STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16CVS021135-590

GVEST REAL ESTATE, LLC,
(formerly Gee Real Estate, LLC)

Plaintiff,

v.

JS REAL ESTATE INVESTMENTS, LLC; SHAW CAPITAL & GUARANTY, LLC; TR REAL ESTATE, LLC; LEVAN CAPITAL, LLC (formerly known as Trinvest Partners, LLC); JAMES SHAW; TYSON RHAME; and YARDS AT NODA, LLC,

Defendants,

v.

JS REAL ESTATE INVESTMENTS, LLC; TR REAL ESTATE, LLC; JAMES SHAW; TYSON RHAME; and
YARDS AT NODA, LLC,

Counterclaim
Plaintiffs,

v.

GVEST REAL ESTATE, LLC
(formerly GEE REAL ESTATE, LLC),

Counterclaim
Defendant.

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION

1. In an earlier order, the Court entered summary judgment against Gvest Real Estate, LLC ("Gvest") on every claim in its amended complaint. (*See* ECF No. 109.) Gvest now moves for partial reconsideration of that decision and seeks to revive

its claim for declaratory judgment. (*See* ECF No. 110.) The Court elects to decide the motion for reconsideration on the briefs. *See* Business Court Rule 7.4.

2. A short background will suffice. This case involves a dispute over the membership and management of Yards at NoDa, LLC. Gvest is one of Yards at NoDa's original members, along with JS Real Estate Investments, LLC and TR Real Estate, LLC. In its declaratory-judgment claim, Gvest asserts that JS Real Estate and TR Real Estate forfeited their membership rights when they attempted to transfer their interests to other entities in 2013. (*See, e.g.*, Am. Compl. ¶¶ 10, 40, 51, ECF No. 20.)

3. At summary judgment, JS Real Estate and TR Real Estate argued that they had not forfeited any rights because their attempts to transfer their membership interests were null and void. Yards at NoDa's operating agreement states that no member may transfer its interest without first providing the transferee's written promise "to be bound by the terms of section VI" of the operating agreement (section 6.1.1.2), disclosing to Yards at NoDa "the transferee's taxpayer identification number" and "initial tax basis" in the transferred interest (section 6.1.1.5), and obtaining "the prior written consent of the Manager" (section 6.1.1.6). (Op. Agrmt. §§ 6.1.1.2, 6.1.1.5, 6.1.1.6, ECF No. 20.5.) Failure to comply with any one of these conditions renders the proposed transfer "invalid, null and void, and of no force or effect." (Op. Agrmt. § 6.1.3.) JS Real Estate and TR Real Estate argued, based partly on testimony from Gvest's own corporate representative, that they had neglected all three conditions. (*See* Gee Dep. 148:24–150:10, ECF No. 101.1.)

4. Gvest needed “to come forth with evidence to controvert” this argument “or otherwise suffer entry of summary judgment against” it. *Econo-Travel Motor Hotel Corp. v. Taylor*, 301 N.C. 200, 205 (1980). But its opposition brief did not mention sections 6.1.1.2 and 6.1.1.5 or attempt to show that JS Real Estate and TR Real Estate had complied with either section. And although it argued that JS Real Estate and TR Real Estate had complied with section 6.1.1.6, it offered no evidence of a signed written consent from either Ray Gee or James Shaw, who were Yards at NoDa’s managers at the time. All that Gvest offered was mere speculation—that Shaw (but not Gee) must have given written consent because he was aware that written consent was an essential condition of any transfer and because he later signed tax returns naming the intended transferees as members of Yards at NoDa.

5. As a result, Gvest waived any argument that it might have had concerning sections 6.1.1.2 and 6.1.1.5, and its speculation about Shaw’s written consent was insufficient to create a triable issue concerning section 6.1.1.6. Unable to show that JS Real Estate and TR Real Estate had complied with the operating agreement’s conditions on transfer, Gvest had no basis to contend that they had forfeited their membership interests and to obtain the declaratory relief that it sought. The Court granted summary judgment.

6. Gvest asks the Court to reconsider that decision under Rule 54(b) of the North Carolina Rules of Civil Procedure. Motions to reconsider rarely succeed because the grounds that merit reconsideration rarely exist. It isn’t enough to polish up old arguments and try them again or to spin out new arguments that could’ve been

raised but weren't. A party must point to a true game changer: "new evidence," a "change in the controlling law," or "the need to correct a clear error or prevent manifest injustice." *Bohn v. Black*, 2018 NCBC LEXIS 50, at *7 (N.C. Super. Ct. May 16, 2018) (quoting *Pender v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 1838, at *7 (W.D.N.C. Jan. 7, 2011)).

7. Here, Gvest has no new evidence. The law hasn't changed. And its claims of clear error lack merit.

8. First, all of Gvest's arguments concern the same tax returns and other documents that it presented before. But the Court considered that evidence and found it wanting. The purpose of a motion to reconsider is not "to ask the Court to rethink what the Court had already thought through—rightly or wrongly." *W4 Farms, Inc. v. Tyson Farms, Inc.*, 2017 NCBC LEXIS 99, at *12 (N.C. Super. Ct. Oct. 19, 2017) (quoting *Wiseman v. First Citizens Bank & Tr. Co.*, 215 F.R.D. 507, 509 (W.D.N.C. 2003)).

9. Second, the motion for reconsideration is the first time that Gvest has attempted to show that the disputed transfers complied with sections 6.1.1.2 and 6.1.1.5. To avoid summary judgment, Gvest needed to show triable issues regarding compliance with sections 6.1.1.2, 6.1.1.5, *and* 6.1.1.6. Yet in a glaring omission, it addressed only the last section, saying nothing about the other two. In other words, Gvest is not asking the Court to *re*consider an argument that it made and lost unfairly; it is asking the Court to consider "a new argument that [it] waived by not raising earlier." *Sunburst Mins., LLC v. Emerald Copper Corp.*, 300 F. Supp. 3d 1056,

1065 (D. Ariz. 2018). Gvest "may not raise this argument now in hopes of a do-over." *Herzfeld v. Teva Pharms. USA, Inc.*, 2020 U.S. Dist. LEXIS 65319, at *12–13 (C.D. Cal. Apr. 14, 2020).

10. Third, Gvest misreads section 6.1.1.6. Its position is that Shaw's written consent (assuming he gave it) satisfied section 6.1.1.6 because that section requires consent from only one of Yards at NoDa's two managers. The Court had no need to decide whether that interpretation was correct at summary judgment because Gvest had not offered sufficient evidence of Shaw's written consent. On this second go-round, the Court sees no reason to avoid the issue any further. Although the term "Manager" is singular, the operating agreement does not use it that way and instead defines it to mean both Shaw and Gee. (Op. Agrmt. § 5.1.1 (designating Shaw and Gee "as the initial Manager").) And section 6.1.1.6 requires written consent from "*the* Manager"—not *a* manager, *any* manager, or *either* manager. (Op. Agrmt. § 6.1.1.6 (emphasis added).) Given this use of the definite article, the only reasonable interpretation is that Shaw and Gee—together, as "the . . . Manager"—needed to give written consent to any transfer. It is undisputed that Gee did not give his written consent, meaning the transfers at issue were "null and void" even if Gvest were correct that a jury could infer from its evidence that Shaw gave his. (Op. Agrmt. § 6.1.3.)

11. For these reasons, the Court **DENIES** Gvest's motion for reconsideration.

SO ORDERED, this the 7th day of March, 2024.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases