FILED
06/17/2024
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 24-0128

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court No.
DA 24-0128

MICHAEL A. HEBERT,

Plaintiff/Appellant,

v.

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

Defendants/Appellees.

On Appeal from the Montana Eleventh Judicial District
Flathead County Cause No. DV-19-132, Hon. Amy Eddy

APPELLEES' RESPONSE BRIEF

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STATEMENT OF ISSUES

Appellees restate the issues as follows:

1. Did the District Court err in granting the Defendants' motion for summary judgment?

2. Did the District Court commit abuse of discretion in denying Hebert's motion to compel evidence or motion to extend the deadline for expert reports?

STATEMENT OF THE CASE

On April 17, 2019 Michael Hebert was dissociated from membership in Shield Arms, LLC and Shield Development Group, LLC. On December 13, 2019 Hebert brought suit in the District Court of the Eleventh Judicial District Court, Flathead County, alleging twenty-four causes of action. Hebert's claims were not prosecuted or litigated for almost three years. On November 4, 2022 Hebert filed a *First Amended Complaint* with six causes of action seeking damages for alleged wrongful dissociation, wrongful valuation of distributional interests, defamation, and conversion. The District Court partially granted Hebert's motion to compel the production of documents, denied Hebert's motion to extend the time to file expert disclosures, and granted summary judgment to Defendants on all counts.[1] From these rulings and judgment, Hebert appeals.

[1] The District Court denied Hebert's motion for partial summary judgment, which is not at issue.

STATEMENT OF FACTS

1. Hebert was dissociated from both entities on April 17, 2019.

Shield Arms, LLC ("Shield") manufactures and distributes firearms and firearm parts pursuant to a Federal Firearms License. Shield's members were Hebert, Zeider and Berglee. It did not have an operating agreement. On April 17, 2019, Zeider and Berglee voted to dissociate Hebert from membership in Shield because Hebert's actions and behavior had become unlawful and damaging to Shield's interests.

Shield Development Group, LLC ("SDG") consisted of Hebert, Zeider, Berglee, Squires and Brandly. SDG's Restated Operating Agreement permitted a member to be expelled upon the unanimous votes of the other members. On April 17, 2019 Zeider, Berglee, Squires and Brandly accordingly voted to dissociate Hebert from membership in SDG.

2. None of Hebert's alleged "designs" were developed or sold.

Neither Shield nor SDG have sold anything that Plaintiff researched, invented or developed. There are no such products in existence to sell in the first place. (Aff. Berglee, Doc. 64, ¶ 7, APP. A) On April 17, 2019 the only item of "intellectual property" that Shield or SDG marketed was a rifle part known as the "Folding Lower Receiver" or "FLR", which arose from Zeider's original idea and

for which Hebert did little to no work. (APP. A, ¶ 8; Aff. Zeider, Doc. 63, ¶¶ 9-11, APP. B, and Exh. B attached thereto) On July 7, 2020 SDG was awarded US Patent No. US-10704848-B1 for the FLR.

3. Hebert's unlawful behavior and actions required dissociation.

On March 12, 2019 Hebert was extremely agitated, and he made a wild barrage of false accusations to Zeider ranging from fraud to theft. His statements and behavior were detached from reality. He had trouble finishing his sentences and kept making new false accusations when confronted with facts. He acted delusional, and showed no appreciation of facts or reasoning. (APP. B, ¶ 20) More than an hour into a meeting with Zeider, Hebert took Zeider's mobile phone off his desk and threw both Zeider's phone and Hebert's phone into the company tools area, and then Hebert ran back upstairs to Zeider's office and closed the door. Zeider became frightened of Hebert's behavior and asked him what he was doing. Hebert replied in hushed tones that Zeider needed to trust him because their friend Dave had been "assassinated" by the government because of what he knew about "the Mandalay Bay shooting in Las Vegas." Hebert said something about radioactive materials that take a month to kill. Hebert's behavior and personality abruptly changed and he acted like a completely different person. Dave had actually died from cancer. (APP. B, ¶¶ 21-23)

On March 21, 2019 Hebert was irrational during a company meeting, exhibited extreme paranoia, and falsely accused Zeider and Berglee of lying, stealing, and deliberately altering the SDG Operating Agreement. None of Hebert's accusations were accurate or based in facts. Later that same day Zeider met with Hebert in person and brought up his accusations, but Hebert acted as if their earlier conversation had never happened. (*Id.*, ¶¶ 24-25)

On March 23, 2019 Hebert attended a memorial service for the owner of New Frontier Armory, a Las Vegas business that had become a key supplier to Shield and was the only machine shop capable of producing the FLR. (*Id.*, ¶¶ 26-27). Hebert's behavior at the memorial service had made people there uncomfortable, which included drawing child-like pictures on cards that Hebert provided to the decedent's family member, and signs of paranoid behavior to employees of New Frontier Armory in attendance at the memorial service, and contractors in the firearms industry. Hebert's actions at the memorial service and thereafter irreparably damaged the business relationship between New Frontier Armory and Shield, which never recovered. (*Id.*, ¶¶ 29-30)

During Shield's meeting on March 23, 2019, Hebert displayed extreme agitation and paranoia and raised a number of issues related to some conspiracy. He was difficult to understand and made no sense. (*Id.*, ¶ 28) Hebert falsely

accused Zeider of "sneaking around" company business, orchestrating "secret meetings" without his attendance, and swapping out paperwork on a patent. He claimed that the Ohio patent attorney that the parties had worked with to successfully apply for the FLR Patent, Glenn Bellamy, had orchestrated a conspiracy to exclude him. He accused Glenn Bellamy of "screwing him over." None of Hebert's conspiracy-based accusations were accurate. (*Id.*, ¶ 31) Hebert physically mocked Zeider's effort to address the facts, and adopted a child-like behavior and voice. Zeider became increasingly concerned for Hebert's well-being, and mental fitness, to continue working at Shield. Hebert's irrational behavior had become routine at that point. (*Id.*, ¶¶ 32-33)

In 2018 and 2019, Shield was doing business with 17 Design and Manufacturing, LLC ("17 D&M"), an Oklahoma company owned and operated by Brandly. 17 D&M was Shield's most important vendor and the source of Shield's top grossing products, and the relationship formed a mutually beneficial relationship between Shield and SDG. (*Id.*, ¶¶ 34-35; APP. A, ¶ 15) In early 2019 Hebert repeatedly demanded, without cause, that Zeider and Berglee end all business affairs with Brandly. In March 2019 Hebert told Zeider that if Zeider didn't "side" with him against Brandly, he would send back any parts that Shield received from 17 D&M, and cancel any bank payments. Shield could not have

operated its business at that time without selling the parts it received from 17 D&M. (APP. B, ¶¶ 36-37) Nevertheless, Hebert kept demanding that Shield and SDG stop doing business with Brandly, and said that the parties could "move on" only if they "immediately" ended the business relationship with Brandly. (APP. A, ¶¶ 14-16 and Exh. M attached thereto)

Hebert kept harassing Berglee about ending business with Brandly. The beneficial business relationship between Shield and 17 D&M was integral to the business survival of Shield, and Shield had no grounds to cut ties with Brandly. In sum, Hebert's dispute with Brandly was personal but Hebert made it a company problem. Berglee asked Hebert to find a better deal with better pricing than the one Shield had with 17 D&M at the time, but Hebert never provided any alternatives. (APP. A, ¶¶ 21-22)

In addition, Hebert reached out to individuals in the firearms industry to solicit negative experiences with Brandly. When Berglee contacted some of these individuals, they had no specific wrongdoings to list against Brandly but stated that they didn't want to be part of "drama" in the industry and instead they just wanted to run their businesses. On April 11, 2019 Hebert told Berglee that Shield was going to be "split" between him and Zeider, and that Berglee needed to "pick which side [he] would be on." (*Id.*, ¶¶ 20 and 23)

On March 25, 2019 Zeider learned that Hebert was involved in an effort to "recruit several guys" from Hebert's church to destroy an abortion clinic, and that Hebert claimed to having been forced out of the US Army because he had discovered that a "Satanic child sex ring cult" had infiltrated the Army Rangers. (see Aff. of Addis Hallmark, attached as Exh. C to APP. B)

On March 25, 2019 Hebert told Squires to sue Brandly for embezzling money and stealing from their business, and stated that Brandly had plans to "screw [Eric] over," all of which was totally false. (Aff. of Dean Brandly, Doc. 48, ¶ 2, APP C) On April 15, 2019 Hebert contacted AJ Lafferty of Kinetic Development Group ("KDG"), Shield's customer at the time, and claimed that Brandly was stealing their technical data, which was false. This action by Hebert caused Shield and SDG to lose the business of KDG. In April 2019 Hebert contacted Aero Precision and claimed that Brandly and Zeider tried to steal technical data from a customer during their site visit to their facility, which was false. Further, Hebert called the president of White Wolf Capital, a private equity company which does business with Shield's customer, and due to Hebert's statements Shield lost a licensing deal and a business relationship dating back several years. (APP. C, ¶¶ 6-7 and 9-10)

In early 2019 Hebert, Brandly and Zeider had visited Las Vegas for a trade

show and experienced a break-in of their rental property, and Zeider's laptop was stolen in the process. They filed a police report with the local authorities. No IP had been taken. (APP. B, ¶ 68) At that time, Shield was engaged in a business relationship with Agency Arms, a California company. In April 2019 Hebert contacted the legal representation of Agency Arms and falsely claimed that members of Shield and SDG had "hacked" Agency Arms' website and were stealing their information and technical data. The owner of Agency Arms helped call their legal team off while they were investigating Hebert's false allegations. This caused significant embarrassment, delay, and time and expense moving Appellees' business interests forward. (APP. C, ¶¶ 11-13) Additionally, Hebert contacted Richard Tentler, a California attorney and former judge, who represents Agency Arms. (APP. B, ¶¶ 65-67 and Exh. F attached thereto) Hebert issued false and damaging statements in messages to Mr. Tentler including that IP had been "hacked," that Brandly had orchestrated a break-in of rental property, and that Brandly was a "con-man and a liar." None of this had occurred or was accurate. (APP. B, ¶¶ 68-69)

Hebert did not keep regular hours at Shield's facility, and from January – March 2019, he was almost never present during normal business hours. On March 26, 2019 Hebert showed up to Sheild's Bigfork facility, and Zeider

observed Hebert acting confused to be there, and wandering around. It sounded to Zeider like Hebert was having conversations on his phone, but he wasn't holding his phone and did not use Bluetooth at the time. After Hebert returned to his office, Zeider heard his imaginary "phone conversations" resume. (*Id.*, ¶¶ 42-44)

On April 3, 2019 Hebert visited the Shield facility and asked Zeider to help him close their bay door. Hebert had dyed his hair and beard a darker color and he looked different. Hebert then called Zeider and demanded that Zeider agree to give him an additional stake in Shield beyond Hebert's membership interest. Zeider told him that he was acting disrespectfully, and Hebert mocked Zeider using a child-like voice and told Zeider that he owed it to his kids. Hebert claimed that Brandly worked "for Glock" and had stolen intellectual property from Glock Industries. Hebert threatened in that call to use a "nuclear option against everyone," which he refused to describe after being asked for details. (APP. B, ¶¶ 45-47)

Additionally, internal complaints were received about Hebert's behavior from Alicia Hauss ("Alicia"). At that time Alicia was Shield's only employee outside of the three members, and losing her services would have created a major setback. On April 5, 2019 Alicia told Zeider that Hebert's behavior at the facility had been frightening her for several weeks, that Hebert's eyes were red, and that

Hebert had stared at her for a long while before saying anything to her when she tried to speak with him. Alicia made an excuse to get away from Hebert and was not comfortable in Hebert's presence. She refused to come to the facility if Hebert was there. (APP. B, ¶¶51-53 and Aff. of Alicia Hauss attached as Exh. D thereto)

On April 5, 2019 Hebert appeared at Shield's shop unexpectedly. Initially, he was talking a mile-a-minute and bouncing around from topic to topic. Alicia asked Hebert if he had dyed his hair and beard, but Hebert said he hadn't and didn't understand why other people had asked him that same question. Hebert told Zeider that maybe he was wrong about Zeider being in on "the conspiracy to get rid of him," maybe Zeider had been "duped" by Brandly, and that he had several people who wanted to setup conference calls to tell them how bad of a person Brandly was. Zeider replied that if Hebert had some evidence of wrongdoing that he needed to present it to him and to Berglee. Hebert did not do so. (APP. B, ¶¶54-56)

Hebert kept asking Zeider for his "word" that Zeider would be with him in his vendetta against Dean. Zeider again asked Plaintiff to present his evidence, and Hebert again declined. Hebert issued text messages to Zeider and Berglee stating: "if you mention one word of our conversation to Dean or it gets back to Dean, Abigail [Shield's bookkeeper] will be subpoena [sic] to testify that you were

warned and you gave your word you would not leak this"; and "maybe my second instinct is true. You are working in conspiracy to ruin me, my position, reputation, honor, future wealth and creations, IP and service to my nation. Then you better come clean, ask forgiveness (I will forgive) and move to defend me, my IP, honor, fortune, etc. Or if not then you better get a damn good attorney. Because will answer for his crimes and espionage." (APP. B, ¶¶ 57-59)

In April 2019 Hebert called Zev Technologies ("ZT"), a California-based company that manufactures firearm parts and was a business partner of Shield. Hebert identified himself to ZT as "Mike from Shield Arms" and told them that if ZT continued to use "IP" that had been stolen from Shield by Brandly, that Hebert would sue ZT. As a direct result of that call, which contained false statements and allegations, ZT canceled $2 million dollars' worth of purchase orders that they planned on making. (*Id.*, ¶¶ 60-62) Similarly, in early 2019 Shield had reached a verbal agreement with Aero Precision, a Washington-based firearms manufacturer, on a multi-million-dollar licensing agreement between the companies. However, Hebert's defamatory phone call to Aero Precision destroyed Shield's agreement with Aero Precision, which never recovered. (*Id.*, ¶¶ 63-64)

Hebert called Walt Bourdage, a friend of Zeider's, and alleged similar false statements of IP theft, fraud, and pending lawsuits. (*Id.*, ¶ 71)

Hebert exhibited erratic and unpredictable behavior and actions that created a hostile work environment at Shield, prevented the company from conducting normal business operations, interfered with contractual and business relationships, and negatively affected the sense of safety and security of those who interacted with Hebert including Zeider and Alicia. (*Id.*, ¶¶ 63-64; APP. A, ¶ 25)

On April 11, 2019 Shield received a letter from legal counsel for 17 D&M, which demanded that Hebert "immediately cease and desist [his] slanderous communications," threatened to file claims of damages against Shield for Hebert's conduct, and threatened to end the business relationship between 17 D&M and Shield. (see Exh. G attached to APP. B)

The unanimous vote to remove Hebert as a member of Shield was made because it had become unlawful to carry on their business with Hebert as a member. (APP. B, ¶ 72 and 76-77 and Exh. J attached thereto; APP. A, ¶ 26-28)

4. The distributional interests offered to Hebert were correct.

Shield extended an accurate purchase offer for Hebert's interests following the dissociation. The amount was increased by 10% for error and reduced by $2,000.00 for 2/3 of the value of an SAF9 firearm prototype that belonged to Shield but Hebert took home and never returned. A $5,672.31 purchase offer was issued to Hebert on May 17, 2019, accompanied by accurate copies of Shield's

assets and liabilities, latest available balance sheet/income statement, and explanation of the calculation. (see Exh. K attached to APP. B) Hebert rejected the offer.

On March 21, 2019 all five members of SDG including Hebert voted to keep the valuation of SDG at $100 per member for a total company value of $500. This meeting was recorded. (APP. B, ¶¶ 80-81) On April 17, 2019 Hebert was dissociated from SDG by unanimous vote of the other four members, pursuant to the Restated Operating Agreement in effect at that time. (*Id.*, ¶¶ 78-79 and Exh. H attached thereto; APP. A, ¶ 29) Pursuant to § 7.4 of the SDG Restated Operating Agreement, each member's 20% interest in SDG was properly valued at $100 at the time of dissociation of Hebert. (APP. B, ¶ 82 and Exh. I attached thereto)

While Shield has been able to continue its business operations after the dissociation of Hebert, the damage that Hebert caused to the reputation of Shield is ongoing and continues to be something Shield has to constantly deal with to this day. (APP. B, ¶ 88; APP. A, ¶ 31)

5. Hebert waited 3 ½ months to get his property from Shield.

For more than three months after dissociation, Appellees tried to return Hebert's personal property to him. (APP. B, ¶¶ 89-90 and Exh. L attached thereto) Shield rented a storage facility and moved Hebert's things for him, at its expense,

and sent to Hebert's attorney Grant Snell a copy of the storage contract and keys to the unit. A second set of keys was even provided to Hebert's wife. (APP. B, ¶ 91) None of Hebert's personal property was taken or used by anyone else at any time. Hebert did not seem to want to have it returned to him. On or about August 2, 2019 Hebert finally picked up his property from the storage unit. Nothing else of his remained at the Shield facility or was in anyone else's possession past that time. Hebert filed a claim of stolen property with Farmers Insurance and continued making the claim after he had picked up his property from storage. (*Id.*, ¶¶ 92-94)

STANDARD OF REVIEW

The Court reviews "de novo a district court's grant or denial of summary judgment, applying the same criteria of M. R. Civ. P. 56 as a district court." *Pilgeram v. GreenPoint Mortg. Funding, Inc.*, 2013 MT 354, ¶ 9, 373 Mont. 1, 313 P.3d 839 (citation omitted). This Court reviews a "district court's conclusions of law to determine whether they are correct and its findings of fact to determine whether they are clearly erroneous." *Pilgeram*, ¶ 9 (citation omitted). Judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law." *Roe v. City of Missoula,* 2009 MT 417, ¶ 14, 354 Mont. 1, 221 P.3d 1200; M.R.Civ.P. 56(c). "A material fact is a fact that involves the elements of the cause of action or defenses at issue to an extent that necessitates resolution of the issue by a trier of fact." *Roe*, ¶ 14 (citation omitted). "The party moving for summary judgment has the initial burden of establishing both the absence of genuine issues of material fact and entitlement to judgment as a matter of law." *Roe,* ¶ 14 (citation omitted). "If the moving party meets this burden, then the 'burden . . . shifts to the nonmoving party to establish that a genuine issue of material fact does exist.'" *Roe*, ¶ 14 (citation omitted). "If no genuine issues of material fact exist, the district court 'then determines whether the moving party is entitled to judgment as a matter of law.'" *Id.*

With respect to the standard of review of the District Court's discovery rulings, Appellees agree with the statement of Appellant. *Opening Br.*, p. 14.

SUMMARY OF THE ARGUMENT

It is undisputed that Judge Eddy granted the motion for summary judgment based on her interpretation and application of § 35-8-803(1)(e)(i), MCA, in determining that it had become "unlawful to carry on [Shield Arms'] business with [Hebert]" at the time of dissociation. Importantly, this law *does not* limit a company's power to dissociate a member *only* through judicially determined

expulsion. The members may do it. The District Court correctly interpreted and applied this law. The District Court considered the evidence presented by Hebert, including his admission that he contacted Shield's business partners to complain about Brandly. Hebert's behavior created tort claims arising from interference with business relationships, and violated his duties of care.

The distributional valuation interests provided to Hebert for his interests in Shield and SDG were accurate following dissociation. Hebert simply disagreed with them. The District Court did not abuse discretion in denying Hebert's request to extend his expert's disclosure deadline, and partially denying Hebert's motion to compel. Hebert's conversion claims were unsupported and properly dismissed.

Finally, it was not in error for the District Court to find that Hebert had signed the SDG Operating Agreement in effect at the time of his dissociation. Judge Eddy should be affirmed in all respects.

ARGUMENT

1. The District Court did not misapply the law on Hebert's Count 1.

On the question of construction and application of § 35-8-803(1)(e)(i), MCA, it was not error for the District Court to agree that it had become 'unlawful'

to carry on Shield's business with Hebert, or that a court action and determination was not required before his dissociation.

A. The language does not limit removal of a member by court decree.

The plain statutory language does not explicitly limit removal to court decree, that members may exclusively be removed by judicial determination, or that managers may be removed from an LLC only by a court. Appellant is not correct in his interpretation of this language. *Opening Br.*, pp. 19-21. Rather, § 35-8-803(1)(e)(i), MCA, expressly permits a member of an LLC to be dissociated by a unanimous vote of the remaining members when it "is unlawful to carry on the company's business with the member." It need not happen only by judicial declaration, and is not limited to instances when the "mere presence" of the member is "enough to preclude continued operations as a matter of law." *Opening Br.*, p. 20.

Other courts have disagreed with Appellant's argument. Like Montana, Utah has adopted the Model Limited Liability Company Act, and the language of Utah Code Ann. § 48-2c-710(3) mirrors the provisions of § 35-8-803(1)(e)(i), MCA. *Duke v. Graham*, 2007 UT 31, 158 P.3d 540, involved the expulsion of two members of a limited liability company through arbitration. *Duke*, ¶ 1. The Utah Supreme Court held that court decree was not required by the plain statutory

language of the LLC Act, and that a court or judicial determination was not required to effectuate removal. *Id*., ¶ 15. The very same analysis and outcome should be applied here. A member's removal from an LLC is not available only by judicial decree pursuant to the plain statutory language.

B. The District Court reasonably interpreted "unlawful."

It was not erroneous for the District Court to recite the definition of "unlawful" from § 28-2-701, MCA, and *Black's Law Dictionary*, because "unlawful" is not defined in the MLLCA. Using this reasonably applied definition, it was not in error for the District Court to agree that "it would have been contrary to the policy of express law and contrary to good morals" to keep [Hebert] as a member [of Shield]." (Order Re: Cross Motions for Summary Judgment, Doc. 90, p. 5, APP. D)

Seymour v. New Destiny, LLC, cited by Appellant, is not applicable. *Opening Br*., p. 24. There, a company was formed to purchase real estate and the two members engaged in a relationship and resided on the property purchased by their LLC, which resulted in a permanent restraining order for domestic violence and one of the members fleeing the Virgin Islands. *Seymour v. New Destiny, LLC*, 2018 V.I. LEXIS 134, *1. However, whether the restraining order made it "unlawful for … the business to be continued" per se was immaterial, since the

parties agreed to dissolve New Destiny in that proceeding. *Id.*, *19-20.

Under the facts, Zeider and Berglee were allowed to dissociate Hebert from membership in Shield, and Hebert wasn't entitled to take part in the vote or be provided advance notice of the decision. The evidence supporting the decision to expel Hebert from membership in Shield Arms was credible and ample, while Hebert's evidence consisted of mere denials. Count 1 was properly dismissed.

2. The District Court considered the alleged issues of fact raised by Hebert.

From the time he filed his *Complaint* to the time of briefing on the motion, Hebert had 4 ½ years to produce supporting evidence for his claims, which he did not do. The District Court correctly noted that "Hebert does not dispute that he contacted several of Shield Arms' business partners threatening litigation if they used stolen 'IP from Dean," and that Hebert failed to provide evidence that Dean "stole anything from anyone" – making it uncontested that Hebert's conduct created tort claims arising from interference with Shield's business relationships. (APP. D, p. 5) Moreover, Hebert's uncontested conduct as described violated his duties of care. *Id.*

Hebert concedes that he made allegations against Brandly, but generally does not address most of the direct allegations regarding his conduct aside from

conclusory denials. *Opening Br.*, pp. 28-29. The standards Hebert recites are unsupported.

Harrell v. Farmers Educ. Coop. Union, 2013 MT 367, 373 Mont. 92, 314 P.3d 920, is inapplicable. *Opening Br.*, p. 29. *Harrell* involved a wage and constructive discharge claim. The wage and "extra duties" verdicts reached by the jury were reversed, and Harrell, an employee of Montana Farmers Union, was held to not personally liable for his actions. *Id.*, ¶ 51. This is in contrast with the present situation, because whether Hebert could be personally liable for his actions is not at issue; the question is rather whether Shield could have been held liable for them, which was certainly the case. A lawsuit for Hebert's actions would have provided cause for Hebert's dissociation from Shield, as Appellant suggests, but was not a prerequisite to dissociation. The harm that Hebert was causing to the interests of Shield and SDG required the members to take the action they did to mitigate such ongoing and future harm, which is not addressed by Hebert.

3. The District Court did not misapply § 35-8-809, MCA.

Hebert pled claims pursuant to § 35-8-809, MCA, in the alternative and based in his own conjecture that the valuations of his interests set by Shield Arms and SDG were allegedly deficient. However, the District Court correctly held that a fair value of Hebert's distributional interests was determined by Shield and SDG

upon dissociation, noting that Hebert "disagrees with the amount owed to him, but has not raised any genuine issues of material fact" as to the value. APP. D, p. 9. The District Court did "affirmatively declare the value of the business" by agreeing with the valuations provided by Shield and SDG. *Opening Br.*, p. 31. Thus, the provisions of § 35-8-809(1), MCA, were properly followed.

Hebert complains that he was entitled to an assessment of damages based on valuations of Shield and SDG beyond the time of his dissociation, and should have received some unspecified amount for IP that was assigned. *Opening Br.*, p. 31. However, this was an unsupported argument, because the distributional amounts were properly valued *at the time of dissociation*, as Hebert had provided no entitlement to valuations beyond that time.

It was well within the province of the District Court to agree with the valuations provided by Shield and SDG to Hebert. It is after all the parties' responsibility to provide a district court with competent evidence of property values. *In re Marriage of Frank*, 2022 MT 179, ¶ 71, 410 Mont. 73, 517 P.3d 188. A District Court may adopt any valuation of property reasonably supported by the record and assign any value to an item of property that is within the range of values offered into evidence. *Hutchins v. Hutchins*, 2018 MT 275, ¶ 50, 393 Mont. 283, 430 P.3d 502 (citations omitted). Hebert provided no credible evidence to support

that his interests in the two entities were actually worth more than the amounts provided, which he simply rejected at the time.

4. The District Court did not abuse discretion in denying Appellant's motions to compel evidence or to extend the deadline for expert reports

As a preliminary matter, it is important to note that Shield had served its objectionable responses to Hebert "almost six months before the … *Motion to Compel* was filed." (Order Re: Various Motions, Doc. 78, p. 2, APP. E) Second, the requested discovery at issue consisted of a litany of financial and business records from Shield "for the years 2017 to the present." The District Court was justified in its denial of Hebert's request for such information after the date of dissociation because he had failed to articulate "any theory by which he is entitled to a business evaluation as of July 31, 2023." *Id*, p. 3. Put another way, Hebert's designated expert accountant had not properly supported his request for more current information, and "[t]here was more than sufficient time to obtain this information prior to the Expert Witness Disclosure Deadline – which the parties had known about for months." *Id*, p. 4. Thus, the District Court permitted the production of information to a time period ending April 19, 2019, which was produced.

These decisions were well within the discretion afforded to the District Court. After delaying the prosecution of this case for several years, Hebert failed

to support his requests to extend deadlines long known to him, and he ultimately failed to adequately justify why his expert was entitled to the financial and business information beyond dissociation. Instead, Hebert filed unsubstantiated and unsupported declarations seeking to create material facts from thin air. The support that he provided in the form of expert analysis was incredibly vague and simply did not identify the alleged need for information beyond the dissociation date, which properly ended the analysis for the District Court on that issue.

Appellant cites *B Bar J Ranch, LLC v. Carlisle Wide Plank Floors, Inc.*, 2012 MT 246, 366 Mont. 506, 288 P.3d 228, as a "similar situation" to this dispute. *Opening Br.*, p. 33. However, in *B Bar J* the Court held that Carlise was entitled to production of tax records for use by an expert, and requested in discovery, which in turn allowed Carlise to disclose its expert after the deadline. *Id.*, ¶ 15. The obvious additional difference with the present case and *B Bar J* is that Hebert actually received the Defendants' tax records to the time of dissociation and was not entitled to such records after dissociation.

5. The District Court did not err in granting summary judgment on the conversion claims.

A. Hebert's personal property was returned to him.

After April 17, 2019 Hebert left a great deal of personal property at the

Shield Arms' facility. The District Court properly dispelled the claim that it was kept or held onto inappropriately:

> Hebert claims that he "left a great deal of personal property behind at Shield Arms, much more than was ever returned to [him]." (Doc. 58, ¶ 13). Zeider does not dispute that Hebert left personal property at the facility. Zeider claims they tried to return the property to Hebert for over three months after he was dissociated and moved the items to a storage facility, where Hebert's attorney and wife were provided keys. (Doc. 44, ¶ 74). Zeider claims Hebert picked up his property from the storage unit on or about August 2, 2019. (Doc. 44, ¶ 76). **Hebert does not state or specify what other personal property of his was never returned to him**. Thus, there is no genuine dispute of material fact as to Hebert's claim for conversion of his personal property.

(APP. D, p. 6) (emphasis added)

Hebert seeks to create issues of material fact on his personal property conversion claim by declaring that Zeider provided "a list of firearms" belonging to Hebert that could have been transferred for Hebert to pick up. *Opening Br.*, p. 36. This never happened. Zeider did not provide some list of Hebert's allegedly unreturned firearms to Hebert's former counsel, or anyone else. (Hebert Declar., Doc. 70, ¶ 39, APP. F) It was not made any part of the process of returning Hebert's actual property, and has been fabricated by Hebert. To be clear: these are not "receipts" from Hebert showing conversion of firearms, but fabricated arguments that seek to create issues where none exist in the first place.

B. Hebert's IP conversion claims were properly dismissed.

Hebert produced no credible evidence substantiating the claim of conversion of his intellectual property (IP). No such IP ever existed in the first place, at least to the understanding of Zeider and Berglee. At Hebert's dissociation the only item of IP that Shield or SDG had interest in is the FLR, which arose from Zeider's original idea, and on which Hebert did little to no work. All five members of SDG applied for the FLR Patent in 2019. On July 7, 2020, the FLR was assigned US Patent No. US-10704848-B1. Hebert's rights to that product, if any, ended upon assignment of the FLR. These facts are not in material dispute.

Hebert claims that the District Court "simply ignored [his] additional inventions, despite the patent attorney's files." *Opening Br.*, p. 38. In fact, Hebert advised the District Court that he would demonstrate "at trial" the IP that originated with him and was under distribution by the Appellees. (APP. D, p. 8) He failed to provide such evidence for consideration on summary judgment, however.

Hebert falsely claims that Defendants "destroyed" his e-mails on his inventions, but that he was able to save "a few of his preliminary drawings." He declares:

> 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.
>
> 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.

(APP. F, ¶¶ 4-5)

Hebert's only evidence of IP ownership is some hand drawing and vague messaging. *Id.*, ¶¶ 4-6, 10. In fact, Hebert provided *no evidence* to establish the exercise of possession or control over any IP, including the FLR or the "enhanced magazines" that he falsely claims were stolen and then patented.

Importantly, Hebert received the e-mails with the patent attorney during discovery and they did not support his IP claims, which he does not explain to this Court. On October 4, 2023 Hebert filed a motion to deny or delay ruling on Defendants' motion for summary judgment, and he stated:

> … Hebert has had to request information related to Count V of the complaint [ie, conversion] from a third-party, because Defendants have apparently lost or destroyed Hebert's company e-mails. Specifically, Hebert has requested emails with the company's patent counsel, which will show Hebert's role in inventing the devices that Defendants are profiting from . . . .

(Mot. Pursuant to Rule 56(f) to Deny or Delay Ruling on Defs' Mot. for Summ.

Judgment and Supp. Br. (Doc. 71), p. 2) Consistent with this effort, Hebert through counsel issued a subpoena duces tecum dated September 19, 2023 to patent attorney Glenn Bellamy, of the Cincinnati law firm Wood, Herron & Evans for all of the communications with Hebert from December 1, 2016 to April 19, 2019. (APP. G) However, Hebert did not file the said subpoena duces tecum into the District Court record. Nevertheless, Hebert received all of his e-mails with Glenn Bellamy pursuant to the said subpoena, and they do not support Hebert's conversion claims. Instead of admitting this, Hebert makes a dishonest argument implying that evidence of his IP was limited by destruction of e-mails. *Opening Br.*, p. 37.

Even assuming that Hebert had provided proof of *ownership* of the FLR or the enhanced magazine designs, the patents themselves would still exclude his ownership:

> Prior to obtaining a patent on an invention, an inventor possesses inchoate rights to the exclusive use of the invention and to apply for a patent thereon. Once obtained, a patent confers upon the patentee the right to exclude others from manufacturing, using or selling the invention during the life of the patent. A patent has the attributes of personal property and is owned by the holder of the patent.

Millhollin v. Conveyor Co, 1998 MT 4, ¶ 16; 287 Mont. 377, 954 P.2d 1163 (citations omitted). Hebert was not an inventor, assignor, or inventor on the patent

attached as Exhibit B to his Declaration, and he assigned the FLR Patent, which is well-documented. Thus, Hebert has no ownership interest in either patent, or any IP.

Finally, it is uncontested that Shield never manufactured or sold anything Hebert claims to have designed or invented. There are no genuine issues of fact concerning the IP claims. It would have been inappropriate for the District Court to draw inferences of material fact in Hebert's favor based solely on unsupported conjecture and misleading arguments.

6. The District Court did not err in upholding the validity of the SDG Operating Agreement.

Hebert originally claimed that he

> signed the signature page to [the SDG] operating agreement that was not attached to the signature page pursuant to misrepresentations made to him by Zeider, Berglee, and others. The managers and members of [SDG] agreed to void the operating agreement and to enter a new operating agreement at a meeting on or about March 21, 2019.

(Amd. Complaint, Doc. 17, ¶ 56) However, the member meeting that took place on March 21, 2019, and had no record of such an agreement or discussion. Hebert conveniently claims that the recording "had been altered" to remove the discussion he allegedly had "concerning the flaws in the purported operating agreement."

(APP. F, ¶ 16) This is nonsense. The inconsistencies with Hebert's arguments on the SDG operating agreement were properly addressed by the District Court:

> The Court finds no genuine issue exists as to any material fact. Although Hebert contends that he did not knowingly sign SDG's Operating Agreement because he signed a blank signature page and believed it was to approve a transaction, the Court does not find this rises to the level of a genuine issue of material fact. The signature page of the Operating Agreement is not a blank page. The signature page indicates it is Page 17 of the Restated Operating Agreement. Thus, the Court finds that a valid Operating Agreement existed at the time of Hebert's dissociation.

(APP. D, p. 6)

Moreover, Hebert never explained what changes – if any – he alleges should have been in place; for example, whether a different version would have rendered ineffective the provision to remove a member by unanimous vote, which seems to be the provision that he wishes to having never agreed to. This claim was not credible under any reasonable analysis, and properly dismissed.

CONCLUSION

Even when construing Hebert's brief in the light most favorable to him, all of the claims he alleged lacked a factual basis. Furthermore, his legal arguments are flawed regarding the power of members to dissociate another member. Hebert can prove no set of facts in support of his claims that would entitle him to relief. Therefore, the Court should affirm Judge Eddy's Order granting Appellees' motion

for summary judgment.

DATED this 17th day of June 2024.

Attorneys for Appellees

CERTIFICATE OF COMPLIANCE

I, Doug Scotti, attorney for Appellees, hereby certifies that Appellees' Response Brief complies with the Montana Rules of Appellate Procedure:

A: Document has double-line spacing and is proportionately spaced in Times New Roman text typeface of 14 points;

B: Word count, exclusive of tables and certificates, does not exceed 10,000;

C: Margins are 1";

D: Document is 8 ½ x 11 inches in size.

I am relying on the word count of the word processing system used to prepare the brief (Microsoft Office Word) in calculating the document's length.

DATED this 17th day of June 2024.

Attorneys for Appellees

CERTIFICATE OF MAILING

The undersigned does hereby certify that on the 17th day of June, 2024, a true and correct copy of the foregoing document was served upon the persons named below, at the addresses set out below their names, as indicated below.

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APPENDIX

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Appendix

CERTIFICATE OF SERVICE

I, Douglas Scotti, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 06-17-2024:

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Electronically signed by Kelly Kracker-Sletten on behalf of Douglas Scotti
Dated: 06-17-2024