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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIK HOLZBAUR, Plaintiff Below, Appellant, vs. TROLLEY SQUARE HOSPITALITY GROUP, LLC, a Delaware limited liability company and ERIC C. SUGRUE, Defendants Below, Appellees.	:	C.A. No. 289, 2025 Trial Court Below: Chancery Court of the State of Delaware C.A. No. 2023-0181 MTZ

APPELLANT'S OPENING BRIEF

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Date: 08/28/25

TABLE OF CONTENTS

TABLE OF CITATIONS

NATURE OF PROCEEDINGS

This is a civil action brought in the Delaware Court of Chancery. The case was brought on February 14, 2023 and is known in the court below as C.A. No. 2023-0181 MTZ. The civil action sounds in contract. It was brought to interpret a limited liability agreement. Specifically, it was brought to determine the rights of one named member to distributions. It was further brought to claim a portion of the profits unpaid to plaintiff.

The originally filed Verified Complaint had four defendants. The first defendant was the limited liability company, Trolley Square Hospitality, LLC. There were three additional defendants, Eric C. Sugrue, Stuart Stafman and Holly Monaco. Those three additional defendants and the plaintiff comprise the complete ownership of defendant Trolley Square Hospitality, LLC.

The original Verified Complaint had three counts. The first count requested financial data under Section 8.4 of the limited liability company agreement and Title 6, Section 18-305 of the Delaware Code. The second count requested payment to the plaintiff for his proportionate share of distributed profits under the agreement and recognition that he remains a director of the limited liability company. The third and final counts of the complaint demanded that the company directors, Eric C. Sugrue, Stuart Stafman and Holly Monaco disgorge any profits paid to them that should have

been paid to plaintiff.

On March 20, 2023, defendants filed a Motion to Dismiss. The court below entered an order granting in part and denying in part the motion on December 1, 2023. As to Count I, the claim for information under 6 *Del. C.* §18-305 was granted dismissal. As to all counts, any claims against defendants Stuart Stafman and Holly Monaco were granted dismissal and those two defendants were completely dismissed from the case. As to Count II, the Motion to Dismiss was denied. As to all counts, the Motion to Dismiss was denied as to defendant Eric C. Sugrue in his capacity as general manager. This order is not the subject of this appeal.

On August 29, 2024, plaintiff filed a Motion in Limine. The motion sought to lime any parol evidence from the defendants to interpret the operating agreement of defendant Trolley Square Hospitality, LLC. Particularly, the motion wished to limit evidence from the defendants to be used to interpret the phrase "cash contributing member." By order dated December 13, 2024, the court below denied the motion. The court below stated that it welcome all evidence regarding the interpretation of cash contributing member. It would make a determination it ambiguity existed in the operating agreement after all evidence is presented. This order is not the subject of this appeal.

The court below order pretail briefing which was completed by all parties on

December 16, 2024. Trial was held on Thursday, January 9, 2025. By order dated February 5, 2025, the court below ordered post trial briefing. The post trial briefing was completed by March 21, 2025. The court below heard post trial oral agreement on May 15, 2025.

The court below issued its post trial memorandum or June 4, 2025 and its final order dismissing all plaintiff's claims on June 23, 2025. This appeal to the Delaware Supreme Court was filed on July 7, 2025. This is appellant's opening brief.

SUMMARY OF ARGUMENTS

1. Section 9.20 of the operating agreement for Trolley Square Hospitality, LLC did not create ambiguity on the issue of whether appellant Eric Holzbaur is a non cash contributing member. Appellant Eric Holzbaur is a non cash contributing member and cannot lose his membership under section 5.1.2.11 of the same operating agreement.

2. If section 9.20 creates ambiguity in the operating agreement, section 9.20 does not have language that would then cause appellant Holzbaur to become a non cash contributing member.

3. *Contra Proferentem* can be appropriately applied to the facts in this litigation and when the language of the operating agreement is interpreted against appellee Eric C. Sugrue as drafter, appellant Holzbaur cannot be dismissed as a member of Trolley Square Hospitality, LLC.

STATEMENT OF FACTS

This litigation results from the interpretation of an operating agreement for a limited liability corporation. The corporation is organized under Title 6 of the Delaware Code. Specifically, the litigation focuses on who is entitled to profits from the limited liability corporation and what events could cause a member to lose his/her right to be a member and his/her entitlement to profits.

The limited liability company in question is defendant below, appellee, Trolley Square Hospitality, LLC (hereinafter "appellee, Trolley Square"). Defendant below, appellee, Eric C. Sugrue, (hereinafter, "appellee Sugrue") wished to operate a restaurant at 1707 Delaware Avenue, Wilmington, Delaware. The restaurant was to be known as Trolley Square Oyster House. The restaurant operation was owned and operated by the defendant limited liability company.

Prior to the formation of appellee, Trolley Square Hospitality, LLC, the owners of the limited liability company were selected. There were four, defendant, Eric C. Sugrue, Stuart Stafman, Holly Monaco and plaintiff below, appellant, Erik Holzbaur (hereinafter, "appellant Holzbaur). Appellee Sugrue was to have a special role, he would be the managing member. Appellant Holzbaur also had a special role, that of general manager. The general manager's job was to operate the restaurant. Appellant Holzbaur was to hire the staff, purchase the food, set the hours and do all things that

a restaurant needs to do to conduct business.

The job of a restaurant general manager is hard:

"...this person is going to have to work late, it's going to have to be long hours, its's going to be a challenge..." (trial testimony of appellee Sugrue, appellant's Appendix at page A-78, hereinafter appellant's Appendix will simply be referenced by page number).

To get a person to accept this hard job, appellee Sugrue, determined that he had to "come up with a way to incentivize and reward a person who is going to come on" (trial testimony of appellee Sugrue, A-71). That incentive, offered to appellant Holzbaur, was "a piece of the profits" (trial testimony of appellee Sugrue, A-71).

The extent of the incentive was discussed at a coffee house meeting between Erik Holzbaur, Eric C. Sugrue and Holly Monaco. Testimony at trial about the content of what was said at the trial can be found at the testimony of appellee Sugrue (A-72 to A-73) and Holly Monaco (A-47 to A-49). The content of the meeting revolved around appellant Holzbaur. He would be hired as general manager. Because he would be doing the job of general manager, his employment would be the reason he would receive membership in the LLC (testimony of appellee Sugrue, A-71). There was no other discussion about any other aspect of appellant Holzbaur's employment. For example, there was no discussion about the effect of appellant

Holzbaur voluntarily leaving the job of general manager. There was no discussion ever about appellant Holzbaur losing his ownership when he voluntarily resigned as general manger until after he did resign over six years later when he membership was terminated and his share of the profits stopped paying.

There was no testimony about the content of any other meeting prior to the circulation of the Limited Liability Agreement of appellee, Trolley Square Hospitality, LLC. The agreement (A-14) was first circulated between December 23, 2015. Appellant Holzbaur, only received three pages of the operating agreement (trial testimony of appellant Holzbaur, A-43). They were pages 16 (A-30), 17 (A-32) and 18 (A-33).

The issue in this litigation is who is a member and can that member be terminated. Membership is defined in the operating agreement at section 2.7. It says,

> "2.7 ***Members.*** The name, present mailing address, taxpayer identification number, and percentage of each Member are set forth on *Exhibit A* attached hereto." (A-19)

Appellant is named in exhibit under the column "Name." (A-33) There is another column labeled "Initial Cash Contribution." As to appellant Holzbaur, $14.00 is listed. His percentage of ownership on Exhibit A is 14%.

Returning to the main body of the operating agreement, section 3.1 references capital contributions. It says:

"3.1 ***Initial Capital Contribution.*** The members have contributed to the Company cash or property in the amounts respectfully set forth on *Exhibit A*." (A-19)

The operating agreement further references capital contributions in section 3.2. It says,

"3.2 ***No Additional Capital Contributions.*** No member shall be required to contribute any additional capital to the Company..." (A-19)

Referencing his job as general manager, a section was added to the operating agreement. It is section 9.20 which reads as follows:

"9.20 ***General Understanding of this agreement & partnership.*** Eric Sugrue decided to move forward and purchase "Satsumi" restaurant located at 1707 Delaware Ave, Wilmington, Delaware. The building/land, contents, goodwill, furniture, fixtures & equipment will be owned by Trolley Square Properties, LLC (landlord). TSH will lease the entire property, along with all of its contents from TSP. The rent amount has not yet been determined but it will be a triple net lease and all expenses will be paid by TSH. Structural building issues will be the responsibility of TSP. Erik Holzbaur will become the General Manager and operating partner. He will take responsibility for the day to day operations. He is receiving a 14% interest in this company based on sweat equity. Same for Holly. This type of partnership will allow this restaurant to not have to fall under the same umbrella as the rest of the BFRG locations. Cash distributions will be paid out based on cash equity first and will continue until all cash equity has been returned. Once returned, cash will be distributed based on pro rata, percentage interest in the company. Cash reserves will be determined by Eric Sugrue. The plan is to build the business to a point where sales exceed $1.5-2m. Once profitable, we will discuss an exit strategy that is the best interest of all the members. The plan and idea is for all of this to take 3-5 years.

There is no other document that sets or adds additional terms for the operating agreement (testimony of appellee Sugrue, A-88.

The restaurant opened in April of 2016. The plaintiff as general manager did "a hell of a job" (testimony of appellee Sugrue, A-76). The restaurant was very successful becoming "a great neighborhood bar" (testimony of Holly Monaco, A-60). Pursuant to section 4.1.2, appellant Holzbaur, received his portionate share of the profits.

In the fall of 2021, after working a general manager for six years, appellant Holzbaur decided to leave the restaurant business (testimony of Holly Monaco, A-61). After his resignation as general manager, appellant Holzbaur asked, "Well, how will I get my membership payments?" (Testimony of appellee Sugrue, A-90). Citing the operation agreement at section 5.1.2.11 (A-22), appellee Sugrue stated that appellant Holzbaur, would receive no more profits from the LLC. That section states:

> The General Manager may "remove non cash contributing members. Removed members will no longer have any rights to profits or cash." (A-22).

Payments to appellant Holzbaur stopped in the fall of 2021. Ths suit was brought to collect back membership payments and acknowledge appellant Holzbaur's membership in the future.

ARGUMENT I

A. Question Presented.

DID PARAGRAPH 9.20 OF THE OPERATING AGREEMENT CREATE AMBIGUITY IN THE AGREEMENT SO THAT PAROLE EVIDENCE WOULD NEED TO BE CONSIDERED TO DETERMINE IF APPELLANT, ERIK HOLZBAUR, WAS A CASH CONTRIBUTING MEMBER OF APPELLEE, TROLLEY SQUARE HOSPITALITY, LLC

B. Scope of Review.

The Delaware Superior Court reviews questions of ambiguity in a contract *de novo* for legal error. *Eagle Industries, Inc. v. DeVibiss Health Care, Inc.*, 702 A.2d 1228 (Supr. 1997).

C. Argument Made Below.

Appellant made these same arguments to the court below in his post trial opening brief (A-102) and his post trial reply brief (A-12).

D. Merits of Argument.

This case hinges on one question: Was appellant Holzbaur a cash contributing member under the agreement? (Memorandum Opinion, p. 36). If appellant Holzbaur is a cash contributing member, he may not be removed by appellee Sugrue as general manager. If appellant is not a cash contributing member, appellee Sugrue can use his authority as member and terminate his right to profits or cash.

Appellant Holzbaur asserts that there is no ambiguity. By looking at the written

operating agreement (A-14) for appellee, Trolley Square Hospitality, LLC, it is clear on its face that appellant Holzbaur is defined under the agreement as a cash contributing member.

There is no definition of "cash" or "non cash contributing member" in the definition section at the beginning of the operating agreement. The agreement does, however, define how to obtain membership status. To be a member and to determine your status as a member, you have to look at sections 2.7, 3.1, 3.2 (A-19) and Exhibit A (A-33).

Section 2.7 states:

> "The name, present mailing addresses, taxpayer identification number, and percentage of each member is set forth on Exhibit A." (A-19)

Section 3.1 states:

> "The members have contributed to the company cash or property in the amounts respectfully set forth on Exhibit A." (A-19)

Section 3.2 states:

> "No member shall be required to contribute any additional capital to the company..."

Exhibit A lists:

> "Erik Holzbaur" is listed under the List of Members with a "cash capital contribution." (A-33)

The court below conceded: "Those parts of the Agreement would make

Holzbaur a cash contributing member." (Memorandum Opinion, p. 38). The court below should have ended its inquiry there because the written contract terms were controlling. *GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776 (Del. Supr. 2012).

The trial court did not stop there as it should. The court referenced section 9.20 and stated that section created ambiguity. An analysis of 9.20 is in order.

1. The first sentence states that appellee Sugrue is buying a property at 1707 Delaware Avenue, Wilmington, Delaware.
2. The second sentence establishes the land and personal property for the restaurant will be purchased in the name of a different LLC from the appellee.
3. The third sentence says the appellee Trolley Square Hospitality, LLC will lease the restaurant from the land holding LLC.
4. The fourth sentence states the lease will be a triplenet lease.
5. The fifth sentence states structural issues will be solved by the land holding LLC.
6. The sixth sentence states that appellant Holzbaur will become the general manager.
7. The seventh sentence states appellant Holzbaur is receiving a 14%

interest for his work as general manager (sweat equity).

8. The eighth sentence states Holly Monaco is to be treated the same as appellant Holzbaur.

9. The ninth sentence states the purpose of establishing a new LLC is to have it be separate from another restaurant group.

10. The tenth sentence states that profits will first pay back cash equity.

11. The eleventh sentence states after the return of the cash equity, profits will be paid based on each member's percentage.

12. The twelfth sentence states that cash reserves will be established by appellee Sugrue.

13. The thirteenth sentence states that the business plan is to build the restaurant to the point that sales exceed two million.

14. The fourteenth sentence says that once profitable, an exit strategy will be discussed.

15. The last sentence states that the life of the restaurant is to be approximately 3-5 years.

A complete reading of section 9.20 shows that its purpose is to give an overall business plan for appellee Trolley Square Hospitality, LLC.

Section 9.20 does reference appellant Holzbaur. It gives him a position in the

LLC. In return for taking the position, he receives a membership in the appellee Trolley Square Hospitality, LLC. It does not modify Exhibit A of the operating agreement. It does not make any reference to Exhibit A. It does not modify section 2.7. It does not make any reference to section 2.7.

To find ambiguity, the court uses a definition of sweat equity to say it (sweat equity) is not cash. The definition is quoted from Black's Law Dictionary. Appellant Holzbaur states the focus should be made on the definition of "cash." Cash is the word used in section 5.1.2.11 (A-22) (non cash contributing members) and Exhibit A (A-33) (cash capital contribution).

Black's Law Dictionary defines cash as "money or its equivalent." Black's Law Dictionary 12th Edition. Exhibit A makes no differentiation between any of the four members. They are all listed in the same columns. Appellee Sugrue and Stuart Stafman are listed in Exhibit A because they contributed money to the LLC (A-79). To be a member, appellant Holzbaur works as a general manager. To Exhibit A, it is the "equivalent" of money. Its meets the definition of cash. Section 5.1.2.11 (A-22) does not apply.

ARGUMENT II

A. Question Presented.

DID THE COURT BELOW DO A PROPER ANALYSIS OF THE LAW REGARDING THE USE OF EXTRINSIC EVIDENCE TO DETERMINE THE INTENTIONS OF THE PARTIES AFTER HAVING FOUND THE OPERATING AGREEMENT TO BE AMBIGUOUS.

B. Scope of Review.

The Delaware Superior Court reviews questions of ambiguity in a contract *de novo* for legal error. *Eagle Industries, Inc. v. DeVibiss Health Care, Inc.*, 702 A.2d 1228 (Supr. 1997).

C. Argument Made Below.

Appellant made these same arguments to the court below in his post trial reply brief (A-115).

D. Merits of Argument.

Appellant incorporates his argument assertion here that there is no ambiguity in the operating agreement. Section 9.20 does not make the language of section 2.7 and the Exhibit A to the agreement ambiguous. However, the appellant also states the court below made legal error in applying extrinsic evidence to resolve an ambiguity.

The court below correctly quotes *Dittrick v. Chalfant*, 948 A.2d 400 (Del. Ch. 2007).

> "[E]xtrinsic evidence is an appropriate resource for the court to use in determining the parties reasonable intentions at the time of the contract." (Memorandum Opinion, p. 39)

The court below also cited *United Rentals, Inc. V. RAM Holdings, Inc.*, 937 A.2d 810, 835 (Del. Ch. 2007).

> "Restated, the extrinsic evidence may render an ambiguous contract clear so that an objectively reasonable party in the position of either bargainer would have understood the nature of the contractual rights and duties to be."

The court below labors very hard on trying to define non cash contributing member and loses what the extrinsic evidence needs to clarify. In the case at bar, the "rights and duties" (*United Rental, Id.*) are: did appellant know that there was an event that would cause him to lose his ownership in the LLC and was it negotiated.

The court below should have made an examination of all discussions between appellee Sugrue and appellant Holzbaur on termination of his ownership.

It is clear appellant did not think losing his membership was possible when he left the position of general manager. He asked appellee Sugrue how he was going to continue receiving his portion of the profits (A-91).

A review of all the trial testimony reveals that at no time did appellant have any conversation with anyone regarding the loss of his membership in the LLC. The extrinsic evidence needs to prove that appellant and appellee Sugrue had a meeting

of the minds over a contractual right to terminate the ownership. The evidence does not prove that meeting of the minds existed. Appellant can retain his ownership.

ARGUMENT III

A. Question Presented.

DOES THERE NEED TO BE A CONTRACT OF ADHESION FOR THE PRINCIPLE OF *CONTRA PROFERENTEM* TO APPLY OR IS THE PRINCIPLE EQUALLY APPLICABLE WHERE ONE PARTY DRAFTS EVERY WORD OF A CONTRACT AND ALL OTHER PARTIES ARE NOT INVITED TO NEGOTIATE THE TERMS OF THE CONTRACT.

B. Scope of Review.

Issues involving the interpretation of contract language are questions of law that the Supreme Court reviews *de novo* for legal error. *Honeywell Intern. Inc. v. Air Products & Chemicals, Inc.*, 872 A.2d 944 (Del. Supr. 2005).

C. Argument Made Below.

Appellant made these same arguments to the court below in his post trial reply brief (A-112 - A-113).

D. Merits of Argument.

The court below states that the principle of *contra proferentem* should be applied more likely in an adhesion contract (Memorandum Opinion, p. 42). On the following page (19), the court finds that the operating agreement in the case at bar "is not a contract of adhesion" and refuses to apply the principle.

The case cited by the court below is *Continental Ins. Co. v. Burr*, 706 A.2d 499 (Del. Supr. 1988). The contract sought to be interpreted is a vehicle insurance policy.

How is an average insurance policy - contract different from the operating agreement for Trolley Square Hospitality, LLC? For a vehicle liability policy, the insured wants insurance. He may tell the insurer the amount of insurance and the deductible, but the rest of the multi page policy isn't even discussed.

The operating agreement in the case at bar is just the same as an insurance policy. Appellant wanted to be a member, but the details were never discussed. As the court below found:

"Sugrue held the pen; he drafted the Company's agreement as its manager; and there were no redlines back and forth marking up and negotiating the agreement, nor was any counsel involved." (Memorandum Opinion, p. 4[illegible])

As the trial court recognized, the language of the operating agreement is the same as the language for an insurance policy. If insurance policies are adhesion contracts, then so is the Trolley Square Hospitality, LLC operating agreement. *Contra proferentem* should apply.

The comparisons between the policy in *Continental Ins Co., Id.* And the operating agreement grow as your read the case. In *Continental Ins Co., Id.*, the issue was the insurer's duty to defend a lawsuit. That part of the policy is unlikely to be negotiated. Likewise, the events that would cause appellant to lose his ownership were not discussed.

Further, the two words that caused the court below to strip appellant of his ownership, "sweat equity" were completely formed by the appellee Sugrue. On a question from his counsel, this was his testimony:

> "Q. Are you the one that came up with the idea of his role being one of sweat equity and this ultimate 14 percent share as a result of his sweat equity?
>
> A. Hundred percent me (A-70)."

Appellee Sugrue's testimony continues (at A-71) and he states that he came about sweat equity after "Holly and I spoke at depth." there is no testimony of appellant Holzbaur participated in those in depth discussions at all.

The application of *contra proferentem* does not require an adhesion contract. This Honorable Court in *Norton v. K-Sea Transp. Partners L.P.*, 67 A.3d 354 (Del. Supr. 2013):

> "If the contractual language at issue is ambiguous and if the limited partnership did not negotiate for the agreement's terms, we apply *contra proferentem* principle and construe the ambiguous terms against the drafter" (page 360)

Appellant would apply *contra proferentem* in this manner. The court below has already ruled that the written section 3.1 and Exhibit A make appellant a cash contributing member. (Memorandum Opinion, pages 37-38). Ever appellee Sugrue admits that the language in Exhibit A was a mistake and "could have" changed it (testimony of appellee Sugrue, A-85). Courts should be wary about giving contractual

protection to those who knew their document contained errors and did not draft a correction. *Cargill, Inc. v. JWH Spec. Circumstance LLC*, 959 A.2d 1096 (Del. Ch. 2008.)

Appellant was never informed his ownership could be terminated. Section 9.20 does not speak to appellant losing his membership. Appellant is still a member of Trolley Square Hospitality, LLC and entitled to his proportionate share of unpaid profits.

CONCLUSION

Appellant Holzbaur remains a member of appellee Trolley Square Hospitality, LLC by the language of the operating agreement, particularly sections 2.7, 3.1, 3.2 and Exhibit A. Those sections define appellant Holzbaur as a cash contributing member of the LLC. Since he is a cash contributing member, section 5.1.2.11 cannot be used to terminate his ownership. Section 5.1.2.11 only applies to non cash contributing members of which appellant Holzbaur is not. The operating agreement is without ambiguity. No parole evidence is required.

If there is ambiguity in the operating agreement, it must be resolved in favor of appellant Holzbaur. Section 9.20 has a purpose and that is to discuss the overall operation of the restaurant. Appellant Holzbaur is referenced in only one sentence and that is to say he will be receiving 14% interest in the LLC. There is no attempt to modify the Exhibit A. There is no discussion at all in section 9.20 regarding termination of ownership rights. Section 9.20 does not state it modifies any section of the operating agreement. Since there is no modification of the operating agreement, appellant Holzbaur remains a cash contributing member.

When the doctrine of *contra proferentem* is applied it strengthens appellant Holzbaur's assertions. Appellee Sugrue drafted the operating agreement. He acknowledged that the language of Exhibit A was poorly crafted. However, appellee

Sugrue did draft it using that language. That language establishes appellant Holzbaur as a cash contributing member and his ownership rights may not be terminated.

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIK HOLZBAUR, Plaintiff, v. TROLLEY SQUARE HOSPITALITY, LLC, a Delaware limited liability company, and ERIC C. SUGRUE, Defendants.	)	C.A. No. 2023-0181-MTZ

MEMORANDUM OPINION

Date Submitted: May 15, 2025
Date Decided: June 4, 2025

John R. Weaver, Jr., JOHN R. WEAVER, JR., P.A., Wilmington, DE, *Attorney for Plaintiff Erik Holzbaur.*

Mark A. Denney, Jr., BROCKSTEDT MANDALAS FEDERICO LLC, Wilmington, DE, *Attorney for Defendants Trolley Square Hospitality, LLC, and Eric C. Sugrue.*

ZURN, Vice Chancellor.

The limited liability company affords great flexibility to those who adopt it to organize their enterprise. Many take advantage of that flexibility by drafting a bespoke limited liability company agreement. But if that agreement is contradictory or confusing, flexibility begets friction.

Here, the parties entered into a limited liability company agreement to operate a restaurant in Wilmington's Trolley Square neighborhood. The plaintiff acted as its general manager. The agreement created two classes of members: those who contributed cash, and those who did not. Both classes received distributions. The managing member could remove noncash contributing members, ending their distributions. The managing member could not remove cash contributing members. The company's limited liability company agreement treats the plaintiff's membership inconsistently. One provision explicitly states his membership is in exchange for sweat equity. Another provision, and an exhibit attached to the agreement, say he contributed cash.

After the plaintiff resigned as the restaurant's general manager, the company's managing member removed the plaintiff as a noncash contributing member, and the plaintiff's distributions stopped. The plaintiff sued, asserting he was a cash contributing member who enjoyed a continuing right to membership and distributions.

Whether the plaintiff was a cash contributing member or a noncash

contributing member is an issue of contract interpretation. This post-trial opinion concludes the agreement is ambiguous, then looks to extrinsic evidence to discern the parties' intent. The extrinsic evidence shows the parties intended for the plaintiff to contribute sweat equity, not cash. It is undisputed that he contributed no cash. Because the plaintiff was a noncash contributing member, he was validly removed. He is no longer a member and is owed no distributions.

I. BACKGROUND[1]

This decision follows a half-day trial with three live witnesses and ten exhibits. Plaintiff Erik Holzbaur bears the burden to prove his claims by a preponderance of the evidence.[2] The following facts were stipulated by the parties or proven at trial.

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[1] Citations in the form "[last name] Tr. –" refer to trial testimony of the referenced witness, available at docket item ("D.I.") 47. Citations in the form "PTO at –" refer the parties' joint pretrial order, available at D.I. 45. Citations in the form "PTOB at –" refer to the plaintiff's post-trial opening brief, available at D.I. 50. Citations in the form "PTAB at –" refer to the defendants' post-trial answering brief, available at D.I. 51. Citations in the form "PTRB at –" refer to the plaintiff's post-trial reply brief, available at D.I. 52.

[2] *REM OA Hldgs., LLC v. N. Gold Hldgs., LLC*, 2023 WL 6143042, at *26 (Del. Ch. Sept. 20, 2023), *aff'd*, 320 A.3d 237 (Del. 2024) (TABLE). Holzbaur implies the defendants carry the burden. PTOB at 7. But "[a]s the party seeking enforcement of his interpretation of the . . . Agreement, [Holzbaur] bears the burden to prove his breach of contract claim by a preponderance of the evidence." *Zimmerman v. Crothall*, 62 A.3d 676, 691 (Del. Ch. 2013); *see also Lillis v. AT & T Corp.*, 2008 WL 2811153, at *4 (Del. Ch. July 21, 2008) ("As the party seeking judicial enforcement of their interpretation of an ambiguous contract, the plaintiffs bear the burden of proof in this action."), *aff'd*, 970 A.2d 166 (Del. 2009).

A. The Parties Join Up.

Holzbaur and defendant Eric Sugrue met over a decade ago in connection with a now-closed restaurant: Holzbaur was its general manager, and Sugrue was an investor.[3] In 2015, Sugrue decided to open a new restaurant, which would become Trolley Square Oyster House (the "Restaurant") in Wilmington, Delaware.[4] Sugrue had a good rapport with Holzbaur and believed he would be an asset, and invited Holzbaur to help open the new restaurant.[5] Holzbaur agreed, believing their restaurant could see success.[6] Sugrue formed Trolley Square Hospitality, LLC (the "Company") to create and operate the Restaurant.[7]

Before Sugrue formed the Company, Holzbaur and Sugrue repeatedly discussed Holzbaur's role in the Company.[8] They agreed Holzbaur would be the Restaurant's general manager, running its day-to-day operations.[9] In exchange, he would be a member in the Company, entitled to equity and distributions.[10] Holzbaur

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[3] Holzbaur Tr. 7–8, 11; Sugrue Tr. 75.

[4] Holzbaur Tr. 11; Sugrue Tr. 76–77.

[5] Sugrue Tr. 77.

[6] Holzbaur Tr. 8.

[7] *See* JX 1 [hereinafter "Agr."].

[8] Holzbaur Tr. 15, 37; Sugrue Tr. 95 ("We had many conversations. Not one, not 10, but I would say probably more than 15."). Holzbaur was also involved in early decisions about the Restaurant; he attended the initial site visit with Sugrue. Holzbaur Tr. 9–10.

[9] Holzbaur Tr. 11, 18, 21.

[10] *Id.* 15.

and Sugrue described Holzbaur's contribution as "sweat equity."[11] Holzbaur "understood that to be a contribution of labor in exchange for equity in the business."[12] This was a good deal for Holzbaur: it is uncommon for restaurant general managers who do not invest cash to receive distributions.[13]

Sugrue and Holzbaur had another discussion about his role in the Company at a local coffee shop, along with a third Company member, Holly Monaco.[14] Sugrue "wanted to make sure everyone understood what the circumstances were."[15] Holzbaur agreed to act as general manager; Monaco would act as co-director of operations.[16] All agreed Sugrue and the fourth member, Stuart Stafman, would be the only members who put money into the business.[17] Holzbaur and Monaco would not contribute any cash.[18] Monaco understood she was a sweat equity member who contributed no cash to the business.[19] And she had no expectation to be treated as a cash contributing member if she left the Company.[20]

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[11] *Id.* 21; Sugrue Tr. 78.

[12] Holzbaur Tr. 20.

[13] Sugrue Tr. 78.

[14] Monaco Tr. 53–55; Sugrue Tr. 79.

[15] Sugrue Tr. 79.

[16] Monaco Tr. 54.

[17] *Id.* 55.

[18] *Id.*

[19] *Id.* 54–56.

[20] *Id.* 59.

Sugrue and Holzbaur did not discuss what percentage of ownership each member would have.[21] Sugrue alone determined Holzbaur would have a 14% stake.[22] Sugrue came to that determination knowing that Holzbaur would work long hours as general manager getting the Restaurant off the ground.[23] He wanted to "incentivize and to reward" Holzbaur's hard work.[24]

Sugrue drafted the Trolley Square Hospitality, LLC Limited Liability Company Agreement (the "Agreement").[25] On December 23, 2015, Sugrue sent Holzbaur some or all of the Agreement.[26] Holzbaur reviewed the attachment, "looking to see the setup of the business," and signed the same day.[27]

The Agreement provides the Company was "organized to purchase, acquire, buy, sell, own, trade in, hold, develop, lease, manage, subdivide and otherwise deal

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[21] Holzbaur Tr. 18–19; Sugrue Tr. 77–78.

[22] Sugrue Tr. 77.

[23] *Id.* 78.

[24] *Id.*

[25] *See generally* Agr.; Sugrue Tr. 85–86; Holzbaur Tr. 16; Monaco Tr. 70.

[26] Holzbaur Tr. 13, 16. There is a factual dispute over whether Holzbaur was sent the entire agreement to sign or just select pages. Holzbaur testified that he received the pages that described him as a sweat equity member and a cash contributing member. Holzbaur Tr. 13–14. Holzbaur agreed he is bound by the entire Agreement, so I need not resolve that factual dispute. *See Holzbaur v. Trolley Square Hospitality, LLC*, C.A. No. 2023-0181-MTZ, at 17–18 (Del. Ch. May 15, 2025) (TRANSCRIPT); *see also Graham v. State Farm Mut. Auto. Ins. Co.*, 565 A.2d 908, 913 (Del. 1989).

[27] Holzbaur Tr. 14–16; PTO at 4.

in the restaurant business."[28] Section 9.20 lays out the "General Understanding of this agreement & partnership," as follows:[29]

> Eric Sugrue decided to move forward and purchase 'Satsumi' restaurant located at 1707 Delaware Ave, Wilmington Delaware. The building/land, contents, goodwill, furniture, fixtures & equipment will be owned by Trolley Square Properties, LLC(landlord). TSH will lease the entire property, along with all of its contents from TSP. The rent amount has not yet been determined but it will be a triple net lease and all expenses will be paid by TSH. Structural building issues will be the responsibility of TSP. Erik Holzbaur will become the General Manager and operating partner. He will take responsibility for all of the day to day operations. He is receiving a 14% interest in this company based on sweat equity. Same for Holly. This type of partnership will allow this restaurant to not have to fall under the same umbrella as the rest of the BFRG locations. Cash distributions will be paid out based on cash equity first and will continue until all cash equity has been returned. Once returned, cash will be distributed based on pro rata percentage interest in the company. Cash reserves will be determined by Eric Sugrue. The plan is to build the business to a point where sales exceed $1.5-$2m. Once profitable, we will discuss an exit strategy that is in the best interest of all the members. The plan and idea is for all of this to take 3-5 years.[30]

Section 9.20 is formatted differently than the rest of the Agreement: Sugrue wrote it himself to set forth the parties' fundamental understanding.[31]

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[28] Agr. § 2.3.

[29] *Id.* § 9.20.

[30] *Id.*

[31] *Id.*; Sugrue Tr. 81.

The Agreement lists four members: Sugrue, Holzbaur, and nonparties Stafman and Monaco.[32] Sugrue is the Company's manager.[33] The Agreement empowers him to "remove non cash contributing members."[34] "Non cash contributing members" is undefined. Per the Agreement, "[r]emoved members will no longer have any rights to profits or cash."[35] "If a member is removed from the company for any reason, their percentage interest will be split amongst the rest of the members at their appropriate pro rata percentage."[36] Cash contributing members, on the other hand, cannot be removed by the manager and receive distributions unless they withdraw from the Company.[37]

Section 3.1 of the Agreement states that "[t]he Members have contributed to the Company cash or property in the amounts respectively set forth on Exhibit A."[38] Exhibit A is a chart of the members, their capital contributions, and percentages of ownership.[39] It lists Holzbaur as owning 14% of the Company, Sugrue as owning

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[32] Agr. Ex. A.

[33] *Id.* § 5.1.1.

[34] *Id.* § 5.1.2.11.

[35] *Id.*

[36] *Id.* § 6.1.

[37] *See id.* § 5.1.2.11; *id.* §§ 6.2–6.3.

[38] *Id.* § 3.1.

[39] *Id.* Ex. A.

51%, Stafman as owning 25%, and Monaco owning 10%.[40] Exhibit A also lists each member's "Initial Cash Capital Contribution," which aligns with each member's ownership: Holzbaur at $14, Sugrue at $51, Stafman at $25, and Monaco at $10.[41]

Sugrue lifted Exhibit A from an old agreement and changed the names and percentages.[42] The Company's members did not perform consistently with Section 3.1 and Exhibit A. It is undisputed that Holzbaur and Monaco contributed no cash, while Sugrue and Stafman contributed much more than $51 and $25.[43] Sugrue listed those cash contributions to align with their ownership stake, not to reflect actual cash contributions.[44]

B. Holzbaur Leaves The Restaurant.

The Restaurant opened in or around April 2016.[45] Holzbaur served as general manager for nearly six years. He worked twelve hours a day, five to seven days a

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[40] *Id.*

[41] *Id.*

[42] Sugrue Tr. 86.

[43] *Id.* 86–88.

[44] *Id.* 86–87.

[45] Holzbaur Tr. 18, 22.

week, getting the business off the ground.[46] He did "a hell of a job."[47] The Restaurant saw success and became "a great neighborhood bar."[48]

In exchange, Holzbaur received cash distributions, after Sugrue and Stafman were repaid for their cash investments.[49] Holzbaur received approximately $282,000 in distributions.[50] A year or two after the Restaurant opened, Sugrue gave Holzbaur the opportunity to invest one of his distributions into the Company.[51] Holzbaur kept the cash.[52]

In the fall of 2021, Holzbaur decided to leave the food service industry, and resigned as the Restaurant's general manager.[53] Holzbaur asked Sugrue how he would receive his distributions moving forward. Sugrue told Holzbaur he would no longer be receiving distributions.[54] Sugrue, Holzbaur, and Monaco met and went over the Agreement, and Sugrue explained why Holzbaur would no longer be receiving distributions.[55] Sugrue removed Holzbaur as a member under Section

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[46] *Id.* 20.

[47] Sugrue Tr. 83.

[48] Monaco Tr. 67.

[49] Agr. § 9.20; Holzbaur Tr. 38.

[50] DX 3.

[51] Sugrue Tr. 83–84.

[52] *Id.*

[53] Holzbaur Tr. 23–24; Monaco Tr. 60–61; PTO at 4.

[54] Holzbaur Tr. 25.

[55] *Id.* 26–27; Monaco Tr. 62; Sugrue Tr. 91–92.

5.1.2.11.[56] Holzbaur was last paid a distribution in or around November 2021.[57]

C. Litigation Ensues.

Holzbaur sued Sugrue, the Company, Stafman, and Monaco on February 14, 2023.[58] Count I sought certain financial records from the Company under Section 8.4 of the Agreement and 6 *Del. C.* § 18-305.[59] Count II asserts Holzbaur's distributions were wrongfully withheld from him and requests remuneration.[60] Count III alleges Holzbaur's distributions were wrongfully redistributed to other members.[61]

On December 1, 2023, I dismissed Holzbaur's Section 18-305 claim and dismissed Monaco and Stafman as defendants.[62] The matter proceeded to trial, held on January 9, 2025. Holzbaur dropped Count I at trial.[63] The parties tried Count II against the Company and Count III against Sugrue (together with the Company,

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[56] Sugrue Tr. 89–90.

[57] PTO at 4; Holzbaur Tr. 27.

[58] D.I. 1 [hereinafter "Compl."].

[59] *Id.* ¶¶ 12–15.

[60] *Id.* ¶¶ 16–19. This count, like the others, was not explicitly pled as a breach of contract. Instead, the complaint titled the claims by the relief sought: financial data, renumeration, and contributions. But as explained in my bench ruling on the defendants' motion to dismiss, these are well-pled breach of contract claims. D.I. 14 at 15–22.

[61] Compl. ¶¶ 20–23.

[62] D.I. 14 at 22.

[63] *See* PTO.

"Defendants").[64] The parties submitted post-trial briefing and presented post-trial argument on May 15, 2025.[65]

Holzbaur contends he was removed, and his distributions were withheld, in breach of the Agreement. He seeks approximately $98,000 in unpaid cash distributions, and a declaration that he was not properly removed and is still a 14% member of the Company.[66] He asserts that because Section 3.1 and Exhibit A list him as having contributed money, he is a cash contributing member and so Sugrue could not remove him as a member. Defendants assert Holzbaur was not a cash contributing member, as reflected by Section 9.20's statement that he received membership in exchange for sweat equity. Under Defendants' interpretation, Holzbaur was a noncash contributing member, and Sugrue validly removed him as a member.

II. ANALYSIS

"Under Delaware law, the elements of a breach of contract claim are: 1) a contractual obligation; 2) a breach of that obligation by the defendant; and 3) a resulting damage to the plaintiff."[67] Here, the parties dispute only the nature of the contractual obligation, i.e., how to read the Agreement. This case hinges on one

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[64] D.I. 14; Compl. ¶¶ 16–23.

[65] D.I. 55.

[66] PTOB 14; Holzbaur Tr. 29.

[67] *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 140 (Del. Ch. 2003).

disagree; rather, the court 'stand[s] in the shoes of an objectively reasonable third-party observer,' and ascertains whether the contract language is unmistakably clear."[72] "The contract must also be read as a whole, giving meaning to each term and avoiding an interpretation that would render any term 'mere surplusage.'"[73] "When a contract's plain meaning, in the context of the overall structure of the contract, is susceptible to more than one reasonable interpretation, courts may consider extrinsic evidence to resolve the ambiguity."[74]

The first step is to discern the meaning of "noncash contributing member." The Agreement does not define that term, so I look to its ordinary meaning.[75] I interpret the term to mean a member who has not contributed cash to the Company.

The next step is to discern if the Agreement identifies Holzbaur as a noncash contributing member. The Agreement is ambiguous on that point. Exhibit A states Holzbaur made an initial cash contribution of $14. And Section 3.1 of the Agreement explains that "[t]he Members have contributed to the Company cash or

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[72] *Id.* (quoting *Dittrick v. Chalfant*, 2007 WL 1039548, at *4 (Del. Ch. Apr. 4, 2007)).

[73] *Sunline Com. Carriers, Inc. v. CITGO Petroleum Corp.*, 206 A.3d 836, 846 (Del. 2019) (quoting *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159–60 (Del. 2010)).

[74] *Salamone v. Gorman*, 106 A.3d 354, 374 (Del. 2014). "This is true notwithstanding the presence of a routine integration clause." *Eagle Indus.*, 702 A.2d at 1233 n.10; *see* Agr. § 9.3.

[75] *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 738 (Del. 2006); *Navient Sols., LLC v. BPG Off. Prs. XIII Iron Hill LLC*, 315 A.3d 1164, 1173 (Del. Super. Ct. 2024) ("A term that is not otherwise defined is to be given its ordinary meaning.").

property in the amounts respectively set forth on Exhibit A."[76] Those parts of the Agreement would make Holzbaur a cash contributing member. But Section 9.20 states Holzbaur "receiv[ed] a 14% interest in this company based on sweat equity."[77] Black's Law Dictionary defines sweat equity as "[f]inancial equity created in property by the owner's labor in improving the property."[78] That provision provides he did not contribute any cash, and so is a noncash contributing member subject to removal.

Section 9.20 directly conflicts with Section 3.1 and Exhibit A. I cannot reconcile the plain text of the Agreement's statements that Holzbaur contributed cash with its statement that his membership was in exchange for sweat equity.[79] "[W]here a contract contains two conflicting provisions, the document is rendered

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[76] Agr. § 3.1.

[77] *Id.* § 9.20.

[78] *Sweat Equity*, Black's Law Dictionary (12th ed. 2024).

[79] It is tempting to view Section 9.20 as more specific than, and controlling over, Section 3.1 and Exhibit A. *See Sunline*, 206 A.3d at 846. Section 9.20 speaks more specifically to the rationale for the Company's membership structure, and its formatting and syntax suggest Section 9.20 was written specifically for the Company. Section 3.1 looks more like boilerplate, and Exhibit A is unrealistic given the costs of starting a restaurant. But that exercise risks diverging from the Agreement's plain text, and renders Section 3.1 and Exhibit A surplusage. Both are improper. *See Kuhn Const., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396–97 (Del. 2010); *Seidensticker*, 2007 WL 4054473, at *2.

ambiguous."[80] I look to extrinsic evidence to resolve the ambiguity.

"[E]xtrinsic evidence is an appropriate resource for the court to use in determining the parties' reasonable intentions at the time of the contract."[81] "Such extrinsic evidence may include 'overt statements and acts of the parties, the business context, prior dealings between the parties, [and] business custom and usage in the industry.'"[82] And

> [a]lthough contemporaneous evidence is far more probative of the shared expectations of contracting parties as a general matter, that does not mean that a party's subsequent conduct has no probative value. Indeed, this Court has stated that, "[i]n giving effect to the parties' intentions, it is generally accepted that the parties' conduct before any controversy has arisen is given 'great weight.'"[83]

The extrinsic evidence is overwhelmingly in Defendants' favor. Holzbaur and Sugrue met multiple times before the Company was formed to discuss the business, including its membership structure.[84] In those meetings, Holzbaur and Sugrue

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[80] *Duff v. Innovative Discovery LLC*, 2012 WL 6096586, at *12 (Del. Ch. Dec. 7, 2012); *see also Sunline*, 206 A.3d at 839–40 ("[T]he Term Agreement does contain conceivably conflicting terms, which cannot be indisputably reconciled on the face of the contract, and is therefore ambiguous."); *United Rentals, Inc. v. RAM Hldgs., Inc.*, 937 A.2d 810, 836 (Del. Ch. 2007) (explaining that because the "Merger Agreement simultaneously purports to provide and preclude the remedy of specific performance" those "conflicting provisions of th[at] contract render it decidedly ambiguous").

[81] *Dittrick*, 948 A.2d at 406.

[82] *United Rentals*, 937 A.2d at 834–35 ((alternation in original) quoting *Supermex Trading Co. v. Strategic Sols. Gp. Inc.*, 1998 WL 229530, at *3 (Del. Ch. May 1, 1998)).

[83] *S'holder Representative Servs. LLC v. Gilead Scis., Inc.*, 2017 WL 1015621, at *24 (Del. Ch. Mar. 15, 2017) (quoting *Ostroff*, 2007 WL 121404, at *11).

[84] *E.g.*, Holzbaur Tr. 10, 15; Monaco Tr. 54; Sugrue Tr. 79.

agreed Holzbaur would contribute sweat equity. Holzbaur knew what sweat equity meant: he "understood [i]t to be a contribution of labor in exchange for equity in the business."[85]

For one of these discussions, Sugrue met with Holzbaur and Monaco at a coffee shop to make "sure everyone understood what the circumstances were."[86] The three explicitly discussed cash contributions. Everyone understood that only Sugrue and Stafman would contribute cash. Monaco, who was situated similarly to Holzbaur, understood she was a sweat equity member too.[87] No party intended that Holzbaur would be a cash contributing member.[88]

Evidence of the Agreement's drafting also demonstrates the parties did not intend Holzbaur to be a cash contributing member. Sugrue drafted Section 9.20 to

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[85] Holzbaur Tr. 20.

[86] Sugrue Tr. 79.

[87] Monaco Tr. 59.

[88] Holzbaur argues that Sugrue, Monaco and Holzbaur never discussed any expectation that Holzbaur would be a noncash equity partner. PTRB at 2–3. In a technical sense, Holzbaur is correct; Monaco testified that they never discussed whether she and Holzbaur would be treated as cash equity partners. Monaco Tr. 58–59. But the evidence shows all parties knew and agreed that Holzbaur and Monaco would not contribute cash to the business. *See, e.g.*, Holzbaur Tr. 21 ("'Q. Okay. And did you and [Sugrue] have a discussion between the discussion to close [Sugrue's old restaurant] and you seeing that email with those three pages [in the Agreement] about sweat equity?' 'A. Yes.' 'Q. What was the discussion?' 'A. As I remember it, the sweat equity was going to be my contribution in and that being opening the restaurant, getting it open, and then running it. That was going to be my sweat equity contribution in order to become a partner for the restaurant.'"); Monaco Tr. 54–55, 65–66.

capture the parties' understanding of the Company's membership structure and the reasons behind it.[89] He took Exhibit A from another agreement and changed it to reflect the ownership percentages, inserting symbolic cash contributions to correlate with that percentage.[90] Section 9.20 reflects the parties' intended contributions, not Exhibit A and Section 3.1.

And the parties performed as they had agreed. Sugrue and Stafman put up cash for the business; Holzbaur did not. And Sugrue and Stafman contributed much more than the $100 listed in Exhibit A. Holzbaur worked as the Restaurant's general manager for six years and never contributed cash, ever when he was given the opportunity a few years in.[91] Holzbaur received distributions only after the cash contributing members were repaid.[92]

The extrinsic evidence shows the parties agreed that Holzbaur was a noncash contributing member. It follows he was properly removed by Sugrue: the parties do not dispute that outcome. He is no longer a member of the Company, and is owed no distributions.

B. *Contra Proferentem* Is Not Appropriate Here.

Holzbaur invited this Court to construe the ambiguous Agreement against

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[89] Sugrue Tr. 79–88.

[90] *Id.* 86–88.

[91] *Id.* 83–84.

[92] Agr. § 9.20; Sugrue Tr. 81–82; Holzbaur Tr. 38.

Sugrue as the drafter. This principle is known as *contrc proferentem*.[93] I do not accept Holzbaur's invitation.

Contra proferentem is a principle of "last resort, such that a court will not apply it if a problem in construction can be resolved by applying more favored rules of construction."[94] And it is most often applied to contracts of adhesion,[95] like insurance agreements[96] or contracts involving public investors.[97] "Where a[n] [LLC] agreement was drafted exclusively by the [manager], the court will interpret ambiguities against the drafter, rather than examine extrinsic evidence. But if a[n] [LLC] agreement was the product of negotiations among the parties, the court will resolve an ambiguity by examining relevant extrinsic evidence."[98] As explained by the Supreme Court in *SI Management L.P. v. Wininger*,

> A court considering extrinsic evidence assumes that there is some connection between the expectations of contracting parties revealed by that evidence and the way contract terms were articulated by those parties. Therefore, unless extrinsic evidence can speak to the intent of *all* parties to a contract, it provides an incomplete guide with which to

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[93] *Twin City Fire Ins. Co. v. Del. Racing Ass'n*, 840 A.2d 624, 630 (Del. 2003).

[94] *E.I. du Pont de Nemours & Co. v. Shell Oil Co.*, 498 A.2d 1108, 1114 (Del. 1985).

[95] *Cont'l Ins. Co. v. Burr*, 706 A.2d 499, 500–01 (Del. 1998); *see also Tex. Pac. Land Corp. v. Horizon Kinetics LLC*, 306 A.3d 530, 548 (Del. Ch.), *aff'd*, 314 A.3d 685 (Del. 2024) (TABLE); 11 Williston on Contracts § 32:12 (4th ed.).

[96] *E.g.*, *Penn Mut. Life Ins. Co. v. Oglesby*, 695 A.2d 1146, 1149–50 (Del. 1997).

[97] *E.g.*, *Bank of N.Y. Mellon v. Commerzbank Cap. Funding Tr. II*, 65 A.3d 539, 551–52 (Del. 2013).

[98] *Gotham P'rs, L.P. v. Hallwood Realty P'rs, L.P.*, 2000 WL 1476663, at *8 (Del. Ch. Sept. 27, 2000).

> interpret contractual language. Thus, it is proper to consider extrinsic evidence of bilateral negotiations when there is an ambiguous contract that was the product of those negotiations . . . .[99]

At first blush, the use of *contra proferentem* has some appeal. Sugrue held the pen; he drafted the Company's agreement as its manager; and there were no redlines back and forth marking up and negotiating the agreement, nor was any counsel involved. But the Agreement reflected a meeting of the minds between Sugrue and Holzbaur regarding Holzbaur's contribution and membership. Sugrue and Holzbaur, alone and with Monaco, discussed and agreed upon the nature of Holzbaur's membership interest before Sugrue sent the Agreement to Holzbaur. Sugrue, Holzbaur, and Monaco discussed their positions and whether they would contribute cash or sweat equity. And Holzbaur "assum[ed] that there would be a written agreement" about what was discussed.[100] While not every detail of the Agreement was discussed or negotiated at these meetings, the Agreement is not a contract of adhesion, and this is not a situation where extrinsic evidence is an "incomplete guide."[101] The extrinsic evidence speaks to the intent of both Sugrue and Holzbaur, and "[w]here all parties to a contract are knowledgeable, there is no reason for imposing sanctions against the party who drafted the final provision."[102]

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[99] *SI Mgmt. L.P. v. Wininger*, 707 A.2d 37, 43 (Del. 1998).

[100] Holzbaur Tr. 14–15.

[101] *Wininger*, 707 A.2d at 43.

[102] *E.I. du Pont de Nemours*, 498 A.2d at 1114.

Contra proferentem is not appropriate.

III. CONCLUSION[103]

Holzbaur is not a member of the Company. He is owed no further distributions. Judgment will be entered in Defendants' favor, and costs shifted under Court of Chancery Rule 54(d). The parties are asked to submit a stipulated final order within fourteen (14) days.

[103] In the PTO, Defendants requested attorneys' fees from Holzbaur. PTO at 7. Defendants did not brief this request. I consider it waived. *See Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived."). Nor can I discern any reason to deviate from the American Rule and shift fees. There is no feeshifting provision in the Agreement, and Defendants have not gone so far as to argue bad faith by Holzbaur.

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ERIK HOLZBAUR, Plaintiff, v. TROLLEY SQUARE HOSPITALITY, LLC, a Delaware limited liability company, and ERIC C. SUGRUE, Defendants.	)	C.A. Nc. 2023-0181-MTZ

FINAL ORDER AND JUDGMENT

WHEREAS, Erik Holzbaur filed this action on February 14, 2023 against Trolley Square Hospitality, LLC (the "Company"), Eric C. Sugrue, Stuart Stafman and Holly Monaco;

WHEREAS, Count I sought certain financial records from the Company under Section 8.4 of the Company's limited liability company agreement and 6 *Del. C.* § 18-305, Count II asserted Holzbaur's distributions were wrongfully withheld and requested remuneration, and Count III alleged Holzbaur's distributions were wrongfully redistributed to other members;

WHEREAS, on December 1, 2023, this Court dismissed Holzbaur's Section 18-305 claim and dismissed Monaco and Stafman from the action, leaving only the Company and Sugrue as defendants (the "Defendants");

WHEREAS, trial took place on January 9, 2025;

WHEREAS, on June 4, 2025, the Court issued its post-trial Memorandum Opinion in this action (the "Opinion") setting forth the Court's decision;

IT IS HEREBY ORDERED, for reasons set forth in the Opinion, on this 23rd day of June, 2025, that:

1. Judgment is entered in favor of Defendants and against Holzbaur on Counts I, II, and III.

2. Under Court of Chancery Rule 54(d), Plaintiff shall remit costs of $1,870.00 to the law office of Brockstedt Mandalas Federico LLC within 60 days.

IT IS SO ORDERED this 23rd day of June, 2025.

/s/ Morgan T. Zurn
Vice Chancellor Morgan T. Zurn