

1 Case No. 2019-CV-00325
2 Dept. No. II

RECEIVED

NOV 05 2021

Douglas County
District Court Clerk

FILED

2021 NOV -5 AM 10:21

DOBBIE R. WILLIAMS
CLERK

A. PONCE DEPUTY

6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF DOUGLAS

9 CHEMEON SURFACE TECHNOLOGY,
10 LLC, a Nevada limited liability
company,

11 Plaintiff,

12 vs.

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGEMENT

13 MI94, LLC, a Nevada limited
14 liability company; MI-16, a
Nevada limited liability
15 company; DOES 1-10; and ROE
ENTITIES 11-20, inclusive,

16 Defendants.
17 _____/

18 THIS MATTER comes before the Court pursuant to Defendants'
19 *Motion for Summary Judgment*. The Court grants the motion as
20 follows:

21 Procedural and Factual Background

22 Plaintiff filed the instant suit for "violation of NRS 86.241
23 and 86.024[.]" *Complaint*, pp. 8-9. Plaintiff claims to be a
24 member of Defendant LLC ("MI94") and therefore alleges to be
25 statutorily entitled to review certain records belonging to MI94.
26 *Id.* Plaintiff's alleged membership interest in MI94 originated
27 when its predecessor in interest—Meiling Family Partnership—
28 "purchased 20,000 common member stock interests in Metalast

1 International [renamed "MI94" in a 2013 Receivership action][.]"
2 *Id.* at p. 2 lines 24-28. Plaintiff traces its membership in MI94
3 to this stock purchase through a complex series of assignments.
4 *Id.* at pp. 1-2.

5 Defendants filed the instant motion to for summary judgment
6 on January 22, 2021. Defendants allege that MI94 ceased to exist
7 in 2013 when all of its assets were sold—an event triggering
8 dissolution under its Operating Agreement ("Agreement")—during a
9 2013 Receivership action. *Motion*, p. 7 lines 9-11. According to
10 Defendants, "MI94 II" was formed in September 2016 when Articles
11 of Reinstatement were filed with the Nevada Secretary of State
12 ("Secretary"). *Id.* at p. 4 lines 26-28. Registration documents
13 issued by the Secretary indicate that this reinstated LLC's
14 legal name is "MI94, LLC," was formed on December 20, 1994,
15 managed by MI-16, and is set to terminate on December 20, 2024.
16 *Affidavit of March Marris in Support of Defendants' Motion for*
17 *Summary Judgement* ("Marris Affidavit"), Exhibit 2. Defendants
18 contend that because MI94 (referred to by Defendants as "MI94 I")
19 "dissolved and ceased to exist" in 2013, Plaintiff is erroneously
20 requesting records from a distinct legal entity—"MI94 II"—formed
21 in 2016. *Motion*, p. 7 lines 9-11. Plaintiff argues that the
22 Articles of Reinstatement filed in September 2016 reinstated MI94
23 and did not create a legally distinct entity as Defendants allege.
24 *Opposition to Defendant's Motion for Summary Judgement*
25 (*"Opposition"*), p. 12 lines 22-24.

26 In the alternate, Defendants argue that Plaintiff is not a
27 member of MI94 because preconditions for assignment, as set out in
28 the Operating Agreement, were not met. *Motion*, p. 11 lines 15-

1 26. More specifically, Plaintiff's membership interest was never
2 approved by MI94's members nor was a "signed counterpart of [the
3 Agreement]" delivered to MI94 as required by the Agreement.¹

4 Plaintiff does not contest these factual allegations in its
5 Opposition; rather, it argues that Defendants should be estopped
6 from making this argument because Defendants allegedly conceded in
7 a federal case that Plaintiff was a member of MI94—constituting a
8 "judicial admission"; and Plaintiff stated in the *Complaint* that
9 it was a member of MI94 and this statement must be assumed in
10 Plaintiff's favor given this matter's procedural posture.
11 *Opposition*, pp. 10-14. Plaintiff also argues that it needs
12 additional discovery to defend itself against Defense's motion for
13 summary judgement, *Opposition*, p. 14 lines 11-27, and that
14 Defendants "come to this Court with unclean hands" by disclosing a
15 confidential purchase sale agreement to the Court, *Id.*, p. 15
16 lines 4-15. Both sides seek fees and costs.

17 Conclusions of Law

18 "Summary judgment is appropriate and 'shall be rendered
19 forthwith' when the pleadings and other evidence on file
20 demonstrate that no 'genuine issue as to any material fact
21 [remains] and the moving party is entitled to a judgement as a
22 matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121

23
24 ¹Section 6.3 of the operating agreement states in relevant part that:

25 No member shall be entitled [sic] to transfer, assign, convey, sell,
26 encumber or in any way alienate all or part of his or her interest except
27 with the prior written consent of all of the other Members Any
28 person who obtains the written consent of all other Members and otherwise
complies with the provisions of this Agreement shall become a substituted
Member. . . No interest may be transferred to, or acquired by, another
person until such person has signed and delivered to the Company a
counterpart of this Operating Agreement."
Marris Affidavit, Exhibit 1 (emphasis added).

1 P.3d 1026, 1029 (2005) (citation omitted). "A party asserting a
2 fact cannot be or is genuinely disputed must support the
3 assertion..." NRCPC 56(c). While "any reasonable inference drawn
4 [from the record] must be viewed in a light most favorable to the
5 nonmoving party," "the nonmoving party 'must, by affidavit or
6 otherwise, set forth specific facts demonstrating the existence of
7 a genuine issue for trial or have summary judgment entered against
8 him.'" *Wood*, 121 Nev. at 729-32 (citation omitted). If a party
9 fails to support an assertion of fact or fails to address another
10 party's assertion of fact, the court may grant summary judgment.
11 NRCPC 56(e)(3).

12 The unverified *Complaint* alleges that Plaintiff is a member
13 of MI94 as being the transferee of membership interests.
14 Defendants' motion challenges this assertion. In support,
15 Defendants point to the company's Operating Agreement that is
16 attached as an exhibit to the *Complaint*. The Operating Agreement
17 provides that a transfer of membership interests requires prior
18 written consent of all members and is not effective until the
19 transferee delivers a signed copy of the Operating Agreement to
20 the company. Defendants point out that the *Complaint* and its
21 exhibits do not allege or lend support to the notion that
22 membership interests were transferred to Plaintiff in the manner
23 required by the Operating Agreement. In support of their
24 contention that the preconditions for transfer were not met,
25 Defendant offers affidavits of two members.

26 In response, Plaintiff frames the transfer requirements of
27 the Operating Agreement as a "technicality." *Opposition*, p. 12,
28 line 19. Plaintiff argues that its generic declaration of

1 membership, Exhibit 2 to the *Complaint*, is sufficient to defeat
2 summary judgment.

3 Operating agreements may set out the requirements of
4 membership. NRS 86.286(4). Operating agreement terms are not
5 mere technicalities. Courts interpreting an operating agreement
6 "[m]ust interpret[] and construct[] [its terms] to give the
7 maximum effect to the principle of freedom of contract and
8 enforceability." NRS 86.286(4)(b). Courts use principles of
9 contract interpretation when considering operating agreements.
10 *See, Maya I-215, LLC v. Moore*, 129 Nev. 1136 at 1 (2013) ("Courts
11 routinely use contract principles when interpreting operating
12 agreements...If a contract is clear and unambiguous, there is no
13 room for interpretation and the court may enforce the contract as
14 written).

15 As noted *supra*, MI94's operating agreement unambiguously
16 requires two preconditions to transfer a membership interest: (i)
17 it must be approved by all MI94's members and (ii) the aspiring
18 member must sign a "counterpart" of the Agreement and "deliver
19 [it] to the Company."

20 Defendants have met their burden of production through member
21 affidavits. Defendants sufficiently challenge Plaintiff's
22 membership status and/or Plaintiff's ability to produce admissible
23 evidence that membership preconditions were met. NRCP 56.

24 In response, Plaintiff stands on its generic assertion of
25 membership without attempting to establish the two preconditions.
26 Plaintiff's generic assertion of membership, found in Plaintiff's
27 declaration attached as Exhibit 2 to the *Complaint*, is not
28 unequivocal and does not address the preconditions. Because

1 Defendants sufficiently contest the preconditions, Plaintiff's
2 generic assertion is not sufficient to defeat summary judgment.

3 Plaintiff also points to statements made by Defendants and/or
4 Defendants' counsel purporting to admit that Plaintiff is a member
5 of MI94. The Court disagrees that the purported statements
6 constitute admissions. Even so, any such admissions would not
7 change the contractual requirements for the transfer of membership
8 interests as stated in the Operating Agreement and Plaintiff's
9 need to produce evidence of the same.

10 Plaintiff requests the opportunity to conduct further
11 discovery. NRCP 56(d). Plaintiff provides no basis to believe
12 further discovery would be fruitful. Plaintiff initiated this
13 action nearly two years ago. Plaintiff has not filed a singular
14 motion to compel or other discovery motion. Defendants argue that
15 Plaintiff's predecessors obtained full and unfettered control over
16 all of MI94's corporate records through a separate receivership
17 action. Plaintiff does not refute this point. The Court does not
18 find good cause to deny or delay summary judgment pursuant to NRCP
19 56(d).

20 Plaintiff's other contentions are unavailing. The Court
21 finds that summary judgment is warranted. NRCP 56(e)(3). Based
22 upon this determination, the Court does not reach Defendants'
23 alternative grounds for relief.

24 The Court has considered Defendants' request for attorney's
25 fees and costs pursuant to NRS 86.243(3)(c). Defendants are the
26 prevailing party. Standing to obtain or examine corporate
27 documents turns on proof of membership. Nearly two years post
28 case inception, Plaintiff has not produce a stitch of evidence

1 that MI94 membership interests were transferred to Plaintiff in
2 the manner required by the company's Operation Agreement. The
3 Court exercises its discretion to grant Defendants their
4 reasonable attorney's fees and costs for having to defend this
5 action. NRS 86.243(3)(c).

6 Defendants' Motion for Summary Judgment is GRANTED.
7 Defendants shall, no later than November 30, 2021, file and serve
8 a statement reflecting the amount of attorney's fees and costs
9 requested and supply appropriate supporting affidavits and
10 evidence. Judgment will not enter until after the Court
11 determines the amount of the attorney's fees and costs award.

12 IT IS SO ORDERED.

13 DATED this 5th day of November, 2021.

14
15
16 
17 THOMAS W. GREGORY
DISTRICT JUDGE

18 Copies served by mail on November 5th, 2021, addressed to:

19 James D. Boyle, Esq.
20 Jessica M. Lujan, Esq.
21 800 South Meadows Parkway, Suite 800
Reno, Nevada 89521

22 Adam Hosmer-Henner, Esq.
23 Philip Mannelly, Esq.
24 100 West Liberty, 10th Floor
Reno, Nevada 89501

25 
26 Erin C. Plante