

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0128

MICHAEL A HEBERT,

Plaintiff and Appellant,

v.

APPELLANT'S BRIEF

SHIELD ARMS, LLC, BRANDON ZEIDER,  
SETH BERGLEE, ERIC SQUIRES,  
RAYMOND DEAN BRANDLY, and  
SHIELD DEVELOPMENT GROUP LLC,

Defendants and Appellees.

On appeal from the Montana Eleventh Judicial District Court

County of Flathead

Cause No. DV-2019-1320

Honorable Amy Eddy Presiding

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Whether the district court properly granted summary judgment on Count I of the amended complaint, relating to Hebert's disassociation from Shield Arms LLC.
2. If Hebert was properly disassociated, whether the district court properly applied section 35-8-809 in compelling a buy-out of Hebert's ownership interest in Shield Arms LLC.
3. Whether the district court properly granted summary judgment on Hebert's conversion claims.
4. Whether the district court properly granted summary judgment regarding the disassociation of Hebert from Shield Development Group.
5. Whether the district court abused its discretion in denying, in part, Hebert's motion to compel evidence relevant for discovery.
6. Whether the district court abused its discretion in denying Hebert's request for an extension of the deadline for expert reports.

## **STATEMENT OF THE CASE**

This case arises from the April 2019 disassociation of Michael Hebert from two Montana limited liability companies, Shield Arms LLC ("SA") and Shield Development Group LLC ("SDG"). Hebert, Brandon Zeider, and Seth Berglee were members of both companies. Raymond Dean Brandly and Eric Squires were members of SDG only.

Hebert originally filed a complaint against SA, SDG, Zeider, Berglee, Brandly, and Squires in December 2019, followed by a six count amended complaint on November 4, 2022. Of relevance here, counts I and II sought reversal of the

disassociation of Hebert from, respectively, SA and SDG. In Count V, Hebert sought return of personal property and/or damages for conversion. In Count VI, Hebert sought, as an alternative, appropriate compensation for his membership interests.

Hebert served discovery of Defendants in March 2023. Defendants only partially responded, asserting broad objections to the bulk of the discovery. *See* Dkt, 59.10, Exh. B. Defendants also conceded that they had destroyed some of the relevant evidence. *Id.* Exh. B at 5. Hebert followed the prescribed procedures for seeking additional discovery responses, including conferring with Defendants and with the district court.

Hebert filed a motion for partial summary judgment on count I of the complaint in June 2023. Dkt. 42. He changed counsel not long after this, and lost his expert. Hebert disclosed his new expert as soon as he retained one, *see* Dkt, 82, Exh. A, and through filed a motion to compel additional discovery responses, and to extend the time for expert reports. Dkt. 59.10.

Defendants moved for summary judgment on all counts of the amended complaint on September 12, 2023. Dkt. 61. After the close of discovery, the district court entered an order partially granting Hebert's motion to compel, and denying the request to extend the time for expert reports. Dkt. 78. Hebert moved to revise this order, pursuant to Rule 54(b). Dkt. 79. The district court never ruled on the motion to revise.

Hebert filed a supplemental declaration opposing summary judgment on December 14, 2023. Dkt. 84. Both summary judgment motions were heard on January 4, 2024. Dkt. 87; *see* Transcript of Oral Argument of January 4, 2024 (hereinafter “Tr.”). On February 7, 2024, the district court granted summary judgment to Defendants on all counts of the complaint. Dkt. 90. Defendants filed a notice of judgment that same day. Dkt. 91.

## **STATEMENT OF FACTS**

### **1. Hebert was a Member of SA and SDG**

Michael Hebert, Brandon Zeider, and Seth Berglee formed Shield Arms LLC (“SA”) in April 2017. SA was formed for the purpose of designing, manufacturing, and selling firearms and firearm accessories. More specifically, the impetus for creating SA was to develop and monetize Hebert’s designs for aftermarket enhanced magazines for popular handguns. Dkt. 70 (hereinafter “Hebert Decl.”) ¶ 6(a). SA started in Hebert’s office in Kalispell.

Shield Development Group LLC was formed in 2018. It was created to hold intellectual property, and was not expected to produce income. *See* Dkt. 84 (hereinafter “Hebert Supp. Decl.”) ¶ 4(a).



## **2. Hebert was the Only Member Developing and Inventing New Products**

From the beginning, Hebert acted as the principal developer of products for SA. In opposition to the motion for summary judgment, Hebert provided a detailed account of his efforts.

4. . . . At the time of my unlawful purported disassociation, patent attorney Glenn Bellamy had been tasked to file patents on the Mag extensions, ICAM, IFLR, and the Project X pistol. In my interrogatory responses, I itemized a number of inventions I was working on when I was removed from Shield Arms. *See* Def. Exh. N at 17.
5. I am not surprised that Zeider's and Berglee's affidavits give no detailed description of their invention efforts concerning the Mag extensions, ICAM, IFLR, Project X pistol, but are instead just bare denials of my efforts. They may have successfully taken these products to market, but the underlying product designs were mine.
6. The ICAM is perhaps the most commercially significant of these. A selections of texts between my colleagues and me illustrates my lead involvement in these projects. Exhibit A
  - a. Shield Arms recently was issued a patent for the ICAM. Exhibit B. Although I am not listed as an inventor, this patent is based on my work. I had originally started thinking about ways to increase magazines more than a decade ago, and it was the original driving purpose behind creating Shield Arms.
  - b. Glock introduced the model 43 in 2015 or so. It was reliable and small, but the six shot magazine limited use and sales. In 2017, I developed a nine shot magazine, currently marketed as the Z9.
  - c. Glock responded by producing the model 43X, which took a ten shot magazine, in November 2018. I studied the 43X and realized that by replacing the plastic magazine Glock was using with a metal ICAM, we could make a 16 shot magazine that fit into the same firearm. I turned my efforts to this in December 2018, and by January 2019, I had a working prototype, which I showed off at the SHOT show that year. I filmed Berglee and Zeider posing and shooting with this product in late February 2019, and we uploaded the video to Youtube in early March 2019.

d. 'This has been a phenomenally successful product and, as I understand it, the most successful aftermarket product in Glock's history. . . .

10. Defendants' insistence that the IFLR patent was the only intellectual property involved in the companies is just plain wrong. Attached is an email from Glenn Bellamy, dated April 7, 2019, enclosing the three pending patent applications he had submitted. Exhibit C. I do not have the complete attachments that Bellamy sent me, but hope to get them and all the other correspondence with him, in discovery.

Hebert Decl. ¶¶ 4-6,10, *see also* ¶¶ 7-8 (explaining development of the folding receiver). In contrast, other than some unsupported statements, Zeider and Berglee presented no evidence at all that contradicted Hebert's account. Indeed, Zeider and Berglee were adamant that the only invention developed by SA or SDG was the folding receiver. They offered no account at all for the enhanced magazines, which are SA's principal product.

When summary judgment was completed, Hebert received some documents from the patent lawyer. These documents confirmed, beyond question, that he was filing patents on at least three inventions for the company prior to the disassociations. Hebert submitted a supplemental declaration including this information. Hebert Supp. Decl. ¶¶ 3,4.

### **3. Hebert's Concerns about Dean Brandly**

Brandly lied to Heberts two lies which, when he learned they were false, gave Hebert grave concerns about the legality doing business with him. First, he learned that Brandly's claim to be a decorated combat leader of a Ranger sniper section was

false. Hebert Decl. ¶ 21. Hebert was sensitive to the potential claims of stolen valor, which could affect SA's business in the firearms business community. *See also* 18 U.S.C. § 704. Second, Hebert learned that Brandly's company did not have the proper federal firearms license for the work it was doing for SA, a felony. *Id.* Brandly admitted these lies to Hebert.

Hebert began calling people Brandly had listed as references; and was told a number of concerning things about him. *Id.* at ¶¶ 23-25, 28. He tried to check whether these allegations were true. He kept Zeider and Berglee informed of what he was hearing, and the efforts he was making, and they never expressed any concerns about him doing so. Instead, they encouraged him to try to get to the bottom of the allegations he had heard. Hebert believed that what he was hearing, combined with the misrepresentations Brandly had made, were sufficient basis to cease doing business with Brandly. Berglee and Zeider did not agree, and took no action to sever any part of their relationship with Brandly or his company, and continued doing business with him, despite Hebert's legal concerns.

Hebert did not call Zev Technologies for this or any other purpose. *Id.* ¶ 31. Hebert (a managing member of the company) was and is unaware of any actual or potential transaction between Zev and SA; SA's document production fails to show any. Aero Precision asked Hebert to call them and expressed their concerns about Brandly to Hebert. *Id.* ¶ 28.

Richard Tentler, whom Hebert hoped to engage as counsel should an issue arise concerning theft of intellectual property, also expressed concerns about Brandly. *Id.* ¶ 30. To Hebert's knowledge, neither Tentler nor Tentler's client ever took any action that harmed or could have harmed Brandly or his company, or SA/SDG. Agency Arms did not have a business relationship with SA or SDG. *Id.*

For his part, Brandly objected to Hebert's calls and texts regarding him, and had counsel send SA a cease and desist letter. Dkt. 42 Exh. 3.<sup>1</sup> Brandly is a member in SDG, along with Hebert, and had a business relationship with SA. Neither he nor Berglee or Zeider ever tried an approach short of a letter from counsel. Nobody shared the letter with Hebert, or gave him any opportunity to cease and desist any conduct. *Id.* ¶ 32. Hebert would have done so, if advised by counsel, but was never given the opportunity. *Id.*

#### **4. Berglee and Zeider Push Hebert Out**

Even before any of this alleged conduct, Zeider and Berglee got the FBI to investigate Hebert with lurid but false accusations. The FBI investigated, and, by July 2019, found that Hebert was not involved in any criminal activity, and closed the investigation. Dkt. 58 Exh. 1. This came too late: on April 17, 2019, without any notice to Hebert or any chance to confront the false allegations against him, Berglee

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<sup>1</sup> The letter was addressed to Hebert in care of company counsel, who did not forward it or notify Hebert.

and Zeider held a meeting and voted to disassociate Hebert under section 35-8-803(1)(e) M.C.A.

After the disassociation, Zeider and Berglee acted to marshall allegations of odd behavior on the part of Hebert during the run-up to the disassociation. See Order of February 7, 2024 (“SJ Order”) at 2,3. Three things can be said of these allegations. First they are materially false and completely post-hoc: nothing was ever said to Hebert before the disassociation, no effort was made to ascertain whether Hebert had alternative explanations for these allegations, nor was any effort made to address them, through, for example, changes in Hebert’s alleged behavior to towards Ms. Hauss. Second, Ms. Hauss’ description of the events involving her differs materially from that of Zeider’s, as did Hauss’ contemporaneous conduct towards Hebert. *See* Hebert Decl. ¶ 12. Finally, although the district court repeated these allegations, as if they were all proven, it did not base its decision even in part on them. That is, the decision that the disassociation was proper was based entirely on Hebert’s alleged conduct with respect to Brandly, and not at all on his allegedly odd conduct in the office. The district court was correct in not basing its decision on this alleged odd conduct, even if it was in error in basing its decision on the conduct relating to Brandly.

## **5. In the Aftermath of the Disassociation, Defendants Appropriated Hebert's Property**

Berglee and Zeider locked Hebert out of SA immediately after the purported disassociation. This meant that a considerable amount of his personal property which was left in the office could not be immediately recovered. Eventually, SA rented a storage unit, and returned some of Hebert's property.

Hebert wanted SA to return all of his property, including a number of firearms which, because of federal firearms regulations, could not be simply left in a storage unit. Zeider personally provided a list of these firearms, Hebert Decl. Exh. M, to be delivered to a licensed dealer, where Hebert could collect them. This transfer never took place, and these firearms were never delivered to Hebert.

Hebert has receipts for these firearms, *Id.* Exh. N, and SA, which has the logs concerning them, has never produced any documentation showing that these firearms were transferred from Hebert's ownership to SA or any other entity.

As required by 35-8-808(2) M.C.A., Zeider and Berglee made an offer to buy-out Hebert's interest in SA. Although the book value of the company was actually over \$111,000,<sup>2</sup> Hebert Supp. Decl. ¶ 6, they left out significant company assets, including the intellectual property they claim could have been licensed for millions of

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<sup>2</sup>The going concern value of the company was about \$480,000, *Id.* ¶ 8, but Hebert was not given the opportunity to present his evidence supporting this figure. *See also* Dkt. 42 at 11, 12.

dollars, and made an offer of \$5,671.62 based on their cooked book value of \$20,094.49. *Id.* ¶¶ 6,7. Hebert, as was his absolute right, declined the offer.

## **6. The Purported SDG Operating Agreement was never Properly Executed**

Hebert did not sign the SDG operating agreement that was attached to Zeider's affidavit submitted in support of summary judgment. Hebert provided a detailed factual account in his declaration opposing summary judgment, Hebert Decl. ¶¶ 14-17, and Defendants-Appellees did not provide evidence to the contrary: they suggested that Hebert's account was refuted by SDG's counsel's file, but this is simply not the case. SDG's counsel was not a witness to Hebert's signing anything, and his file includes nothing about what Hebert signed, why he signed it, or what anyone said to him.

The core facts are not even in dispute: Hebert raised concerns about the enforceability of the purported agreement, and the members of SDG unanimously agreed to replace that unenforceable document with one that corrected its legal flaws. This cure for the defects in the purported operating agreement was not performed. The document Zeider emailed to Knudsen on March 21, 2019 after the meeting, was not the revised operating agreement the members had all agreed was necessary at the meeting, nor was it a document that Hebert had signed.

Hebert's disassociation from SDG was based completely on the purported operating agreement that the members had unanimously agreed to replace with one that Hebert would agree to and be legally valid.

## **7. Hebert's Efforts to get Redress**

Hebert filed his six count amended complaint in late 2022. It states claims for wrongfully disassociating him from SA and SDG, alternatively for appropriate compensation if the disassociations were proper, for conversion, and for defamation.

Hebert served discovery on all five defendants in March 2023, which was partially answered in late April 2023. Defendants objected to a great deal of the discovery, on constitutional and relevance grounds. Critically, Defendants-Appellees withheld financial records for the period after the disassociation; they also admitted that all of Hebert's emails had been destroyed. Hebert's then-counsel pursued the remedies available under the Rules, and the district court's scheduling order, including having a conference with the district judge.

Hebert moved for summary judgment on count I of the amended complaint in June 2023, contending that his disassociation from SA was improper. Dkt. 42. After this motion was filed, Hebert was without counsel for weeks. *See* Dkt. 50, 57. After he hired new counsel, his new counsel filed a reply brief in support of the motion for partial summary judgment and then, once a new expert was retained, disclosed the new expert to Defendants-Appellees, and filed a motion to compel production of



documents relevant to damages, and for and extension of the then imminent expert report deadline. Dkt. 59.10. This motion was still pending when Defendants-Appellees moved for summary judgment on all claims of the amended complaint in September 2023. Hebert filed his opposition brief in early October 2023. After briefing was completed and discovery had closed, the district court granted the motion to compel, in part, and denied the request to extend time for the expert report. Order of Oct. 23, 2023. Hebert moved to revise this order, to direct the production of additional documents related to his damages claims. Dkt. 79. Once he had some responses to outstanding discovery, Hebert filed a supplemental declaration in December 2023. The district court heard oral argument, and granted Defendants-Appellees' motion for summary judgment, and denied Hebert's for partial summary judgment, on February 7, 2024.

The district court upheld Hebert's disassociation from SA, on the theory that potential tort liability from Hebert's statements about Brandly might subject SA to tort liability, which the district court considered sufficient to support a finding that it would have been unlawful to continue to carry on the business of SA with Hebert as a member. SJ Order 4-6. As to SDG, the district found that the operating agreement was valid. *Id.* at 6. With respect to conversions, despite considerable evidence in the record, including citation to a youtube video seen by thousands, the district court found that (a) there had only been one item of intellectual property, which had been

properly assigned and (b) that all other personal property had been returned to Hebert. *Id.* at 8-9. That is, the district court ignored the correspondence regarding applications from the company's patent lawyer, the actual issuance of a second patent based on one of those applications, and the list of firearms Zeider produced that were never returned. With respect to the alternative claim for compensation, the district court did not independently ascertain the value of SA, but instead said that Hebert had not proven that the amount he had been offered was too low. *Id.* at 9. The district court did not order the sale of Hebert's interest.

The district court did not rule on any of the other pending motions, which were mooted by its grant of summary judgment.

### **STATEMENT OF THE STANDARDS OF REVIEW**

The Court reviews summary judgments *de novo* using the same standards as are supposed to have been applied in the district court. *Egan Slough Community v. Flathead Cty Bd. Of Comm'rs*, 2022 MT 57 ¶ 14. There are two elements to a summary judgment decision: (1) there must be an absence of genuine issues of material fact, and (2) the movant must, on the undisputed material facts, be entitled to judgment as a matter of law. All reasonable inferences from the factual record must be drawn in favor of the non-moving party, *Cremer Rodeo Land & Livestock Co. v. McMullen*, 2023 MT 117 ¶ 17, and only then can the Court determine whether there is no genuine issue of material fact. This Court has

repeatedly held that summary judgment is an extreme remedy and should never be substituted for a trial if a material factual controversy exists. *Spinler v. Allen*, 1999 MT 160, ¶ 16, 295 Mont. 139, 983 P.2d 348 (citing *Montana Metal Buildings, Inc. v. Shapiro*, 283 Mont. 471, 474, 942 P.2d 694, 696 (1997)). Fact finding is the province of the jury at trial, not that of the district court on summary judgment. “[W]eighing the evidence is . . . a classic jury function’ and we are reluctant to remove that function from the jury's purview.” *Andrews*, ¶ 21 (quoting *Braulick v. Hathaway Meats, Inc.*, 1999 MT 57, ¶ 14, 294 Mont. 1, 980 P.2d 1). Consequently, if there is **any doubt** as to the propriety of a motion for summary judgment, it should be denied. *Rogers v. Swingley*, 206 Mont. 306, 312, 670 P.2d 1386, 1389 (1983); *Cheyenne Western Bank v. Young*, 179 Mont. 492, 496, 587 P.2d 401, 404 (1978).

*Williams v. Plum Creek Timber Co.*, 2011 MT 271, ¶ 41 (emphasis added).

The Court reviews the district court’s discovery rulings, and its rulings on scheduling matters, for abuse of discretion. *Egan Slough Community*, 2022 MT 57 ¶ 15 (standard for reviewing denial of motion to compel); see *B Bar J Ranch v Carlisle Wide Plank Floors, Inc.*, 2012 MT 246 ¶ 13 (standard for reviewing decision extending expert report deadline). “A district court abuses its discretion when it acts arbitrarily without employment of conscientious judgment or exceeds the bounds of reason resulting in substantial injustice.” *B Bar J Ranch*, 2012 MT 246 ¶ 10.

## SUMMARY OF THE ARGUMENT

The district court erred in two fundamental ways when it granted summary judgment on Count I of the amended complaint, each alone sufficient reason to reverse.

First, it misapplied the Montana Uniform Limited Liability Company Act when it found that Zeider and Berglee could disassociate Hebert from SA under 35-8-803(1)(e) M.C.A. for the potential tort liability that might follow from various alleged acts of misconduct. Misconduct or tort liability of the sort alleged by Zeider and Berglee could be used as the basis for judicially ordered disassociation only under section 35-8-803(1)(f) M.C.A., and not under section 35-8-803(1)(e).

Second, the district court erred in finding that there was no genuine issue of material fact with regard to whether Hebert had engaged in the alleged conduct. Hebert offered considerable evidence that much of the conduct never occurred, and that what did occur did not justify disassociation. The district court's conclusion that SA faced potential tort liability was unfounded.

The district court completely misapplied section 35-8-809 M.C.A., with respect to the alternate claim for just compensation for Hebert's interest in SA. Under that statute, the district court was obligated first to ascertain the fair value of Hebert's interest in SA and then to set a schedule and terms for the purchase of that interest. It is beyond dispute that the offer made to Hebert was less than the value of his interest, and Defendants/Appellees admitted as much at oral argument. Even if that figure had been correct, and it was not, the district court failed to direct terms for the purchase of Hebert's interest.

The district court erred in ignoring the genuine issues of material fact – and a number of indisputable facts – in granting summary judgment on Hebert’s conversion claims. The record showed that there were at least three inventions involved, and yet the district court based its decision on there only being one invention. It completely ignored the evidence concerning Hebert’s role in those additional inventions. In addition, the district court ignored the evidence that some of Hebert’s firearms were never returned to him.

The district court’s evidentiary ruling of October 23, 2023 deprived Hebert of evidence essential to proving his case. It unduly limited Hebert’s access to evidence relevant to the determination of damages, and also unfairly deprived Hebert of essential expert testimony.

With respect to SDG, the district court ignored the evidence that the purported operating agreement was invalid, despite the members’ undisputed determination to replace it with a new properly executed operating agreement.

## **ARGUMENT**

### **A. The District Court Erred in Granting Summary Judgment on Count I**

The district court erred in two fundamental ways when it granted summary judgment on Count I of the amended complaint.

First, it misapplied the Montana Uniform Limited Liability Company Act when it found that Zeider and Berglee could disassociate Hebert from Shield Arms LLC under section 35-8-803(1)(e) for potential tort liability that might arise from various alleged acts of misconduct. Misconduct of the sort alleged by Zeider and Berglee could be used as the basis for disassociation only under section 35-8-803(1)(f) of the Act: the section Zeider and Berglee employed is not for misconduct, but for situations where the presence of the member works a legal disqualification. Hebert briefed this issue fairly extensively, in support of his own motion for summary judgment, and in opposition to Defendants/Appellees' motion for summary judgment, and at oral argument, the district court showed familiarity with and understanding of Hebert's position. *See* Tr. at 29-30. And then, in its opinion, the district court made no effort to explain this issue of statutory interpretation, adopting instead a simplistic reading that is at odds with the structure of the uniform limited liability company act, and the few authorities that bear on this question.

Second, the district court erred in finding that there was no genuine issue of material fact with regard to whether Hebert had engaged in the alleged conduct at all. Either of these grounds are completely sufficient basis to reverse the summary judgment.

## 1. The District Court Misapplied Section 35-8-803(1)(e) M.C.A.

The heart of this case, and the central claim of this appeal, is a question of statutory interpretation.

In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

*City of Missoula v. Fox*, 2019 MT 250 ¶ 18 (quoting Mont. Code Ann. § 1-2-101). “We construe a statute by reading and interpreting the statute as a whole, ‘without isolating specific terms from the context in which they are used by the Legislature.’ ... Statutory construction should not lead to absurd results if a reasonable interpretation can avoid it.” *Fox*, ¶ 18 (quoting *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11 (internal citations omitted)). “Statutory construction is a ‘holistic endeavor’ and must account for the statute's text, language, structure, and object.” *Fox*, ¶ 18 (quoting *State v. Heath*, 2004 MT 126, ¶ 24 (internal citation omitted)). In addition, Montana’s limited liability company law is a uniform act, and, as is usual, the Montana legislature has defined a different interpretative paradigm: rather than searching the Montana code for some out-of-context turn of phrase, courts are instructed to look to other state’s interpretation of the uniform act. § 35-8-111 M.C.A. And because the wording in the

uniform act is derived from other uniform acts,<sup>3</sup> other state's interpretations of those acts are relevant as well.

Under the LLC Act, as adopted in Montana, there are two ways to involuntarily disassociate a member of an LLC. They differ both as to grounds and, procedurally, as to whether prior judicial review is mandatory. The most usual form of disassociation is that under section 601(6) of the uniform act – codified as 35-8-803(1)(f) M.C.A. This allows disassociation for a number of grounds, including engaging in wrongful conduct that materially affects the company, breaching duties to the other members, engaging in conduct relating to the company's business that make it not reasonably practicable to carry of the business with the member, but can only be effectuated after judicial review confirms that one of these grounds exist. *Id.* Much rarer – indeed, there are almost no reported cases in any state – is the non-judicial exclusion procedure. This is only available when the company is disqualified

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<sup>3</sup> The purpose, and challenge, in drafting statutes for limited liability companies was to combine some features of corporations with some features of partnerships. *See* Carter G. Bishop, *The Uniform Limited Liability Company Act: Summary & Analysis*, 51 Bus. Law 51 (1995). Professor Bishop suggests that “[t]he primary source for the ULLCA’s disassociation concept is [Revised Uniform Partnership Act] section 601.” 51 Bus. Law. At 73 n. 149. As comment 1 to section 601 of that Act describes, the concept of disassociation “dramatically changes the law governing partnership break-ups.” RUPA of 1997, §601, cmt. 1; *see McCormick v. Brevig*, 2004 MT 179 ¶ 37 (noting emergence of ‘disassociation’).

The uniform limited liability company act, the uniform partnership act, and the uniform limited partnership act all have provisions for the non-judicial disassociation of a member/partner when their ownership interest prevents the business from “carrying on.”



as a matter of law from continuing the business because of a particular member's membership in the company, or when a particular member has ceased to exist as a legal entity. ULLCA § 601(5)(i).

The question, then, is not whether a member is an effective manager, a good salesman, or is accused of engaging in tortious conduct. Rather, section 35-8-803(1)(e) applies only if his presence disqualifies the company, as a matter of law, from conducting its business. In the structure of the uniform act, this high bar makes sense. Whether or not a member is effective at his responsibilities, or has engaged in misconduct, can be adjudicated prior to removal, with, where warranted, preliminary relief to protect the status quo of the business. Summary removal, though, is reserved for those instances where even if the member is excluded from operations while his removal is litigated, his mere presence in the ownership is enough to preclude continued operations as a matter of law.

This indeed is what the statute literally says:

A member is disqualified from a limited liability company upon . . . (e) [his] expulsion by unanimous vote of the other members if . . . (i) it is unlawful to carry on the company's business with the member.

§ 35-8-803(1). Diagramming the final clause, “unlawful” is an adjective, qualified by the phrase “to carry on the company's business.” The final prepositional phrase “with the member” further qualifies what unlawful carrying on is covered. This statute does not simply mean, and cannot mean, consistent with the rules of grammar, a member

‘behaved in a way that the other members think is contrary to good morals.’ Despite the statute’s passive construction, it is evident as a matter of simple English that the subject here is the business, and the goal of the provision is to allow removal of a member whose presence in the ownership acts as a legal bar. It is also evident that 35-8-803(f) is designed to cover instances where a member’s conduct or misconduct might not be conducive to good business but is not disqualifying as a matter of law:

[A member may be disassociated] on application by the company or another member, the member's expulsion by judicial determination because the member:

- (i) engaged in wrongful conduct that adversely and materially affected the company's business;
- (ii) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under 35-8-310; or
- (iii) engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

§ 35-8-803(1)(f) M.C.A. A member’s making threatening calls to customers or suppliers, or defaming other partners, would, ***if proven in a court action brought pursuant to this section***, clearly amount to grounds for disassociation. This would also apply to instances where a member’s tortious conduct might be applied to the company. Suppose, for example, a member of a trucking company is involved in a car wreck with a company vehicle. The company could very likely be liable, but that liability would be based on the conduct of the member/driver. Nothing would preclude the member from continuing in the ownership of the company, even if he is cited, or his

license is suspended. Someone else could drive the trucks, and the business could continue.

The uniform act, and the Montana code, includes a parallel provision, dealing with dissolution of the company. In the case that it becomes unlawful to continue a business in whole or in substantial part, the company is automatically dissolved, without prior court action. This dissolution can be reversed, again automatically, if the legal disability is cured – for example by disassociating the member who is the cause of the disqualification -- within a short period. § 35-8-901(1)(a) M.C.A.

In contrast, dissolution with prior judicial disapproval is permitted when, for example, a member's conduct makes continuation of the business impractical, or the economic purpose of the business is frustrated. § 35-9-902(1)(a) & (b). This division, like the division regarding member disassociation, makes both business and legal sense. If it is unlawful to operate the business, then either the unlawfulness must be corrected immediately, or the business must cease. This is not an issue that can wait for adjudication: by definition, the business would have to cease during the interim between the condition arising and the resolution.

That “unlawful to carry on” refers to existential conditions is especially evident because of the automatic dissolution provision. Limited liability companies do not dissolve whenever a member gets a speeding ticket, nor do they automatically dissolve when, for example, the company has improperly discriminated against an employee

based on race or gender. As the language makes clear, disassociation and automatic dissolution are reserved for instances when there is a legal impediment to continuing to pursue the business of the company.

Other grounds for both dissolution or disassociation are not existential in the same way – the business can continue to operate while evidence is marshalled, presented, and weighed by a court of law. It is also evident from the language of these statutes that “is unlawful” refers to a present, objectively determinable state. The statute does not say that members are afraid that operations might become unlawful in the future, or that some third party might bring a tort action based on the conduct of a member.

There is very little caselaw on these automatic provisions. This is logical for two reasons: first, ‘unlawful to carry on the business’ is very a high bar, and very few going concerns will ever face it. There would be correspondence from a regulatory body. Second, for those that do, the disqualification is going to be objectively obvious, and so the parties involved are unlikely to litigate the question.<sup>4</sup> If, on the other hand, the statute was as Defendants asserted – and the district court accepted -- a wide open invitation to summarily expel members whenever the rest of the company decides to

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<sup>4</sup> One can imagine scenarios: a company in the securities business where a member is barred by the SEC from engaging in the securities business might qualify. A company that does business with the federal government under small business set-aside programs, which suddenly no longer qualifies under the affiliation rules. See 13 C.F.R. § 121.103 *et seq.*

do so, and can concoct unreviewable allegations, there would be numerous cases on the propriety of doing so from around the country.

One of the very few examples comes from the United States Virgin Islands, a territory that has adopted a number of uniform laws, including the uniform limited liability company act. In *Seymour v. New Design LLC*, No. ST-17-cv-347, 2018 V.I. LEXIS 134 (Super. Ct. U.S.V.I. 2018), one member of the LLC (Forkin) had obtained a domestic violence restraining order against the other (Seymour), and in addition, Seymour was charged with violating the protective order and other unrelated criminal statutes and had fled the jurisdiction. *Id.* at 2 & n.2. The court nonetheless determined that it was not impossible for the members to operate the business, through third parties or counsel if necessary. *Id.* at 17-18. The court then determined that automatic dissolution was not available under the Virgin Islands LLC statute because “the restraining order does not make it ‘unlawful for all or substantially all of the business of the company to be continued.’” *Id.* at 19 (quoting 13 V.I.C. § 1801(3)). Seymour’s egregious conduct was not grounds for automatic dissolution, because the test was whether the protective order itself made continuing the business unlawful. It did not.

Defendants searched the Montana Code to find a statute they think might help them out of the mess they have created and chose the provision for determining when a contract is not enforceable. § 28-2-701 M.C.A. There are a number of problems

this approach. In the first instance, this is not how uniform statutes are supposed to be interpreted. More fundamentally, a list of circumstances where a contract might be unenforceable does not have any application to whether Shield Arms LLC could carry on its business. Shield Arms manufactures parts for and assembles firearms. Nothing about Hebert's alleged conduct calls the validity of any Shield Arms LLC contract into question, much less renders them unenforceable. Even if it did affect some specific contract, this would still not meet the language of section 35-8-803(1)(e)(i) M.C.A. Shield Arms LLC could still continue in business with Hebert as an owner.

Indeed, nothing alleged about Hebert would invalidate any Shield Arms LLC contracts using the criteria in section 28-2-701 M.C.A. These factors focus on the nature of the performance, not the identity or past acts of one of the parties. Brandly's company did not even have a written contract with SA or SDG.

The provision of the limited liability company act was designed to allow the business to continue in the face of a circumstance that might have forced a partnership to dissolve at common law. When there is an existential issue that objectively prevents the company from continuing, the other members are allowed to take summary action. There is no indication at all that the drafters of this uniform law, or the Montana legislature, intended to create a way for members to execute a power play, avoiding the kind of pre-removal adjudication that is appropriate for cases of misconduct or other conduct inconsistent with practical operation of the business.

The disassociation was procedurally flawed as well, in a way that demonstrates the lack of merit in the ruling below. It is undisputed that Defendants did not give Hebert any notice of the meeting of the members at which his disassociation was voted on, or any opportunity to respond to their contentions.<sup>5</sup>

The assertion that this was permissible – the district court did not reach this question – shows the absurdity of the district court’s interpretation of 35-8-803(1)(e). The Act provides a method for disassociation of a member charged by the other members with wrongful conduct materially affecting the company’s business, breach of contract or his duties to the company, or conduct that makes it not reasonably practicable to carry on the company’s business with the member. § 35-8-803(1)(f). To effectuate the disassociation on these grounds, members must commence a suit, give the member they wish to disassociate notice and an opportunity to present evidence and be heard, and, ultimately, members seeking to remove another member must convince a fact finder, by a preponderance of the evidence at least, that the bad conduct occurred, and that disassociation is an appropriate remedy. The Act has thus built in a fairly robust set of procedural safeguards to protect members from improper overreach.

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<sup>5</sup> Notice was not difficult, the vote was not emergent: Zeider and Berglee had already spend a month on their project to remove Hebert.

The district court simply set these robust safeguards aside. It found that a mere accusation, based on hearsay, of potentially unlawful conduct on the part of a member is sufficient basis to trigger summary removal, without notice or any opportunity to participate, present evidence, confront witnesses, without even a meeting including a person who shares equally in the management of the company. Nothing in the statute supports this reading.

As the district court pointed out at oral argument, Tr. at 29-30. Defendants had a choice to make in 2019. They were dissatisfied with their business arrangement with Hebert, for whatever reason. If they thought he had engaged in misconduct which could justify a judicial disassociation, they could have followed the statute and commenced an action, and gotten a ruling based on the evidence. Instead, they elected self-help, in so doing disregarded the statute, taking what amounts to an unlawful action. And, in marked contrast to its comments at oral argument, the district court let them get away with it.

In sum, even if the allegations of tortious or unlawful conduct on the part of Hebert were undisputed – and they were disputed, as is demonstrated below – it would still have been improper to grant summary judgment on count I of the amended complaint. Nothing about that conduct makes it unlawful for SA to carry on its business.



## **2. Hebert Raised Genuine Issues of Material Fact Concerning the Conduct Defendants/Appellees Alleged**

In weighing motions for summary judgment, the task of a district court is clear. As noted above, it must draw all reasonable inferences in favor of the non-moving party, and then it must decide whether there are general issues of material fact. The district court here failed to follow this well worn path.

It recites as fact numerous allegations that are in direct dispute, for example whether Hebert called Zev Technologies, whether Zev was a business partner of SA, and whether Zev had any purchase orders with SA to cancel; whether Hebert contacted Aero Precision, and whether Aero had any kind of business arrangement with SA. It is true that counsel received a cease and desist letter from counsel for SDG member Brandly, but it is undisputed that no one told Hebert about the letter, thus giving him no opportunity to cease or desist from any future conduct.

Even if the alleged conduct had occurred, disassociation was still not justified. Brandly did not sue SA for slander or tortious interference, nor did he raise counterclaims in this action. He would surely not have been able to prove all the elements of either tort, but the important point is that he did not even try. Brandly did not identify any contracts *he* lost or damages *he* suffered as a result of Hebert's alleged conduct. His allegations of business harm only concern harm to SA/SDG, which demonstrates the incongruity in the district court's decision: SA could not be held liable for damages to SA. No tortious interference claim against SA for injuries

to SDG would lie because Hebert was a member of SDG, and was acting on his own beliefs in what he thought was the best interest of SA/SDG. SDG did not bring an action against SA or Hebert either; if it had it would have had to prove much more than is in the affidavits submitted in this case. *See Harrell v. Farmers Educ. Coop. Union*, 2013 MT 367 ¶¶ 45-51.

Hebert's supposed statement that SA/SDG would sue anyone who used intellectual property that belonged to SA/SDG without a valid contract, even if made, is neither tortious interference nor defamatory. At most, this can be understood Hebert as expressing his belief that Brandly was not authorized to unilaterally bind the company to licensing deals without approval from the other members. Or, probably more correctly, that Brandly did not have authority to license SA/SDG intellectual property on his own account. Nothing presented to the district court shows that either of these statements would have been untrue.

In any event, the theoretical liability of SA for his alleged conduct would not have been removed by disassociating Hebert – that could only forestall liability for future conduct. Which could as well have been deterred by telling Hebert about the cease and desist letter, and/or instructing Hebert to stop talking with others about Brandly. Whatever liabilities of the past were already fixed, and as to conduct in the future, nothing about Hebert's membership in SA was a barrier to operations or a

source of potential liability. The disassociation was therefore improper, even if the district court was right about section 35-8-803(1)(e) and the disputed facts.

### **B. The District Court Misapplied Section 35-8-809 M.C.A.**

Hebert asserted, in count 6 of the amended complaint, an alternative claim for compensation for his interest in SA, if but only if the disassociation had been proper.

The mandate from the legislature is clear:

(1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court *shall*:

(a) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

35-8-809 M.C.A. (emphasis added).

This is a no-fault procedure. If the parties have failed to reach agreement as to the amount to be paid for the dissociated member's interest, then the dissociated member may commence an action. 35-8-808(4) M.C.A. He does not have to prove that the offer was made in bad faith – there is a separate provision for that – but

states a claim merely by observing that the parties have not come to agreement. This, as the language of the statute is clear, triggers an affirmative duty on the district court to determine the value.

Defendants made an offer based on a facially inaccurate account of the company's book value. Whether or not this was malfeasance of some sort is not relevant to alternative count VI. The undisputed fact that Hebert did not accept the offer is by itself sufficient to trigger the district court's obligation to determine the value of the business.

The district court did not follow the statute. First, it did not affirmatively declare the value of the business, instead ruling only that Hebert had not proven that the offer was inaccurate. This is simply wrong: the calculation underlying the offer was not based on the company's complete financials, and omitted substantial value of the company. This is indisputable. The figure in the offer is indefensible.

Defendants more or less conceded this at oral argument: "there is currently no evidence of the current values of these companies," so the district court could not assign *any* value to Hebert's interest. Tr. at 15:22-25.<sup>6</sup> The district court discounted all of this, and then simply blew past, apparently without recognition, the biggest

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<sup>6</sup> There are two ready remedies for this. First, expert testimony concerning the value would clarify the question considerably. In addition, the statute clearly contemplates the district court appointing its own expert, if necessary, to help it determine the value.

incongruity of all: in finding that Hebert had acted unlawfully, the district court repeated, as if true, (unfounded) allegations that Hebert's conduct had cost the company licensing deals worth millions of dollars. And then when it came to valuing the company, the district court accepted as fair a valuation that assigned the intellectual property that would have been licensed *no value at all*. Accepting the flawed valuation is certainly reversible error.

In addition, the district court failed completely to follow through on its obligations under section 35-8-809(1)(b): it was required to set the terms, including the timing, for the buyout. It did not do so.

**C. The District Court Abused its Discretion when it did not Grant Hebert's Motion to Compel Certain Evidence Related to Damages**

The district granted Hebert's motion to compel in part, but limited damages evidence to documents created prior to April 17, 2019, on relevance grounds. Hebert moved to revise this order, under Rule 54(b), and articulated theories under which such evidence would be relevant. The district court did not rule on this motion.<sup>7</sup>

As is discussed in more detail in the brief in support of the motion to revise and the reply brief, post-dissolution financial information is relevant to calculating

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<sup>7</sup> Hebert recognizes that the motion to revise was made moot by the grant of Defendants' motion for summary judgment. This left the underlying order of October 23, 2023 intact, and effectively functions as a denial of the motion to revise. For this reason, Hebert believes that this Court has jurisdiction to reach this issue if it reverses the grant of summary judgment as to either counts I or V.

two different types of damages that Hebert is seeking here: compensation for lost distributions from SA due to his improper disassociation, and damages for conversion of his personal and intellectual property.

Defendants' position was that these documents were not relevant because Hebert had not yet proven that he would prevail on liability as to either claim. Although, obviously, damages evidence is ultimately irrelevant where there is no liability, this is not how discovery works. A litigant must request, and the responding party must produce, evidence that would be relevant – or lead to relevant evidence – in the action as it exists at the time. Before there is a determination on liability, parties can, and, because of how litigation schedules work, must request damages evidence.

#### **D. The District Court Abused its Discretion when it Denied Hebert's Request to Extend the Deadline for Expert Reports**

As discussed above, Defendants did not fully respond to Hebert's discovery requests. In addition to the direct problems this caused, discussed in section \_ above, it created an indirect issue for Hebert: his new expert needed additional information to perform his analysis. This Court faced a similar situation in *B Bar J Ranch*, albeit from the opposite ruling from the district court. This Court's discussion is worth quoting at length:

14. As the District Court recognized, Carlisle undoubtedly needed the tax records before it could have determined whether a tax expert would be necessary at trial. Although the tax returns supported Carlisle's theory that B Bar J was not a consumer, they could have also disproved that theory. It was

only after reviewing the returns that Carlisle knew for sure that it needed a tax expert to testify at trial. B Bar J argues, however, that it was Carlisle's own fault that it did not receive the tax records in a timely fashion. Our review of the record reveals otherwise. Carlisle first sought production of the tax records in October of 2010. At that time, B Bar J refused to produce the records and claimed that they were irrelevant. The next time Carlisle requested the records was in a letter that it sent to B Bar J's counsel on November 18, 2010. In that letter, sent nearly a month before the deadline to disclose experts, Carlisle's counsel explained that the tax records were directly relevant to its MCPA claim defense. But B Bar J again refused to produce the records and continued to insist that they were irrelevant. Carlisle was consequently forced to seek the District Court's assistance, which it received on January 27, 2011, when the court compelled production of the tax returns. That order came well after the deadline to disclose expert witnesses.

15. B Bar J now asks us to penalize Carlisle for its own delay producing the tax returns. Although Carlisle could have been more diligent in its attempt to obtain the records, B Bar J knew what the records revealed and still claimed that they were irrelevant. Moreover, B Bar J continued to insist that the records were irrelevant even after Carlisle's counsel explicitly explained how they pertained to its defense, and it was B Bar J that forced Carlisle to obtain a court order compelling production. We will not now allow B Bar J to benefit from a situation that it had no small role in creating. Carlisle would have had plenty of time to meet the court's scheduling order deadline if B Bar J had produced the records following either of Carlisle's requests. Because B Bar J did not disclose the clearly relevant tax records until after the deadline to disclose expert witnesses, the District Court did not abuse its discretion when it found good cause to amend the scheduling order to allow Carlisle's late disclosure of Langel as an expert witness.

*B Bar J Ranch LLC*, 2012 MT 246. Hebert planned to present expert testimony relevant to Count VI, the valuation of SA. The importance of this testimony cannot be overstated. As noted above, the Act provides that the district court “shall” calculate the value of Hebert’s ownership interests. The inadequacy of the offered price has already been discussed above in section B, as has been Defendants’ concession, at oral argument, that the district court did not have evidence before it to

fulfill its statutory responsibility. Hebert could offer a calculation of the company's book value, based on simple arithmetic, *see* Hebert Supp Decl. ¶ 6, but this would be no substitute for an expert opinion.

Expert testimony was clearly necessary here for the district court to perform its role under the statute. In moving for the extension, Hebert demonstrated that an extension of the expert deadline would only minimally disturb the rest of the schedule, and need not disturb the trial schedule at all. Defendants would not have been prejudiced at all – they would only have lost the windfall that they gained through the timing of Hebert's change of counsel/expert. In the very same order denying the extension, which was entered more than a month after the deadline, and after the close of discovery, the district court ordered Defendant to produce certain documents, which had been sought to allow the expert to perform his analysis.

Hebert recognizes that district courts are given wide latitude to manage the schedules of cases before them. In this case, however, the material prejudice of granting the motion would have been so slight, and the impact on the case of denying the motion is so catastrophic, the district court's failure to grant the extension must be considered an abuse of discretion.



## **E. The District Court Erred in Granting Summary Judgment on Hebert's Conversion Claims**

### **1. There are Genuine Issues of Material Fact Regarding Hebert's Firearms and Other Property**

In seeking summary judgment, Defendants asserted that they had returned all of Hebert's personal property, and pointed to the storage unit they had rented for him, and the items they moved there. This does not include all of Hebert's personal property that was at SA, however. Hebert owned a number of firearms, and stored them at SA because it was both legal and safe to do so. Defendants could not simply move these firearms to a storage unit, because doing so would have been a violation of federal regulations.<sup>8</sup> Instead, *after* items had been moved to the storage unit, Zeider provided Hebert's counsel with a list of firearms that could be transferred to a registered firearms facility, which Hebert could pick up there.

Although Hebert wanted these firearms returned, Zeider did not follow through on returning the firearms. Instead, either SA kept them,<sup>9</sup> or has otherwise disposed of them. These facts are not meaningfully in dispute. Defendants suggested

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<sup>8</sup> SA could have given the firearms to Hebert directly.

<sup>9</sup> Some of the firearms on Zeider's list of firearms to be returned to Hebert were also listed on the inventory of SA property. Hebert does not know whether these firearms are still listed in SA's inventory, or whether SA sold them, because the district court ruled that Defendants did not need to produce documents created after Hebert's disassociation.

that Hebert had not proven ownership of the firearms that Zeider had said he would be returning, and so, in opposing summary judgment, Hebert provided receipts.

The district court completely ignored this evidence, finding instead that Defendants had returned all of Hebert's property. This was plainly erroneous. Given the requirement that the district court draw reasonable inferences in Hebert's favor, including from Zeider's listing of firearms to be returned to Hebert, and the lack of any evidence at all that these firearms were in fact returned to Hebert, it was error to conclude that there were no genuine issues of material fact regarding this issue.

## **2. There are Genuine Issues of Material Fact concerning the Intellectual Property**

The district court accepted and repeated Defendants claim that there was only one relevant invention at SA or SDG, for a particular machine gun. Hebert showed that the company patent attorney had submitted three applications to the US Patent and Trademark Office during Hebert's tenure at SA/SDG. He also showed that a patent has been issued to SA on one of the additional applications. Here, the documentary evidence shows clearly that Hebert was right and that Defendants and the district court were wrong. *See also* Dkt, 42 at 7-8.

There is also a dispute of fact – which the district court did not reach – concerning Hebert's interests in these inventions. Hebert gave a detailed explanation of how he came to invent each item, and, despite having had all his emails destroyed by Defendants, had a few of his preliminary drawings he'd been able to save. In

contrast, Defendants offered no explanation their theory about these inventions – not even a cocktail napkin – and instead (a) offered a blanket denial that Hebert, the company’s R&D director, had invented or developed anything at all; and (b) denied that any inventions other than the folding receiver machine gun even existed. On this record, even without drawing inferences in Hebert’s favor, the district could not possibly have granted summary judgment to Defendants on the ownership of these inventions, and instead just simply ignored the additional inventions, despite the patent attorney’s files.

Finally, although the district court had jurisdiction to do what Hebert asked, *see Gunn v. Minton*, 568 U.S. 251, 257-58 (2013), it did not have jurisdiction to decide that Hebert’s efforts were not sufficient to create a federally protected property interest. *Id.*

#### **F. The District Court Erred in Upholding the Validity of the SDG Operating Agreement.**

The validity of Hebert’s disassociation from SDG turns entirely on the validity of the SDG operating agreement. Hebert’s account regarding the SDG operating agreement is un rebutted – Defendants/appellees raised only non-sequiturs in defense of its validity. Hebert signed a blank signature page. He did so because it was represented to him that signing this page before he left town was urgent, so urgent that he should just trust the process.

Hebert was surprised to hear months later that the resulting draft was being treated as final, and raised this prior to the March 21, 2019 meeting of the members of SDG. At that meeting all members agreed that a new operating agreement, with notarized signatures was necessary to resolve the concerns about the validity of the then-purported operating agreement. This new operating agreement was never executed, and never presented to Hebert. Nothing in either SDG's counsel's file, nor in the affidavits of the principals of SDG suggests otherwise. Nothing in Hebert's complaint, in which he asserts that the purported operating agreement is invalid, amounts to an admission to the contrary. All parties agree.

Instead of creating a new valid operating agreement, as had been unanimously agreed, the SDG instead voted to disassociate Hebert, without notice or any opportunity to respond. This vote was as invalid as the purported operating agreement itself.

## **CONCLUSION**

For the foregoing reasons, summary judgment on counts I, II, V, and VI should be reversed. Partial summary judgment should be ordered in Hebert's favor on Count I: the purported April 17, 2019 disassociation of Hebert from Shield Arms LLC should be vacated, and this claim remanded for trial on the amount of money damages due Hebert in consequence of the unlawful disassociation.

The other claims in the case should be remanded to district court with instructions to require defendants to respond fully to Hebert's discovery, and to give Hebert an adequate time to present an expert report after the discovery is provided.

Dated: April 16, 2024

\_\_\_\_/s/ Charles H. Carpenter

Attorney for Hebert

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief is printed in 14 pt Garamond type, and contains 9,980 words, calculated by Microsoft Word, excluding tables and certificates..

/s/ Charles H. Carpenter

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Appellants' Brief has been served, using the Court's electronic filing system, on counsel of record in this matter:

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/s/ Charles H. Carpenter

## **CERTIFICATE OF SERVICE**

I, Charles H. Carpenter, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Opening to the following on 04-16-2024:

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