IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA 23-0291

LITTLE BIG WARM RANCH, LLC, LARRY H. SMITH and MARK FRENCH

Appellants/Cross Appellees,

v.

WILFRED L. DOLL and CHERI L. DOLL

Cross-Appellants/Appellees.

LEVI DOLL and SHEILA DOLL,

Intervenors.

RESPONSE BRIEF OF CROSS-APPELLEES AND REPLY BRIEF OF APPELLANTS LITTLE BIG WARM RANCH, LLC, LARRY H. SMITH and MARK FRENCH

On Appeal from the Seventeenth Judicial District Court, Phillips County, Cause No. DV 2018-06 Honorable Yvonne Laird

Hertha L. Lund
Lund Law, PLLC
662 S. Ferguson Ave., Unit 2
Bozeman, MT 59718
T: (406) 586-6254
Lund@Lund-Law.com

Gregory G. Pinski
CONNER, MARR & PINSKI, PC
P.O. Box 3028
Great Falls, MT 59403-3028
T: (406) 27-3550
greg@mttrials.com

Attorney for Appellants

Monica J. Tranel
TRANEL LAW FIRM, P.C.
401 Washington Street
Missoula, MT 59802
T: (406) 926-2662
mtranel@tranelfirm.com

L. Randall Bishop
L. Randall Bishop, AAL
27 Prairie Falcon Ct.
Kalispell, MT 59901
T: (406) 670-9394
rbishop@lrblawyers.com

Attorneys for Cross-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

ARGUMENT: RESPONSE TO DOLLS' APPEAL

I. The District Court Was Correct in Its Ruling that LBWR's Counterclaims for Counts IV, V and VI Are not Barred by the Statute of Limitations.

A. LBWR's Counterclaims are Based on the Same Written Instrument, the LLC Operating Agreement, as Dolls' Complaint, So No Statute of Limitations Defense Applies.

Dolls' complaint alleges rights based on the written Operating Agreement for LBWR, LLC. Doc. 104, Dolls' Second Amended Complaint and Request for Jury Trial ¶¶ 9, 10, 67, 71, 73, 77, 83, 84, 87, 89, 90, 91, 92, 93, 98, 105, 115, 118. Also, Dolls' Counts II and V allege that LBWR had breached that Operating Agreement. Amended Complaint ¶¶ 76, 97-102. Even the dissolution count explicitly refers to the Operating Agreement: Paragraph 7 of the Amended Complaint states: "This action seeks judicial dissolution of Little Big Warm Ranch under § 35-8-902, MCA **and Section 12 of the Ranch's Operating Agreement**…" (emphasis added). LBWR's counterclaims for Dolls' breaches of Dolls' duties to LBWR arise from the same written Operating Agreement, which specifically incorporates the duties imposed on members by Montana law. In Section 14.3, the Operating Agreement signed by the Dolls states that all members agree to follow "all applicable laws and regulations of the state of Montana." Appendix Doc. 2, Pls.' Trial Ex. 148 (Operating Agreement, Trial Tr. 86-87, Jan. 27, 2023). These duties include the duties of care, loyalty, and the obligations of good faith and fair dealing. Thus, LBWR's

counterclaims for Dolls' breach of these duties are breaches of the same written Operating Agreement on which Dolls based their Amended Complaint.

Montana statutory law provides that:

> Assertion of counterclaim. (1) A defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the defendant.

Mont. Code Ann. § 27-2-408 (1). This Court held that § 27-2-408, MCA meant the statute of limitations did not apply to counterclaims arising from the same written contract as the plaintiff's complaint, the same situation as here:

> More importantly, because Ranch Recovery's claims are counterclaims arising from the same written contract from which First Security asserts its right to foreclose and to priority, Ranch Recovery is entitled to assert those claims **notwithstanding any applicable limitation periods**. Section 27–2–408(1), MCA, provides that the period of limitation is extended, and "[a] defendant is entitled to assert against a plaintiff, by pleading or amendment, any counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against him." Because Ranch Recovery's counterclaims arise out of the same transaction as First Security's foreclosure action, we conclude that **the District Court erred when it found that the counterclaims were barred by the applicable statutes of limitation**. (Emphasis added)

First Sec. Bank of Missoula v. Ranch Recovery Liab. Co., 1999 MT 43, ¶ 35, 293 Mont. 363, 372, 976 P.2d 956, 961–62. There has been no negative treatment of this case by this Court, and it applies squarely to the case at bar. Like Ranch Recovery's counterclaims, because LBWR's counterclaims arise from the same written contract on which Dolls based their complaint--the LBWR Operating Agreement--LBWR's

counterclaims are not barred by the statutes of limitation.

B. If a Statute of Limitations Does Apply, it is the 8-year Period Prescribed for Actions on Written Instruments.

The District Court found:

> Section 27-2-204, MCA, titled "Tort actions," provides that "the period prescribed for commencement of an action upon a liability not founded upon an instrument in writing is within 3 years." Mont. Code Ann. § 27-2-204(1). Section 27-2-211(1)(c) imposes . . . Section 27-2-202, MCA, provides that "the period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is . . . 8 years." Montana Code Ann. § 27-2-202(1). If there is a "substantial question" as to "which of the two statutes of limitations should apply … any doubt should be resolved in favor of the statute containing the longer limitation." *Kearney v. KXLF Communications*, 263 Mont. 407, 413, 869 P.2d 772, 775 (1994) (internal quotes omitted). (emphasis in original).

Doc. 291, April 23, 2021, Order Regarding Plaintiffs' Motion for Summary Judgment at 13-14. At trial in response to Dolls' oral motion regarding LBWR seeking punitive damages, the District Court found, "we applied the contract Statute of Limitations in the previous order, but if you read *Romo v. Shirley*, there can be a tort and a contract claim arising alongside each other." Appendix Doc. 7, Trial Tr. 39:11-19, Jan. 27, 2023. In *Romo*, this Court found: "We have recognized in several cases that contract actions and tort actions in the same case 'are not incompatible.'" *Romo v. Shirley*, 2022 MT 249, ¶ 14, 411 Mont. 111, 119, 522 P.3d 401, 407.

Kearney remains good law and this Court relied on it in *Mungas v. Great Falls Clinic*, LLP, 2009 MT 426, 354 Mont. 50, 221 P.3d 1230. This Court has

been clear, the statute of limitations to be applied is the longer of the two possible statutes of limitations. This policy strikes the proper balance between allowing adjudication of disputes on their merits, on the one hand, and prevention of stale claims which would prejudice a surprised defendant on the other. Since the parties were engaged in on-going litigation arising from the Dolls' entry into and concealment of a water settlement agreement which directly benefitted Dolls and directly damaged the LLC of which they were members, neither surprise nor prejudice existed.

The District Court correctly found that the longer 8-year statute of limitations applies to LBWR's counter claims. Doc. 291, April 23, 2021, Order Regarding Plaintiffs' Motion for Summary Judgment at 14. Although the Judge's reasoning was limited, it was correct and should be affirmed. "If we reach the same conclusion as the district court, but on different grounds, we may affirm the district court's judgment. *Germann v. Stephens,* 2006 MT 130, ¶ 21, 332 Mont. 303, 137 P.3d 545." *In re E. Bench Irr. Dist*., 2009 MT 135, ¶ 20, 350 Mont. 309, 314, 207 P.3d 1097, 1101.

LBWR's counterclaims against Dolls stem from the duties expressed in a written contract. Dolls signed a written Operating Agreement with all members of Little Big Warm Ranch, LLC on November 10, 2014. Appendix Doc. 2. That Operating Agreement specifically provided that the LLC was formed under the

Montana Limited Liability Corporation Act (Sections 1.1, 2.1). An Operating Agreement is a written instrument, to which contract law applies. *See Morley v. Morley*, 2022 MT 12, ¶ 26, 407 Mont. 241, 252, 502 P.3d 666, 673; *AWIN Real Est., LLC v. Whitehead Homes, Inc.,* 2020 MT 225, ¶ 15, 401 Mont. 218, 224, 472 P.3d 165, 169-70. Thus, Dolls' (adjudicated) breaches of their duties of loyalty, good faith and care to the LLC are breaches of their contractual duties to LBWR, LLC. LBWR's counterclaims are for breaches of those duties imposed by the written Operating Agreement. The District Court correctly applied the 8-year statute of limitations to those counterclaims.

This Court in its most recent case regarding the covenant of good faith and fair dealing found:

> Under Montana law, "[e]very contract, regardless of the type, contains an implied covenant of good faith and fair dealing."

Grizzly Sec. Armored Express, Inc. v. Bancard Servs., 2016 MT 287, ¶39, 385 Mont. 307, 384 P.3d 68. In congruence with this case, the District Court here correctly found that the duties stemmed from the Operating Agreement, which specifically included the duties also expressed by statute:

> Here breach of fiduciary duty is a tort the liability for which is created by Mont. Code Ann. § 35-8-310. Breach of fiduciary duty is neither a penalty, forfeiture, nor a statutory debt. Also, the Dolls' fiduciary duty and any liability from its breach arise from the Operating Agreement which is undoubtably an "instrument in writing" and an enforceable contract. Thus, a claim for breach of fiduciary duty is "an action upon … contract" and liability for such is "founded upon an instrument in

writing."

Doc. 291, April 23, 2021, Order Regarding Plaintiffs' Motion for Summary Judgment at 14.

Contrary to Dolls' argument, the District Court found that LBWR's claims were based on the LLC statute and on the Operating Agreement. *Id*. Dolls did not cite to any paragraph in *Phelps v. Frampton*, 2007 MT 263, 339 Mont. 330, 170 P.3d 474, to support their statement claiming that that case "differentiated between the statutory and contractual causes of action." Doll's Response at 28. The *Phelps* case involved a law firm's Partnership Agreement. *Id*. ¶ 4. The Court held "the implied covenant of good faith and fair dealing and the obligation of good faith and fair dealing both applied here." *Id*. ¶ 33. The *Phelps* Court's finding was that the District Court erred in its conclusion that there was no good faith and fair dealing requirement in that case. *Id*. ¶ 34.

Without providing a cite to any case involving § 35-8-310, MCA and the parties executing an Operating Agreement, Dolls argued that LBWR did not choose whether they were bringing a contract or a tort claim. Dolls' Response at 28. Dolls based their argument on *Tin Cup County Water v. Garden City Plumbing & Heating, Inc*., 2008 MT 434, 347 Mont. 468, 200 P.3d 60. However, there is a critical difference between the case at bar and *Tin Cup.* Here, the Operating Agreement signed by Dolls specifically included the duties imposed on LLC members by

Montana law. In *Tin Cup*, however, the Supreme Court based its holding on the fact that the plaintiff could not point to any provision in the professional services contract which imposed any duty of care, making negligence the only available cause of action.

> The District Court concluded that Tin Cup failed to point to a specific contractual provision in the October 16, 1997, letter agreement allegedly violated by DJA. Tin Cup also admitted in response to a request for admission that "there is no contract for construction" between Tin Cup and DJA.

Id. ¶ 33

> The gravamen of Tin Cup's argument is that DJA was professionally negligent in performing its duties to supervise, coordinate, and inspect. Tin Cup does not allege that DJA breached a specific provision of the contract by failing entirely to supervise, coordinate, or inspect. Tin Cup's cause of action with regard to DJA therefore sounds in tort.

Id. ¶ 36. Here, LBWR alleged and proved breaches of duties imposed by statute and the Operating Agreement, and subject to the 8-year statute of limitations.

Similarly, Dolls' reliance on *Johnson Farms, Inc.* is misplaced. There, the Supreme Court recognized that:

> Johnson correctly recognizes we have previously held that when there is a question as to which of two or more statutes of limitations should apply, the general rule is that the doubt should be resolved in favor of the statute containing the longest limitations. *Thiel v. Taurus Drilling,* 218 Mont. 201, 212, 710 P.2d 33, 40 (1985).

Johnson Farms, Inc. v. Halland, 2012 MT 215, ¶ 26, 366 Mont. 299, 291 P.3d 1096. There, the Court held that there was no question as to which one of the two

statutes of limitation should apply because the plaintiff could not point to any written contract, much less specific contractual provision, as the basis for the claim: "We are thus led to the conclusion that count one in Johnson's complaint is a claim of a breach of fiduciary duty or possibly conversion, but not contract." *Id.* ¶ 21. Here, by contrast, LBWR's counterclaims allege violations of duties incorporated by a specific provision into a written contract signed by Dolls, and thus subject to the 8-year statute of limitations.

Dolls cited no case law involving claims based on § 35-8-310, MCA, establishing the standards for a LLC's members' conduct and an Operating Agreement, as exists in this case. The District Court did not err when it found that LBWR's counterclaims fall under the 8-year statute of limitations.

Even if Dolls' argument regarding the statute of limitations were legally correct on Counts IV and V, LBWR's count for Dolls' violation of good faith and fair dealing, Count VI, would remain. In *Lutey-Construction*, this Court held that statute of limitations for the implied covenant of good faith and fair dealing was "governed by the statute of limitations for … contract actions." *Lutey Construction-The Craftsman v. State*, 257 Mont. 387, 393-94, 851 P.2d 1037, 1040 (1993). In this case, LBWR pleaded: "As members of LBWR, Dolls have an obligation of good faith and fair dealing towards LBWR," that LBWR had a reasonable belief that Dolls would treat the LLC fairly, and that Dolls breached that obligation. Doc. 50, January

15, 2019, LBWR's Amended Counterclaim and Third-Party Complaint at ¶ 86. Contrary to Dolls' new argument for the first time[1] on appeal, LBWR's Count VI plainly included a breach of the implied covenant of good faith and fair dealing. *See Puryer v. HSBC Bank USA, N.A.*, 2018 MT 124, ¶ 26, 391 Mont. 361, 371, 419 P.3d 105, 112.

In its Order awarding LBWR summary judgment, the District Court found:

> Here, the Dolls acted in bad faith. Prior to closing, they pursued a Settlement Agreement that they knew would diminish the utility and value of the water rights that LBWR was purchasing. At closing the Dolls sought to make the Settlement Agreement binding on LBWR by presenting the Acknowledgment for LBWR's members to sign. The Dolls were not truthful about the purpose and effect of the Acknowledgement and subjected the members to duress by threatening to back out of the deal if members did not sign when LBWR had a $300,000 deposit on the line. Such conduct was dishonest and falls short of the reasonable commercial standards of fair dealing in the agricultural industry and in real-estate transactions. This bad faith conduct deprived LBWR of the senior water rights that it intended to purchase, and given the Dolls' fiduciary duties to LBWR, LBWR's purpose to manage a working ranch, and the important role that priority water rights play in successfully managing a working ranch, under the Operating Agreement LBWR had a justified expectation to pursue such water rights without the Dolls' interference. Thus, Dolls breached their obligation of good faith and fair dealing.

Doc. 296, May 28, 2021, Order Regarding Defendants' Motion for Summary Judgment on Counts IV, V, and VI, at 10-11. The District Court found that the

[1] Dolls never mentioned any case or cited any legal authority in their briefs raising the statute of limitation argument before the District Court. DKT #189 Dolls' Motion for Summary Judgment on Counterclaim; DKT # 233 Dolls' Reply Brief in Support of Motion for Summary Judgment on Counterclaim.

statutory obligations of an "obligation of good faith and fair dealing" existed alongside the contractual implied covenant of good faith and fair dealing. *Id* citing *Phelps*, ¶ 30.

The District Court ruled correctly when it found LBWR was not barred by the statute of limitations from bringing Count IV, Violation of the Duty of Loyalty; Count V, Violation of the Duty of Care; and Count VI, Violation of Obligation of Good Faith and Fair Dealing. Even if Dolls' argument regarding the statute of limitations were correct, it would only impact LBWR's Counts IV and V. LBWR's Count VI regarding the obligation of good faith and fair dealing would still survive, leaving the jury verdict intact.

II. The District Court Correctly Ruled on LBWR's Counts IV, V and VI

The District Court found that even though "Dolls make much of the fact that LBWR knew about the Settlement Agreement and its terms prior to closing, but cite no authority indicating that this fact is material. . . . under the MLLCA a breach of fiduciary duty may occur regardless of whether the LLC can be said to have been aware of the conduct constituting a breach. Thus, the fact that LBWR knew about the Settlement Agreement and its terms is immaterial." Doc. 296, May 28, 2021, Order Regarding Defendants' Motion for Summary Judgment as to Counts IV, V, and VI at 8.

The District Court also found that the "parties dispute the extent to which the

members of LBWR knew about these negotiations and whether they were informed of the final terms of the Settlement Agreement and its effects on LBWR's water rights." *Id* at 3. Further, the District Court found:

> However, it is undisputed that the Dolls did not disclose the negotiations or the final terms of the Settlement Agreement to the other members and made false representations to them concerning these matters. On December 11, 2014, at closing, the Dolls signed a loan application submitted by LBWR to First State Bank for the purchase of the Property and its appurtenant water rights. …However, it is significant to note that the Settlement Agreement was not executed until December 23, 2014, twelve days after closing, and that during the high-pressure situation created by the Dolls, they did not disclose the final terms of the Settlement Agreement which effectively nullifies their promise of "1st water rights."

Id at 4. This Court did not hear or decide these issues in *Little Big Warm I*, because these issues were not before the Court in that appeal. The issues of whether Dolls violated their duties of loyalty, care and good faith and fair dealing were not and could not be decided in the Water Court because issues of contract, tort and statutory violations between members of an LLC are not within the Water Court's limited subject matter jurisdiction. These issues can only be presented to and decided by a District Court. Here, the District Court judge issued a valid summary judgment based on the undisputed material facts before her and Montana law.

Dolls relied on a 2020 case involving a buy/sell for property in eastern Montana, *Payne v. Hall*, 2020 MT 46, 399 Mont. 91, 458 P.3d 1001, to support their argument that LBWR had no legal right to bring their counterclaim. Dolls'

Response at 32-33. *Payne* involved a land deal gone bad and the party's obligations under the Partnership Purchase Agreement. *Id.* ¶¶ 2-8. There is nothing in *Payne* like the District Court's ruling in this case. Here, the District Court found that even if LBWR knew about the Settlement Agreement and its terms, it is immaterial because Dolls still violated their Section 35-8-310, MCA and contractual duties. Doc. 296, May 28, 2021, Order Regarding Defendants' Motion for Summary Judgment as to Counts IV, V, and VI at 8.

Dolls filed four redundant motions asking the District Court to reconsider its Order. In response to Dolls' Motion to Amend and Clarify, LBWR argued this Court did not rule on Dolls' conduct towards LBWR in *Little Big Warm I*. Doc. 290, April 20, 2021, LBWR's Response to Dolls' Motion to Amend Clarify Order at 5-8. Also, LBWR argued that nothing in the Water Court proceedings or the Supreme Court's opinion in the earlier case negates the District Court's finding that:

> the undisputed material facts show that as LBWR negotiated the purchase of the Property, the Dolls pursued a Settlement Agreement with the same sellers which severely diminished the value of that Property, failed to disclose the harmful terms of the Settlement Agreement, and made false representations about these terms.

Id at 12-13 citing Doc. 279, March 8, 2021, Order Regarding Plaintiffs' and Intervenors' Motion for Summary Judgment as to Counts III, IV, V, VIII and XII at 8.

The District Court denied Dolls' Motion to Amend and Clarify on June 18,

2021. Doc. 297, Order Denying Motion to Amend and Clarify. On June 21, 2021, Dolls filed the Motion again. Doc. 298, June 21, 2021, Dolls' Motion and Brief to Amend and Clarify. The fourth and final time that Dolls raised these same arguments to the District Court, the District Court again denied Dolls' motion. The District Court also found that Dolls' statements to the Court were "clearly intended to threaten the Court and express contempt for its authority." Doc. 332, Sept. 6, 2022, Order on Plaintiffs and Counterclaim Defendants' Motion to Address Contradictory Filings at 18. The District Court issued sanctions against Dolls. *Id*.

ARGUMENT: REPLY IN SUPPORT OF LBWR'S APPEAL

I. The District Court Erred in Determining that Dolls Dissociated from LBWR on February 2, 2018

Dolls' Second Amended Complaint actually did not request dissociation from the LLC; instead they requested the District Court issue "an order dissolving the ranch or alternatively for a distribution and/or purchase of the Dolls' interest in Little Big Warm Ranch, LLC, and all other relief as the court may deem proper, including payment to the Dolls for the value of their capital contributions to Little Big Warm Ranch, and including any and all damages allowable together with statutory interest." Doc. 104, May 30, 2019, Dolls' Second Amended Complaint and Request for Jury Trial at ¶ 86. Additionally, Dolls alleged that Defendants had committed minority oppression, breach of fiduciary duty, tortious interference with contract, constructive fraud, deceit, and other skullduggeries, claims which the jury resolved

against. *Id* ¶¶ 65-156 & Doc. 423, February 4, 2023, Special Verdict Form. The prayer for relief has no request for dissociation, and instead requested an order invalidating a proposed amendment to the Operating Agreement, indicating an intent to continue as members of the LLC. Doc. 104, May 30, 2019, Dolls' Second Amended Complaint and Request for Jury Trial at 38.

Dolls correctly stated that § 35-8-805(2)(a), MCA provides that: "Upon a member's dissociation from a limited liability company: (a) the member's right to participate in the management and conduct of the company's business terminates." However, Dolls continued to actively participate in LBWR, LLC until after the trial. For example:

1. On February 16, 2018, LBWR held a telephone meeting, which Dolls attended until the members voted to meet without them because Sheila Doll disclosed that she was recording the meeting, and the rest of the members did not consent to being recorded. Appendix Doc. 1, Pls' Trial Ex. 57 (2018.02.26 Email Caitlin with 2.16.18 Meeting Minutes, Trial Tr. 178-179, Jan. 27, 2023).

2. On January 4, 2023, LBWR, LLC held its annual meeting and all members attended, including all the Dolls. Sheila Doll moved to set the value for the share price. Appendix Doc. 6, Defs.' Trial Ex. 564 (LBWR 2023 Meeting Minutes, Trial Tr. 170-171, Jan. 27, 2023).

The District Court found that both the Operating Agreement and § 35-8-

803(1)(a), MCA allowed for dissociation by giving notice. Doc. 457, April 21, 2023, Order on Parties' Summary Judgment Motions on Count III of Plaintiffs' Second Amended Complaint at 9. While that is true, Dolls never gave notice to the LLC of their intent to dissociate. The Dolls themselves did not believe they were dissociated until after the Court's April 21, 2023 Order.

During trial, at least three times, Dolls' attorney argued that the Court had to determine whether Dolls should be disassociated. Appendix Doc. 8, Trial Tr. 19:24-20:2; 24:16-20; 55:25-56:7, Feb. 3, 2023. After trial, Dolls filed a Statement of Dissociation stating: "Plaintiffs Willie and Cherie Doll and Intervenors Levi and Sheila Doll were dissociated as a matter of law from LBWR under Section 35-8-803(1)(f), M.C.A. by order dated April 21, 2023 (Doc. 457), entered by the Montana Seventeenth Judicial District Court, Phillips County, in civil cause No. DV-2018-06." Doc. 470, May 31, 2023, Statement of Dissociation.

Until after trial, Dolls never gave the requisite notice of dissociation and attended the LLC's annual meetings. *See e.g.:* Appendix Doc. 1; Appendix Doc. 3, Defs.' Trial Ex. 506 (2.16.18 LBWR Notice of Meeting, Jan. 27, 2023, Trial Tr. 173); Appendix Doc. 4, Defs.' Trial Ex. 507 (2.16.18 Meeting Minutes, Jan. 27, 2023, Trial Tr. 174); Appendix Doc. 5, Defs.' Trial Ex. 508 (9.16.19 LBWR Notice of Meeting, Jan. 30, 2023, Trial Tr. 84-85); and Appendix Doc. 6. Since Dolls did not follow the Operating Agreement's dissociation procedure, they did not dissociate

from LBWR in 2018. The undisputed facts as shown by Dolls' actions and their Statement of Dissociation provide clear evidence that Dolls had not dissociated in February of 2018.

The first time Dolls requested dissociation from LBWR, or cited to the Dissociation Part 8, of Chapter 35, was February 28, 2023, when their post-trial response brief acknowledged that Dolls had lost on their Count III for Dissolution and observed: "… as a practical matter, the Court's rulings effectively ordered Dolls' dissociation from LBWR pursuant to Section 35-8-803(1)(f), MCA…" Doc. 450 at. p. 2-3. In fact, the Dolls were not judicially dissociated from LBWR until April 21, 2023, after the jury verdict, when the District Court issued its final Order requiring LBWR to pay the share value of $434,000. This value was determined at the 2023 meeting of the LLC, in which Dolls were present, Sheila Doll made the motion as to the value, and all the Dolls voted. Appendix Doc. 6.

Portions of the final Pre-Trial Order prove that, even just before trial, Dolls did not consider themselves dissociated and were waiting for other relief from the District Court:

- Dolls ask the Court as a matter of law to provide relief of Dolls exiting the company pursuant to § 35-8-902, M.C.A., as well as dissolution of LBWR and other appropriate relief.

- Dolls ask the Court to require LBWR to purchase Dolls' shares within 60 days of the Court's decision so that LBWR would comply with the Operating Agreement Section 11.4.

Doc. 419, Jan.31, 2023, Final Pretrial Order at 66-67.

Based on the undisputed facts here, Dolls did not believe they were dissociated from LBWR, LLC until after the April 21, 2023, Court Order when they filed their Statement of Dissociation. Dolls participated in the January 4, 2023, Annual Meeting and advocated for the value of their shares' buyout price. Further, throughout the trial, Dolls presented issues against the LCC based on facts that occurred after their Complaint was filed. Therefore, the District Court erred in finding that Dolls had dissociated when they filed their Complaint on January 30, 2018. Ironically, even in their brief before this Court, Dolls continue to admit and argue that "Dolls sought to participate in company business on February 16, 2018," which indicates that Dolls did not believe they had dissociated from the LLC in 2018. Dolls' Response Brf. at 37.

Dolls could have simply given notice to LBWR in 2018 if they wished to dissociate, § 35-8-803(1)(a), MCA, specifying the date of dissociation as the date of notice or some later date, which Dolls did not do. Instead, Dolls sought dissolution. Had they sought dissociation; the LLC would have been required by § 35-8-808(1)(a), MCA to purchase the dissociated member's distributional interest

"for its fair value determined as of the date of the member's dissociation." Dolls never gave this notice to LBWR, and their pleading for dissolution does not provide notice of dissociation, given that it is a wholly distinct claim and remedy from dissolution. The Idaho Supreme Court so held in 2022: "the district court's determination that they were dissociated by filing their claim for dissolution was erroneous." *Nelsen v. Nelsen*, 170 Idaho 102, 135, 508 P.3d 301, 334 (2022). The District Court erred as a matter of law when it held that Dolls' 2018 petition for dissolution of the LLC constituted notice of Dolls' desire to dissociate. Doc. 457 at 9.

II. Dolls Failed to Respond to LBWR's Appeal Arguments.

Dolls did not respond to two issues LBWR presented for review on appeal:

- III. Whether the District Court erred in declaring that "as a matter of law Dolls and Jr. Dolls are not subject to the Amendments to the 2018 Operating Agreement?"
- IV. Whether the District Court erred as a matter of law when it denied LBWR's Motion for Expenses and Attorney Fees under § 35-8-809(4), MCA and the Operating Agreement?

Since Dolls provided no response to these arguments, the Court should take them as uncontroverted and rule in LBWR's favor.

CONCLUSION

Dolls sued LBWR, Larry Smith, and Mark French. The Court and the Jury found that Dolls had violated their duties to the LLC, and its members, of care, loyalty, and good faith and fair dealing. The jury awarded LBWR punitive damages. Contrary to Dolls' argument, they are not the victim in this case. It is LBWR and its members who were damaged due to Dolls' actions.

Based on the foregoing, LBWR asks this Court:

1. To deny Dolls' appeal of the District Court's denial of Dolls' Motion for Summary Judgment on LBWR's Counts IV,V, and VI.
2. To reverse the District Court's Order on the Parties' post-trial Summary Judgment motions and the portions of the final judgment that provide Dolls' interest on their share price beginning on February 2, 2018.
3. To find, as a matter of law, that LBWR should be granted summary judgment on its motion that Dolls be dissociated as of April 21, 2023.
4. To reverse the District Court's holding that Dolls were not subject to the Operating Agreement, including the Court's finding that Dolls were not subject to the Amendments in the 2018 Operating Agreement.
5. To reverse the District Court's denial of LBWR's request for expenses and attorney fees and order that LBWR be awarded its fees and expenses, under both § 35-8-809(4), MCA and LBWR LLC's Operating Agreement.

DATED this 2nd day of February, 2024.

Lund Law, PLLC

By:/ **Hertha L. Lund**
Hertha L. Lund
Attorney for LBWR

CONNER, MARR & PINSKI, PC

By:/ **Gregory G. Pinski**
Gregory G. Pinski
Attorney for LBWR

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(a) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the words calculated by Microsoft Word, is not more than 5,000 words, excluding the table of contents, table of citations and certificate of compliance.

DATED this 2nd day of February, 2024.

Lund Law, PLLC

By: /s/ **Hertha L. Lund**
Hertha L. Lund
Attorney for LBWR

CERTIFICATE OF SERVICE

I, Hertha Louise Lund, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant Reply and Answer to Cross Appeal to the following on 02-02-2024:

Monica Joan Tranel (Attorney)
401 Washington Street
Missoula MT 59802
Representing: Cheri L. Doll, Wilfred L. Doll, Levi Doll, Sheila Doll
Service Method: eService

Gregory G. Pinski (Attorney)
PO Box 3028
Great Falls MT 59403-3028
Representing: Little Big Warm Ranch, LLC
Service Method: eService

L. Randall Bishop (Attorney)
27 Prairie Falcon Ct
Kalispell MT 59901
Service Method: eService
E-mail Address: rbishop@lrblawyers.com

Electronically signed by Genevieve Martin on behalf of Hertha Louise Lund
Dated: 02-02-2024