that conclusion.

In late 2021, Mr. Swanson valued Mr. Jones' Membership Units for the Estate of Dewitt Jones (the "Estate") at a figure *much* higher than Mr. Hartel's later estimate. (See Dec. 17, 2025 Hrg. Transcr., at 11:18-24 (Defendants' counsel noting that Mr. Swanson's "valuation went from 35,000,000 to 9,000,000 dollars")). Mr. Swanson testified that his initial valuation relied on projections as of June 11, 2021.² (See Defs.' Dec. 12, 2025 Suppl. Mem. Supp. Mot. Summ. J. Ex. A, at 23:5-8). Plaintiff thus entered the valuation process having been told that Mr. Jones' interest was worth substantially more than what Mr. Hartel later concluded. Defendants have made no showing that Mr. Swanson's original valuation was excessively high. They have not presented evidence of the assumptions or projections upon which he relied. They have not presented evidence of the underlying data upon which he relied.

Six months later, Mr. Hartel released his initial June 28, 2022 Summary Valuation Report as of June 11, 2021 ("HDH Report"). (See Oct. 24, 2024 Mem. Supp. Mot. to Alter or Amend. Ex. A). As discussed below, the face of the HDH Report raises substantial questions; for example, it relies on unsupported forecasts, a single valuation method, and judgment calls that sharply reduced ISS's operating value. It projected net COVID revenue of \$12.0 million for the last seven months of 2021 and \$12.4 million for 2022, followed by a steep decline to \$0 for 2023:

² Mr. Jones passed away sometime between June 11 and June 16, 2021, though the record is not consistent on the precise date. The precise date of Mr. Jones' death is not material to the outcome of this appeal. For purposes of this Reply, Plaintiff will refer to the date of Mr. Jones' death as June 2021.

	Projected ¹				
	TME 31-Dec-21	FYE 31-Dec-22	FYE 31-Dec-23	FYE 31-Dec-24	FYE 31-Dec-25
Tax Revenue	\$ 2,855,692	\$ 6,175,884	\$ 7,102,266	\$ 7,812,493	\$ 8,203,118
Other Molecular Revenue	-	575,050	1,270,500	1,397,550	1,467,428
COVID Revenue	12,003,841	12,365,834	-	-	-
Revenue	\$ 14,859,533	\$ 19,136,767	\$ 8,372,766	\$ 9,210,043	\$ 9,670,545
Annual Growth %	4%	-54.0%	-56.2%	10.6%	5.0%
Cost of Sales	6,540,577	11,943,029	3,421,577	3,763,735	3,951,922
Gross Profit	8,319,956	7,193,738	4,951,189	5,446,308	5,718,623

(See *id.*, at Ex. 14 thereto).

The HDH Report assumes that COVID revenues would drop to zero after 2022 but does not analyze whether that forecast was reasonable in June 2021. The HDH Report does not address whether COVID-generated revenue could support ISS's growth in other areas. The HDH Report identifies no contract-level support, testing volumes, reimbursement assumptions, customer pipeline, or probability analysis for that assumption. There is no evidence in the record of what, if anything, Mr. Hartel did to verify the data and projections underlying his valuation. The face of the HDH Report disclosed that *ISS management* supplied the 2021 and 2022 forecasts and that Mr. Hartel extrapolated 2023 through 2025 after discussions with management. (See *id.*). There is no evidence whatsoever in the record of the substance of this information. There is no evidence showing that the forecasts Mr. Hartel relied upon were the same forecasts that a potential buyer might have found in June 2021. Because ISS had an interest in minimizing the cost of the buyout, the reliability of the forecasts *that its management made and communicated to Mr. Hartel* warranted examination. Yet the record does not show that either appraiser independently tested them.

The HDH Report derived a relatively low operating value by assuming a rapid collapse in COVID revenue without analyzing the potential positive offsets that might have existed. The difference between the appraisers appears to stem principally from the projections supplied by ISS management. Because the data underlying the management projections are not in the record, the

trial court could not independently assess the forecasts on which the asserted Fair Market Value depended. This creates another factual issue for trial.

Defendants could not establish *when* ISS created the projections and other information on which Mr. Hartel relied. The *only* record evidence on that point is Mr. Swanson's testimony that he did not know when the projections were prepared:

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). As a result, the later projections could have been created at any time between June of 2021 and the date of the 2022 initial HDH Report.

Fair Market Value is the price, as of Mr. Jones' death, at which his Membership Units "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." (*See* Op. Agr't ¶ 11.4). Fair Market Value therefore must be based on information known or reasonably knowable on the applicable date in June 2021. Because the projections on which

Mr. Hartel relied were prepared at an unknown time, they may incorporate information or expectations that did not exist on the valuation date. Defendants have not established that a reasonable buyer and seller in June 2021 would have anticipated that ISS's COVID revenue would soon disappear and the company's overall revenue would decline sharply over the next several years.

The record does not establish as a matter of law that the updated projections existed, were available, or reflected the information a hypothetical buyer and seller would have possessed on the date of Mr. Jones' death. Rather, the record reflects complete uncertainty on the issue. Mr. Hartel's testimony that he sought a forecast prepared "as close to" the valuation date as possible does not eliminate that uncertainty. (*See* Resps.' Br., at 26 (*quoting* Alex Hartel Dep. Tr. at 44:15-22) ("we went back to management and asked if they could provide a forecast that was prepared as close to the date of death as possible.")). At summary judgment, the court could not resolve the evidentiary conflict or accept Defendants' preferred inference about when the forecast was prepared. The dispute is material because the Operating Agreement defines Fair Market Value as the price at which a hypothetical willing buyer and willing seller would transact while having reasonable knowledge of relevant facts. The valuation date gives content to that standard. The buyer and seller are hypothetical parties dealing as of the relevant date, not parties endowed with later-developed information or hindsight.

Plaintiff does not argue that an appraiser must complete the appraisal on the valuation date or may never consult materials prepared afterward. However, the appraisal must still represent what a potential buyer and seller would have known on the valuation date. The relevant distinction is between using later analysis to understand or corroborate facts knowable on the valuation date and using later-developed information to substitute a different outlook for the one a market participant would have held on the valuation date. The Operating Agreement requires Fair Market Value as of the date of death. Defendants themselves relied on that premise to oppose discovery of post-death financial records. The inquiry is therefore what a well-informed buyer and seller reasonably would have known and expected in June 2021. A later-developed projection may be

relevant to the extent it reflects contemporaneous facts and expectations, but it cannot replace them with a subsequent reconstruction.

Defendants therefore did not carry their burden of proving beyond dispute that Mr. Hartel's appraisal reflected the Fair Market Value of Mr. Jones' Membership Units at the time of his death. The record does not reveal the projections' contents, their factual foundation, why ISS management forecast severe declines, or whether revenues declined as predicted. It shows only that Mr. Hartel accepted management's prediction of the collapse of COVID revenues. There is no evidence in the record that Mr. Hartel (or Mr. Swanson) did anything to probe or test those assumptions. The evidence simply did not satisfy Defendants' summary judgment burden of proving no genuine issue of material fact.

Defendants argue that the valuation procedure is "binding" and that Plaintiff cannot override it merely by disagreeing with the Estate's own appraiser. (*See Resps.' Br.*, at 18). Plaintiff does not ask the Court to disregard the procedure; he did not bring this action merely because he "disagrees" with Mr. Hartel. Instead, he argues that a factual dispute remains over whether the procedure produced a valid Section 11.4 determination, because the resulting figure may not represent Fair Market Value as defined in the Operating Agreement. In deciding that question at summary judgment, the Court must view "the evidence and inferences that can reasonably be drawn therefrom . . . in the light most favorable to" Plaintiff. (*See Resps.' Br.*, at 14 (*quoting Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 415, 756 S.E.2d 148, 152 (2014))). Resolving all doubts in Plaintiff's favor, it was error for the trial court to grant Defendants' Motion for Summary Judgment.

The evidence permits the inference that Mr. Hartel's valuation was unduly pessimistic. His initial model projected no COVID revenues starting in 2023 without testing customer-specific evidence of residual revenue. It also failed to measure whether COVID-generated profits had funded capital, equipment, personnel, capacity, customer development, or expansion into toxicology, molecular testing, and other services. The model thus assumed the disappearance of COVID revenue, limited replacement growth, and then discounted the resulting depressed earnings

stream for risk. A willing buyer evaluating ISS as of June 2021 could reasonably have viewed the company as a better-capitalized and more diversified laboratory platform with demonstrated scale and opportunities for continued expansion, rather than simply as a business returning to pre-COVID performance. The record permits a factual dispute over whether Mr. Hartel's methodology adequately accounted for that possibility.

For the foregoing reasons, the Court should reverse the trial court's grant of summary judgment and remand this matter for further proceedings.

2. Defendants' Reliance on Section 11.5 of the Operating Agreement Is Misplaced.

Section 11.5 of the Operating Agreement provides, in part:

After the records of the Company have been so modified and after such tender of 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 rights as a Member to the extent of the Membership Units so canceled or transferred.

(*See Op. Agr't* ¶ 11.5). Defendants rely on Section 11.5 to argue that Plaintiff had to accept any figure put forward by Messrs. Hartel and Swanson:

The parenthetical "(whether or not accepted by the Offering Member, his estate, or his personal representative)" is a direct textual answer to the Estate's argument that Mark Swanson was required to get approval from the Estate prior to reaching an agreement. (*Id.*). The Operating Agreement expressly contemplates that the buyout is completed regardless of whether one party or the other finds some reason to dispute the price determined pursuant to the Operating Agreement.

(*See Resps.' Br.*, at 19). That reading does not account for Section 11.5's text and context.

Section 11.5's parenthetical does not answer Plaintiff's argument. It modifies the immediately preceding phrase, "after the tender of such payment has been made," and addresses whether Plaintiff must accept payment before ISS may cancel the Membership Units. It does ***not*** state that Plaintiff must accept any valuation or permit a price other than Fair Market Value. Section 11.5 instead assumes that the price was properly "determined herein" under the Operating Agreement; it does not cure a valuation that failed to satisfy Section 11.4.

Sections 11.2, 11.4, and 11.5 should be read together. *See McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause"). Section 11.2 makes the sale mandatory and directs that the purchase price be computed under Section 11.4. Section 11.4 establishes the price-determination mechanism and requires Fair Market Value. Section 11.5 then governs payment and transfer of the units. Under Defendants' reading, tender of a note would make a disputed valuation binding even if the appraiser lacked authority or the valuation did not satisfy the contractual standard. Nothing in the text of Section 11.5 supports that result.

Plaintiff does not contend that he could retain Mr. Jones' Membership Units by refusing tender. Rather, he contends that Defendants have not established as a matter of law that the promissory note reflected a purchase price based on a valid determination of Fair Market Value under Section 11.4 of the Operating Agreement. Section 11.5 cannot supply what Section 11.4 requires.

C. The Record Creates a Genuine Issue of Material Fact as to Whether Mr. Swanson Could Bind Plaintiff to Mr. Hartel's Valuation.

1. Nothing in the Operating Agreement or the Record Granted Mr. Swanson Express Authority to Bind Plaintiff.

Defendants contend that, by appointing Mr. Swanson as an appraiser, Plaintiff necessarily authorized him to bind Plaintiff to the appraisers' valuation. Specifically, Defendants argue:

That law is not relevant to the rights of third parties in dealing with agents the principal admits it hired. On that score, the law protects the reasonable expectations of third parties in dealing with a principal's agent. *See Spence v. Spence*, 368 S.C. 106, 126, 628 S.E.2d 869, 879 (2006). That is particularly true where, as here, the agent is appointed pursuant to the parties' contract to accomplish some act the agent is expressly empowered to do by that contract. *First S. Bank v. Rosenberg*, 418 S.C. 170, 180-181, 790 S.E.2d 919, 925-926 (Ct. App. 2016) (holding an agent expressly empowered by the parties' instrument possessed actual authority to bind the principal to the resulting contract).

(*See Resps.' Br.*, at 23). The crux of this argument is that the Operating Agreement expressly authorized Mr. Swanson to bind Plaintiff to a valuation as his agent.

However, nothing in the language of the Operating Agreement supports that conclusion.

Defendants can identify no provision stating that appointment of an appraiser creates an irrevocable agency relationship (or any agency relationship, for that matter), grants unilateral settlement authority, or prevents the appointing party from limiting or revoking that authority. To the contrary, the Operating Agreement provides only that Plaintiff was to "appoint" an appraiser to try to "agree on the Fair Market Value" with ISS's appraiser:

The Company ... and the Offering Member (or his estate or other legal representative, as the case may be) shall within thirty (30) days following the expiration of the aforesaid twenty-one (21) day period 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 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.

(See Op. Agr't ¶ 11.4). This language does not authorize an appraiser to act as Plaintiff's agent. In fact, it does not grant any specific powers of agency. The Operating Agreement likewise does not foreclose a challenge to whether an appraiser acted within the authority granted or whether the resulting value satisfied the contractual Fair Market Value standard. Those questions therefore turn on the Operating Agreement's text and the evidence concerning the appraiser's authority.

In the absence of any language in the Operating Agreement granting Mr. Swanson any specific express agency, it was error for the trial judge to bind Plaintiff to Mr. Swanson's actions. See *Royal v. Free Kindergarten Ass'n of Charleston*, 445 S.C. 436, 450, 914 S.E.2d 856, 863 (Ct. App. 2025) ("[T]he record is devoid of any evidence that FKAC's Executive Committee expressly granted such authority to Wells.").

Defendants' reliance on *Rosenberg, supra*, for the proposition that an agent expressly empowered by the parties' instrument possessed actual authority to bind the principal to the resulting contract is misplaced. In *Rosenberg*, this Court addressed an agent's authority under an express "power of attorney," which plainly set forth the agent's powers:

Brust argues the circuit court misinterpreted the POA by refusing to recognize it was susceptible to more than one interpretation. According to Brust, other jurisdictions have been "especially cautious" in recognizing an agent's ability to

bind a principal under a guaranty, and this court should adopt the position that the authority to bind under a guaranty must be expressly granted in the power of attorney. Brust further insists the POA's language was ambiguous as to whether Rosenberg had actual authority to bind Brust to the Guaranty. We disagree. ... In the instant case, the circuit court found the POA was unambiguous and permitted Rosenberg to execute the Guaranty on behalf of Brust.

See *Rosenberg*, 418 S.C. at 179, 790 S.E.2d at 924 (emphasis added). Under the Power of Attorney, the agent was expressly authorized to "execute any ... document ... involved in [the Property's] financing." See *id.* On the other hand, the Operating Agreement does not unambiguously make an appraiser Plaintiff's agent.

Plaintiff does not seek a "veto" over an adverse appraisal. The issue is narrower: whether Mr. Swanson was authorized under the Operating Agreement to bind Plaintiff to a value that, at least arguably, did not represent Fair Market Value.

The trial court treated Plaintiff's evidence as immaterial because the Operating Agreement did not require Plaintiff's express approval after the appraisal. (See Jan. 21, 2026 Order Granting Defs.' Mot. Summ. J., at 5 ("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.")). However, the absence of an express post-appraisal approval requirement does not itself establish that Mr. Swanson had irrevocable authority to bind Plaintiff. The relevant question is the scope of the authority Plaintiff actually granted.

Plaintiff does not seek a "do-over" with successive appraisers. (See Resps.' Br., at 20-21). He asks only that the Court enforce Section 11.4 as written. See *South Carolina Dep't of Transp. v. M & T Enterps. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) (court is "without authority to alter an unambiguous contract by construction or to make new contracts for the parties"). Defendants' construction, by contrast, would add a significant term that appears nowhere in the Operating Agreement: that an appointed appraiser has irrevocable authority to enter a final valuation agreement regardless of instructions, limitations, revocation, or compliance with the Fair Market Value standard. Courts enforce the parties' written agreement and should not imply such a consequential term without textual support.

2. **Plaintiff's Testimony that He Promptly Objected to the Appraisal and Never Authorized Mr. Swanson to Accept It Creates a Genuine Dispute of Fact.**

The summary judgment record contains affirmative evidence that Plaintiff objected to the proposed valuation and did not authorize Mr. Swanson to accept it. Plaintiff testified that, after Mr. Swanson sent the revised appraisal on September 8, he met with Mr. Swanson and described the proposed value as "ridiculously low." (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. C thereto). Plaintiff also testified that he never authorized Mr. Swanson or anyone else to accept a valuation of approximately \$9 million for ISS, never agreed that Mr. Hartel's analysis was sufficient, and expected Mr. Swanson to provide a revised valuation explaining the changed methodology before any acceptance. (*See* Sept. 17, 2025 Letter filing Exhibits, Ex. E thereto).

Plaintiff's sworn affidavit was equally clear: he never authorized any representative to agree to a valuation of the Fair Market Value of Mr. Jones' interest. (*See* Sept. 15, 2025 Sworn Aff. of Timothy Jones, at 1-2). That testimony was more than an expression of dissatisfaction after the fact. It was evidence that Plaintiff either never authorized Mr. Swanson to finalize the proposed value or had withdrawn any such authority.

The timing also supports a reasonable inference in Plaintiff's favor. On September 8, Mr. Swanson forwarded the revised valuation, stated that he had worked with Mr. Hartel, and indicated that he believed the revised approach was reasonable. (*See* Resps.' Br., at 10). Defendants acknowledge that Mr. Swanson also reported that Plaintiff wanted time to review the valuation. (*See* Resps.' Br., at 10; Sept. 17, 2025 Letter filing Exhibits, Ex. E thereto). The next day, however, Mr. Hartel circulated an email stating that the appraisers had agreed. A factfinder could reasonably conclude that Plaintiff either had revoked or had never granted Mr. Swanson the authority to take final action before Plaintiff had an opportunity to review the material and before Mr. Swanson provided the supporting explanation Plaintiff expected.

Defendants rely on Mr. Swanson's testimony that he did not recall a discussion in which Plaintiff objected. A lack of recollection, however, does not contradict, much less conclusively refute, affirmative testimony that the discussion occurred. At most, the testimony presents a

credibility question that cannot be resolved on summary judgment, which must be resolved in Plaintiff's favor. *See Callawassie Island Members Club v. Martin*, 437 S.C. 148, 157, 877 S.E.2d 341, 345 (2022). Rule 56 required the court to credit Plaintiff's testimony and draw all reasonable inferences in his favor.

Defendants also observe that Mr. Swanson was never formally "fired." Formal termination is not the legal test. (*See Resps.' Br.*, at 12). Authority may be limited or revoked without a particular word or formality. The question is whether the principal manifested that Mr. Swanson lacked authority to accept the valuation. Plaintiff's evidence supports that inference. Whether Plaintiff did so, and when, is a question for the factfinder.

For the foregoing reasons, the Court should reverse the grant of summary judgment to Defendants and remand for further proceedings.

3. **Defendants' Apparent Authority and Estoppel Arguments Fail Because ISS Knew Plaintiff Had Not Approved the Valuation.**

In response to Plaintiff's argument that, assuming Mr. Swanson was his express agent, Plaintiff revoked any authority he had, Defendants argue that ISS was entitled to rely on his apparent authority because no revocation was communicated to it. (*See Resps.' Br.*, at 22-24 (citations omitted)). That argument fails because it depends on a premise that is in factual dispute.

By Defendants' own account, on September 8, 2022, Mr. Swanson reported to ISS's counsel that:

By September 8, 2022, their work was complete, and Swanson **reported to counsel for the Company** and then-counsel for the Estate that Hartel and "I spoke this afternoon and have produced what I (Swanson) believe is a fair valuation for all parties ... I have shared it with Tim. **Tim would like some time to review and says he will contact me next week.**"

(*See Resps.' Br.*, at 10 (*citing* Swanson Dep. Tr. at 12:22-13:6)). Rather than wait for Plaintiff to meet with Mr. Swanson, on "[t]he next day, September 9, 2022, Hartel sent an email to Swanson and then-counsel for the Estate and the Company attaching the agreed-upon Fair Market Value of the Company as of Dewitt Jones's death." (*See id.*). That email stated:

Good afternoon,

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.

Please let us know if you have any questions.

(See Sept. 17, 2025 Letter with Exhibits Ex. D).

"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)). "[T]he 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." *See McCallum v. Grier*, 86 S.C. 162, 166, 68 S.E. 466, 468 (1910).

The rule upon which Defendants rely provides that: "When a principal, by any such acts or conduct, has knowingly caused or permitted another to appear to be his agent, either generally or for a particular purpose, he will be estopped to deny such agency to the injury of third persons who have in good faith and in the exercise of reasonable prudence dealt with the agent on the faith of such appearances." (See Resps.' Br., at 23 (emphasis added) (citing *Town of Kingstree v. Chapman*, 405 S.C. 282, 315, 747 S.E.2d 494, 511 (Ct. App. 2013) (quoting *R & G Const., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000))). For the reasons that follow, there is at least an issue of material fact as to whether Plaintiff communicated the revocation of Mr. Swanson's agency to Defendants.

As set forth above, Defendants' own Brief admits that ISS had actual notice on September 8, 2022—before Mr. Hartel circulated the valuation that he represented as "agreed" on September 9—that Plaintiff had not approved Mr. Hartel's valuation and that his review was forthcoming, potentially the following week. Having been told that Plaintiff wanted time to review the HDH Report, Defendants cannot claim that they reasonably relied on Mr. Swanson's alleged authority to finalize the valuation the next day. *See McCall v. Finley*, 294 S.C. 1, 6, 362 S.E.2d 26, 29 (Ct. App. 1987). ISS had notice, if not of a revocation, that Plaintiff was not prepared to allow Mr. Swanson to accept the HDH Report.

Whether Defendants' reliance was reasonable and whether Plaintiff held Mr. Swanson out as having authority to finalize a value without his review are fact questions that cannot be resolved against Plaintiff on summary judgment. "Questions 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) (reversing grant of summary judgment) (*quoting Reid v. Kelly & Play Air, Inc.*, 274 S.C. 171, 174, 262 S.E.2d 24, 26 (1980)). Here, the record contains at least sufficient evidence to create such an inference.

D. Summary Judgment Was Premature Because Material Discovery and Expert Evidence Remained Outstanding.

Plaintiff argued below that summary judgment was premature because discovery remained incomplete:

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 GreerWalker, 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).

Plaintiff diligently pursued discovery. This lawsuit was filed on January 2, 2023. On September 26, 2023, Plaintiff served discovery requests directed to Defendant ISS seeking, among other things, information about ISS's financial performance and condition. (See March 4, 2024 Pl.'s Mot. to Compel). On February 15, 2024, Plaintiff sent a Rule 11 letter following up on his discovery requests. (See *id.*, Ex. B). On March 4, 2024, Plaintiff filed a Motion to Compel. (See *generally id.*). The trial court heard Plaintiff's Motion to Compel on October 7, 2024. (See *generally* Oct. 7, 2024 Hrg. Transcr.). The trial court denied Plaintiff's Motion to Compel on October 14, 2024. (See Oct. 14, 2024 Order). Plaintiff filed a timely Motion to Alter or Amend the Order denying his Motion to Compel. (See Oct. 24, 2024 Mot. to Alter or Amend). The trial court denied that motion on November 6, 2024. (See Nov. 6, 2024 Order).

Plaintiff then sought to take the Rule 30(b)(6) deposition of Defendant ISS. Defendants filed a Motion for Protective Order on February 12, 2025, asserting that "plaintiff's counsel asked numerous questions concerning ISS's financial information previously determined to be irrelevant." (See Feb. 12, 2025 Defs.' Mot. Prot. Order). On April 16, 2025, the trial court granted the motion. (See April 16, 2025 Order). Plaintiff timely moved for reconsideration, which the trial court denied on May 23, 2025, less than two months before Defendants filed the Motion for Summary Judgment at issue in this appeal. (See May 23, 2025 Order; July 16, 2025 Defs.' Mot. for Summ. J.).

Defendants characterize Plaintiff's request as an effort to delay resolution while he searched for a better valuation. (*See Resps.' Br.*, at 28-29). The record shows otherwise. Plaintiff had identified concrete, case-dispositive evidence that remained unavailable: discovery concerning the financial assumptions underlying the challenged valuation, newly produced materials, and a forthcoming expert report addressing the valuation methodology and data.

Rule 56(f) authorizes relief when a party who cannot yet present facts essential to its opposition explains why further discovery is material. Plaintiff did so. Plaintiff's affidavit stated that a valuation expert had been retained and that the expert's report was expected to materially differ from the valuation advanced by Defendants. (*See Sept. 15, 2025 Sworn Aff. of Timothy Jones*, at 1-2). Plaintiff's opposition also identified newly produced documents, newly identified information, and additional depositions requested by Defendants, including the deposition of Plaintiff's expert.

Defendants' answer is that a competing expert valuation would have been irrelevant because the two appraisers' agreed number was supposedly dispositive. That is circular. The new expert evidence was relevant to Plaintiff's contention that the purported agreement did not determine contractual Fair Market Value and that the valuation relied on data or assumptions inconsistent with the valuation date. It was also relevant to Plaintiff's challenge to the reliability of the projections and the methodology employed. A court cannot first decide those contested merits questions in Defendants' favor and then label evidence bearing on them irrelevant.

Defendants emphasize that the action had been pending for more than three years, that Plaintiff failed to "advance a good reason why the time was insufficient," and that further discovery would not uncover relevant evidence or was a "fishing expedition." (*See Resps.' Br.*, at 27-28 (citations omitted)). The passage of time alone does not nullify a Rule 56(f) request. The controlling question is whether Plaintiff had a fair opportunity to obtain evidence essential to allow him to oppose the motion. The trial court barred Plaintiff from discovering information he needed to test the valuation's forecasts, and Defendants had recently produced additional materials.

Moreover, Plaintiff had identified a valuation expert whose work could address the very issues on which Defendants sought judgment.

Defendants further argue that Plaintiff did not timely produce an expert report. However, a party's inability to finalize an expert report while relevant financial discovery remains contested does not establish that the report would be immaterial. The record instead shows why Plaintiff needed discovery and a fair opportunity to develop expert evidence. The trial court's grant of summary judgment before that evidence could be developed was premature.

For the foregoing reasons, this Court should reverse the trial court's grant of summary judgment to Defendants.

E. Defendants' Brief Does Not Refute That Plaintiff Sought Post-Death Discovery to Test Valuation Inputs, Not to Alter the Valuation Date.

Plaintiff also argues that the trial court erred in its discovery rulings on requests for information and documents about ISS's performance and finances after Mr. Jones' death in June 2021. Defendants contend that this discovery "is irrelevant under the plain language and purpose of the Operating Agreement." (*See Resps.' Br.*, at 30). That argument misses the purpose for which Plaintiff sought the information.

The parties agree that the Operating Agreement requires Mr. Jones' Membership Units to be valued as of the date of his death. (*See Resps.' Br.*, at 12). Plaintiff did not seek post-death financial information to substitute ISS's later performance for its value on that date. He sought the information to test the factual foundation and reliability of the revenue projections used in Defendants' date-of-death valuation.

Defendants maintain that Plaintiff is bound by Mr. Swanson's selected value and that the HDH Report reflects Fair Market Value because it used more reliable forecasts supplied by ISS management. The record, however, indicates that Mr. Swanson did not have ISS's financial information or management's input and did not independently verify the HDH Report's assumptions. Plaintiff therefore sought discovery to examine those assumptions, the underlying forecasts, and the process by which the appraisers valued Mr. Jones' Membership Units.

The HDH valuation used a discounted-cash-flow analysis and projected revenue through 2025. It projected annual revenue to decline by approximately 54% in 2022 and by a further 56% in 2023. (*See id.*, at Ex. 14 thereto). Defendants' valuation theory is that COVID-era revenues were unusually high and unsustainable. Financial performance in the years immediately after the valuation date could bear on whether those forecasts were grounded in contemporaneous information, whether the appraisers relied on a reasonable forecast, and whether later-developed information influenced the revised value.

This is not an impermissible attempt to use later events as the valuation measure. It is discovery directed at the assumptions used in a valuation that itself incorporated projected future cash flows. The distinction is central. Plaintiff did not seek information to support an argument to adjust the valuation to reflect actual post-death corporate performance. He sought to learn whether the forecasts that drove a purported date-of-death appraisal were supportable and based on information a buyer and seller would reasonably have had in June of 2021.

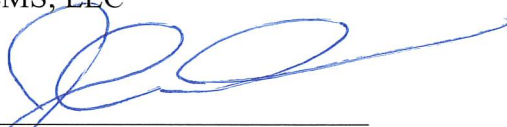
Discovery under Rule 26 is broader than admissibility. Even if the trial court later determined that certain post-death results could not be presented as direct proof of date-of-death value, the information remained relevant to investigating the valuation methodology, testing the appraisers' assumptions, and examining whether the revised forecast reflected contemporaneous knowledge rather than hindsight. The trial court's discovery orders conflated these distinct questions.

For these reasons, the Court should (a) reverse the trial court's grant of Defendants' Motion for Protective Order (including its award of sanctions); and (b) reverse the trial court's denial of Plaintiff's Motion to Compel production of Defendant ISS's financial information.

CONCLUSION

For these reasons, the Court should reverse the entry of summary judgment for Defendants. The Court should also reverse the denial of Plaintiff's Motion to Compel and the grant of Defendants' Motion for Protective Order, and remand this matter for further proceedings.

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October 12, 2026