Rule 23 order filed
September 27, 2019
Modified on denial of
Rehearing October 28, 2019

2019 IL App (5th) 180293-U

NO. 5-18-0293

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WILLIAM CRAIN, STEVEN QUICK, GREG SHAVER, MICHAEL TYLER, RICHARD SINCLAIR as Trustee for the Gerald Sinclair Family Trust, RAMEY-ALDAG PARTNERSHIP, WILLIAM CRAIN as Trustee for the Crain Grandchildren Trust, SANDRA JENKINS, BEVERLY TAYLOR, MIMZIE ATTISANO, GERALDINE MILAM, JENNIFER LEHANE, and MATTHEW GEARY,	)	Appeal from the Circuit Court of Marion County.
Plaintiffs and Counterdefendants-Appellants,	)	
v.	)	No. 17-MR-70
SUSAN ANDREWS, RHONDA ANDREWS, Individually and as Executor of the Estate of John Andrews, Deceased, WAYNE STANFORD TRUST, JOHN F. ANDREWS, CRAIG & JUDY ANDREWS, MARILYN SHETLEY SHOOK, KAY BAKER, US SONET, LLC, and MARION COUNTY SAVINGS BANK,	)	Honorable Daniel E. Hartigan, Judge, presiding.
Defendants and Counterplaintiffs-Appellees.	)	

JUSTICE CATES delivered the judgment of the court.
Justices Chapman* and Barberis concurred in the judgment.

*Justice Chapman concurred in the original Rule 23 order filed in this case on September 27, 2019. Justice Chapman retired on October 1, 2019, and did not participate in the rehearing proceedings.

ORDER

¶ 1 *Held:* The circuit court erred in entering summary judgment in favor of the Defendants and against the Plaintiffs because the court incorrectly held that the manager of US Sonet, LLC had the authority under the company's operating agreement to borrow money to fund the company and there are genuine issues of material fact precluding the entry of summary judgment on the parties' claims.

¶ 2 The Plaintiffs, who are Class B unitholders of US Sonet, LLC (the Company), filed a four-count complaint against the Defendants seeking a declaratory judgment and money damages. The Defendants are the Company, the Class A unitholders, the remaining Class B unitholders, and Marion County Savings Bank (MCSB). The Defendants, except for MCSB, filed a cross-complaint against the Plaintiffs for declaratory judgment. The parties then filed cross-motions for summary judgment. The circuit court granted the Defendants' motion for summary judgment, denied the Plaintiffs' motion for summary judgment, and entered judgment in favor of the Defendants on all counts. For the following reasons, we reverse the judgment of the circuit court and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 In 2002, Susan Andrews (Susan) and her son John Andrews (John) formed the Company, an Illinois limited liability company, for the purpose of constructing and operating a fiber-optic communication network in southern Illinois. The Company's operations were governed by an operating agreement. Pursuant to the operating agreement, the Company was a manager-managed limited liability company with two classes of Members. The operating agreement named Susan and John as co-managers and

they were the sole Class A Members of the Company. At inception, there were a total of 400 Class A units issued, with Susan owning 190 units and John owning 210 units.

¶ 5 Following formation, the Company issued a confidential offering circular to solicit additional investors. The circular asked potential investors to make offers for the purchase of Class B membership interests at a cost of $1000 per unit. The offering circular indicated that the Company's business would be governed by the operating agreement, which was attached to the offering circular, and provided a summary of the operating agreement.

¶ 6 Throughout the life of the Company, the Class B Members invested a total of $1,200,000 in the Company, resulting in the issuance of a total of 1200 Class B units. Under the terms of the operating agreement, this figure constituted what was deemed the "Target Amount." Pursuant to section 3.5 of the operating agreement, once the Class B Members received non-tax distributions equal to or exceeding the target amount, Susan and John would each receive 250 additional Class A units, thereby increasing Susan and John's membership interest in the Company. The Members' profit interests were tied to their membership interest such that each Member's profit interest was equal to the number of units they own, divided by the total number of units owned by all Members. The effect of the additional distribution to Susan and John would be to dilute the Class B unitholders' membership interest in the Company, thereby also reducing their profit interest.

¶ 7 Susan and John co-managed the Company from the Company's inception until John's death in February 2016. Following John's death, Susan served as the sole manager

of the Company. John's estate, through his widow and executor, Rhonda Andrews (Rhonda), owns his Class A units.

¶ 8 On December 13, 2016, the Company entered into an Asset Purchase Agreement with Wabash Independent Networks, Inc. (Wabash) to sell substantially all the assets of the Company for the purchase price of $7,500,000. All Members of the Company unanimously approved the proposed sale pursuant to section 2.4.1 of the operating agreement. The original closing date for the asset sale to Wabash was scheduled for March 1, 2017.

¶ 9 On February 10, 2017, Susan sent letters to the Class B Members requesting that those Members allow she and Rhonda to issue distributions to the Class B Members in order to reach the target amount and trigger the automatic issuance of the additional Class A units. Susan indicated that the purpose of this distribution would be to increase her ownership interest and Rhonda's ownership interest in the Company. This increase in ownership interest would provide them a larger percentage of the net proceeds from the upcoming asset sale at the expense of the Class B Members' interests. The Class B Members rejected Susan's request.

¶ 10 Subsequently, Susan and Rhonda secured personal loans from MCSB in the amount of $1,176,499.93. On February 21, 2017, Susan, in her capacity as manager, borrowed these funds for the Company. Also, on February 21, 2017, Susan, in her capacity as manager, disbursed the $1,176,499.93 that had been borrowed by the Company by issuing checks to the Class B Members. Prior to this date, the Company had issued a total of $23,500.07 in non-tax distributions to the Class B Members. Susan took

the position that issuance of the February 21, 2017, checks constituted distributions reaching the target amount, which then triggered the automatic issuance of 500 new Class A units per section 3.5 of the operating agreement.

¶ 11 The loans incurred by Susan on the part of the Company substantially increased the Company's outstanding indebtedness. Upon discovery of Susan's actions, Wabash took the position that the Company had breached the asset purchase agreement and demanded that the loan obligations be satisfied on or before the date of the asset sale.

¶ 12 On March 17, 2017, the Company and all of the Members entered into an agreement (escrow agreement) permitting the principal and interest of the loans to be repaid to Susan and Rhonda from the proceeds of the asset sale with the remaining sale proceeds to be placed and held in escrow in the Company's account. On March 24, 2017, the sale of substantially all the Company's assets to Wabash was successfully closed. Pursuant to the escrow agreement, the Company's loans from Susan and Rhonda were repaid during the closing of the asset sale and the balance of the proceeds was placed in the Company's account.

¶ 13 The Plaintiffs, who are Class B Members holding 932 of the 1200 Class B units, brought a four-count complaint against the Defendants seeking declaratory judgment and money damages. In count I, the Plaintiffs sought a declaratory judgment that Susan's February 21, 2017, actions of borrowing $1,176,499.93 to fund a distribution to the Class B Members violated the operating agreement and did not give rise to a distribution of the target amount or modify the distribution of the net proceeds due the Members from the asset sale. The Plaintiffs brought additional claims against Susan for breach of contract

(count II); against Susan, Rhonda, and MCSB for conspiracy to divest the Plaintiffs of their rights as Class B Members (count III); and against MCSB for tortious interference with the Plaintiffs' contractual rights (count IV). All of the Plaintiffs' claims were predicated, in whole or in part, upon the authority of Susan as manager of the Company to secure the loans and issue the distributions on February 21, 2017. The Defendants, with the exception of MCSB, filed a counterclaim against the Plaintiffs seeking a declaratory judgment that the Company's issuance of the February 21, 2017, checks were lawful and valid distributions of the target amount to the Class B Members, and that Susan and Rhonda were entitled to the issuance of the additional 500 Class A units.

¶ 14 The parties filed cross-motions for summary judgment. On April 26, 2018, the circuit court entered summary judgment in favor of the Defendants and against the Plaintiffs on all counts. The court found that Susan, as the manager of the Company, possessed the authority to borrow the $1,176,499.93 on February 21, 2017. Relying on provisions in the offering circular, the court found that Susan also had the authority to use the loan proceeds to make a distribution to the Class B Members for the sole purpose of accelerating the distribution of the target amount. The court found that the February 21, 2017, distribution was valid, thereby causing the target amount to be reached, and triggering the issuance of the additional 500 Class A units to Susan and Rhonda in accordance with section 3.5 of the operating agreement. Alternatively, the court found that Susan could have made the target amount distribution after the asset sale with Wabash closed, and immediately prior to the dissolution of the Company, because the

Company would have then possessed sufficient funds to make the distribution. This appeal follows.

¶ 15 On September 27, 2019, we issued our original disposition in this matter. On October 17, 2019, and October 18, 2019, the Defendants filed two petitions for rehearing. After considering the argument set forth in the Defendants' petitions, we now issue this modified disposition upon denial of rehearing.

¶ 16 ANALYSIS

¶ 17 This court reviews the circuit court's grant of summary judgment *de novo*. *Katris v. Carroll*, 362 Ill. App. 3d 1140, 1144 (2005). Summary judgment is appropriate where the pleadings, depositions, affidavits, admissions, and exhibits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Katris*, 362 Ill. App. 3d at 1144.

¶ 18 The Company is a limited liability company organized under the Illinois Limited Liability Company Act (Act) (805 ILCS 180/1-1 *et seq*. (West 2002)). Section 15-5 of the Act allows the members of a limited liability company to enter into an operating agreement to "regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company." 805 ILCS 180/15-5(a) (West 2002). The provisions of the Act are default provisions, governing a limited liability company in the absence of controlling provisions in a written operating agreement. 805 ILCS 180/15-5(a) (West 2002). Here, the Members entered into a written operating agreement. Accordingly, the court must interpret the language of the

Company's operating agreement to determine whether Susan's conduct violated some provision therein.

¶ 19 Limited liability companies are creatures of contract, and their operating agreements are enforced according to general contract principles. *In re Marriage of Schlichting*, 2014 IL App (2d) 140158, ¶ 63. When construing a contract, the primary focus is to ascertain and give effect to the intent of the parties. *Highland Supply Corp. v. Illinois Power Co.*, 2012 IL App (5th) 110014, ¶ 26. When the contract's terms are clear and unambiguous, the terms will be given their plain and ordinary meaning, and the contract will be enforced as written. *Highland Supply Corp.*, 2012 IL App (5th) 110014, ¶¶ 28-29. Absent an ambiguity, the court interprets the contract as a matter of law, and without the use of parol evidence. *Guterman Partners Energy, LLC v. Bridgeview Bank Group*, 2018 IL App (1st) 172196, ¶ 51. The contract is construed as a whole, viewing each provision in light of the other provisions rather than viewing a clause or provision in isolation. *Morningside North Apartments I, LLC v. 1000 N. LaSalle, LLC*, 2017 IL App (1st) 162274, ¶ 15. The interpretation of a contract is a question of law that we review *de novo*. *My Baps Construction Corp. v. City of Chicago*, 2017 IL App (1st) 161020, ¶ 71.

¶ 20 On appeal, the Plaintiffs argue the circuit court erred in finding in favor of the Defendants because (1) Susan, as the manager, did not have the authority to borrow the money on behalf of the Company because the loans were not obtained for a purpose related to the operation of the business and her actions constituted a violation of the asset purchase agreement with Wabash; (2) Susan, as the manager of the Company, was not

empowered to make distributions solely to the Class B Members pursuant to section 3.9 of the operating agreement and certain provisions of the Act; (3) in entering its judgment, the court erroneously relied upon the language of the offering circular rather than the operating agreement and, assuming the court could rely on statements within the offering circular, the court misconstrued the document; (4) Susan, as the manager, was required to obtain a majority vote of the Members to perform any action that could constitute a breach or modification of the asset purchase agreement; and (5) that those Class B Members who were made defendants in this action ratified Susan's actions, thereby consenting to a redemption of their membership interests in the Company.

¶ 21 The Defendants argue the circuit court's judgment is correct because Susan, as the manager of the Company, had the authority to make the February 21, 2017, distribution and the lawful authority to borrow funds to facilitate that distribution. It is the position of the Defendants that Susan's act of unilaterally borrowing the $1,176,499.93 in order to fund the distribution did not violate the terms of the operating agreement, contending that the operating agreement is "silent as to any restriction on the authority of the manager to borrow funds." The Defendants also firmly assert that the borrowing of money to fund a distribution or to return a unitholder's initial investment is part of operating a business.

¶ 22 Upon this court's review of the record, it became apparent that the operating agreement does contain a specific provision limiting the power of the manager to borrow funds. Contrary to the arguments by the parties, the question of whether the manager could borrow funds on behalf of the Company is answered by the plain language of the operating agreement. The operating agreement provides, in relevant part:

> 2.3 POWER OF THE MANAGER. The Manager shall have the sole authority to conduct the business of the Company and to do all acts to operate such business, subject only to the limitations expressly contained in this Agreement ***.
>
> 2.4 ACTIONS REQUIRING MAJORITY VOTE OF THE CLASS A & B MEMBERS. A Majority Vote of the Class A Members and Class B Members must be obtained for the following actions:
>
> ***
>
> 2.4.10. Any other action requiring vote or consent of the Class B Members hereunder or under the Act, except to the extent a different percentage vote or consent is specifically called for.
>
> ***
>
> 3.4 ADDITIONAL CONTRIBUTIONS. *If the Manager and a Majority Vote of the Class B Members determines that the Company requires funds for any purpose related to the business of the Company and such funds cannot be borrowed from third parties on terms acceptable to such Members, the Company shall request additional capital contributions from the Members and*, the Member shall have the option to contribute such funds to the capital of the Company in proportion to their Profit Interests; provided, however, that no Member shall be required to make additional contributions to the Company without its consent ***. (Emphasis added.)

¶ 23 The parties agree that section 2.3 sets forth the powers of the manager and that section 2.4 limits those powers. Both in the circuit court and now on appeal, in addressing the question of whether Susan had the authority to borrow the money used to fund the February 21, 2017, distribution, the parties have focused almost exclusively on whether the loans were obtained for a business purpose. The Plaintiffs assert the loans were procured solely to benefit Susan and Rhonda and not for a purpose related to the operation of the business. The Defendants counter that the loans were for a business purpose because they were used to make distributions to the unitholders. Neither party

has raised or addressed the effect of section 3.4 even though the application of this provision is paramount.

¶ 24 Section 3.4 clearly pertains to the overall operation of the business, regardless of where that section was located within the operating agreement, as there was no limiting or conditional language within that paragraph.[1] Section 3.4 governs how the Company will obtain any additional capital needed to fund the business. First, the provision requires that the determination with regard to whether the Company needs additional funds be approved of by both the manager and a majority vote of the Class B Members. If such a determination is made, the funds are to be borrowed from third parties on terms acceptable to "such Members." If the money cannot be borrowed on these terms, the Company shall make a capital call from the Members.

¶ 25 The Defendants' position throughout the proceedings has been that the February 21, 2017, loans obtained by Susan were related to the operation of the business, placing the loans squarely within the scope of section 3.4. The evidence is undisputed that Susan acted unilaterally in obtaining the loans on behalf of the Company, and that a majority of the Class B Members did not approve of Susan's determination that additional monies were necessary to fund the Company and did not approve the terms of the loans. Based on the plain language of the operating agreement, Susan lacked the authority to unilaterally borrow money on behalf of the Company under the circumstances, as

[1]Section 11.7 of the agreement provides that the article headings are included only for convenience and do not define or limit the scope of any provision in the agreement.

presented. Thus, Susan violated the terms of the operating agreement on February 21, 2017, by borrowing $1,176,499.93 to reach the target amount.

¶ 26 The Defendants maintain that Susan had borrowed money in the past without majority approval and without objection, and that she was advised by the Company accountant that it was common for companies to borrow money to pay back their investors. Neither of these facts changes the outcome of this case. The fact that Susan violated the terms of the operating agreement without objection on other occasions does not excuse her violation of the operating agreement on this occasion. Furthermore, whether other businesses, formed under different agreements, may perform certain acts does not alter the terms of the operating agreement governing the Company in this case.

¶ 27 Based on the undisputed facts in this case, Susan's execution of the promissory notes on behalf of the Company on February 21, 2017, in favor of herself and Rhonda violated the terms of the operating agreement. Because Susan lacked the authority to borrow the money to fund the attempted February 21, 2017, distributions, those distributions did not operate to reach the target amount.

¶ 28 In the alternative, the circuit court found that even if Susan could not have made the February 21, 2017, distributions using borrowed funds, the Company would have received sufficient funds from the March 24, 2017, asset sale to allow her to make the target amount distributions to the Class B Members prior to the dissolution of the Company. The Defendants raised this argument in the circuit court and to this court on appeal.

¶ 29 This finding raises several issues, the first being whether Susan had the power to issue distributions only to the Class B Members. On appeal, the Plaintiffs argue that Susan's attempted distribution solely to the Class B Members violated section 3.9 of the operating agreement requiring *pro rata* distributions to all the Members absent a majority vote and the consent of the Class B Member receiving the non-*pro rata* distribution.

¶ 30 Section 3.9 of the operating agreement is the primary provision governing distributions to the Members. This section provides, in relevant part:

> 3.9 DISTRIBUTIONS. The Company may make distributions to the Members *pro rata* in proportion to their respective Profit Interests, in proportion to the positive balances in their respective Capital Accounts, in proportion to the expected allocation of income to such Members for tax purposes, or on a curative basis to restore the Members' capital accounts to a proportional par with the Members' ownership of Units. Such Distributions shall be made in an amount and form subject to the discretion of the Manager, except as provided below. Distributions made other than in accordance with the first sentence of this Section 3.9 shall be made only upon a Majority Vote and consent of each Member receiving the Distribution, and, if made, shall be treated as whole or partial redemptions for purposes of Section 3.11, below, and shall give rise to a restatement of the Members' Units ***.

¶ 31 Section 10.20 of the operating agreement defines the term "Member" as "each owner of an interest in the Company. The Initial Members and their class of Units are listed in Exhibit 1 attached hereto, and additional Members may be admitted as provided in Article 6." Exhibit 1 was attached to the operating agreement and listed both the Class A and Class B Members.

¶ 32 The Defendants argue that Susan was permitted to make targeted distributions only to the Class B Members for the purpose of reaching the target amount based on (1) her general authority and discretion to run the Company as the manager, (2) her

discretion to issue distributions pursuant to section 3.9 of the operating agreement, (3) the target amount provisions in section 3.5 of the operating agreement, and (4) language in the offering circular specifically indicating that she could do such.

¶ 33 As an initial matter, the reliance of the circuit court and the Defendants on language within the offering circular in assessing Susan's authority as a manager and the relations between the parties is misplaced. It is the operating agreement, and not the offering circular, that governs the operation of the Company. 805 ILCS 180/15-5(a) (West 2002). As the contract between the Members, the operating agreement is enforced according to general contract principles. *In re Marriage of Schlichting*, 2014 IL App (2d) 140158, ¶ 63. When the language of a contract is clear and unambiguous, the contract is enforced as written and without the use of parol evidence. *Guterman Partners Energy, LLC*, 2018 IL App (1st) 172196, ¶ 51; *Highland Supply Corp.*, 2012 IL App (5th) 110014, ¶¶ 28-29. The circuit court did not find, and neither party suggests, that the terms of the operating agreement are ambiguous. Indeed, on appeal, the parties argued that the terms of the operating agreement were unambiguous, and we agree. As such, it was inappropriate for the circuit court to go beyond the four corners of the operating agreement and look to the language of the offering circular in construing the agreement between the unitholders.

¶ 34 The Defendants' suggestion that the target amount provisions in section 3.5 of the operating agreement allow the Company to make distributions solely to the Class B Members is also misplaced. Section 3.5 of the operating agreement addresses the Members' profit interests and provides as follows:

> 3.5 PROFIT INTERESTS. Initially, the Members' respective "Profit Interests" shall be equal to the number of Units owned by the Member divided by the number of Units owned by all Members. The initial Profit Interests of the Members shall be as set forth in Exhibit 3 attached to this Agreement. Effective as of the date the aggregate amount of all Distributions (excluding Tax Distributions) made to the Class B Members equals or exceeds the Target Amount, the aggregate Unit interest of Class A Members shall be increased to 900 Class A Units in total. The increase in Class A Units to 900, in total, shall decrease the percentage Profit Interest of the Class B Members and increase the percentage Profit Interest of the Class A Members. The percentage Profit Interest for each Member shall be recalculated to be equal to the number of Units owned by the Member divided by the total number of Units owned by both Class A and Class B Members.

¶ 35 Nothing in section 3.5 states that the manager can issue "targeted distributions" to the Class B Members in contravention of the distribution guidelines provided for in section 3.9. Instead, the reasonable reading of section 3.5, in conjunction with section 3.9, is that once distributions are made to all unitholders on a *pro rata* basis as set forth in section 3.9, and the target amount has been reached, only then will the additional Class A units be issued.

¶ 36 Next, the Defendants argue that Susan, as manager, had the discretion to make targeted distributions only to the Class B Members for the purpose of reaching the target amount. This argument requires a determination of the parameters of Susan's authority as manager based on the language of section 3.9, and whether this provision granted her the discretion to make distributions from the proceeds of the asset sale.

¶ 37 Nothing in section 3.9 suggests that the proceeds from an asset sale could not be used to make distributions to the Members, as this section gives the manager discretion in issuing distributions. This discretion, however, is not unlimited. The caveat is that the

manager could only make distributions in accordance with the provisions plainly set forth in section 3.9. Section 3.9 clearly states that distributions are to be made to the Members on a *pro rata* basis in proportion to their respective profit interests, in proportion to the positive balances in their respective capital accounts, in proportion to the expected allocation of income to such Members for tax purposes, or on a curative basis to restore the Members' capital accounts to a proportional par with the Members' ownership of units. Section 3.9, therefore, specifically limits the manager's exercise of her discretion to the above-mentioned methods of distribution, as any alternative distribution is treated as a redemption of the Member's interest, requiring a majority vote of the Members and the consent of the Member receiving the distribution. The Defendants' contention that Susan had the discretion to unilaterally deviate from the approved distribution schemes outlined in section 3.9 of the operating agreement is thus incorrect.

¶ 38 The Defendants also argue that the February 21, 2017, distributions made solely to the Class B Members were authorized *pro rata* distributions based on the Class B Members' profit interests. The Defendants contend that the section 3.9 requirement that distributions be made *pro rata* is satisfied so long as the distribution is made *pro rata* across only one class of Members. The problem with the Defendants' position is that it is contrary to the plain language of section 3.9.

¶ 39 Again, section 3.9 states that the Company may make *pro rata* distributions "to the Members." The operating agreement defines the word "Member" as "each owner of an interest in the Company" and includes both the Class A and Class B Members. Thus, by the plain language of the contract, section 3.9 requires a *pro rata* distribution to both

the Class A and Class B Members in order to qualify as a valid distribution, absent one of the exceptions.

¶ 40 That being said, it is unclear from the record whether a distribution solely to the Class B Members could have been made following the closing of the asset sale to Wabash because such a distribution would have complied with one of the section 3.9 approved methods. While it appears from the record before us that it was not a *pro rata* distribution in proportion to all the Members' profit interests, genuine issues of material fact exist as to whether such a distribution could be appropriate under section 3.9.

¶ 41 Finally, the circuit court's alternative reasoning raises another potential issue, as it may not adequately provide for accounting issues that could arise during the winding up of the Company upon dissolution. Article 8 of the operating agreement provides for the procedures to be implemented during dissolution of the Company and liquidation of its assets. Section 8.3 of the operating agreement, states as follows:

> 8.3 ALLOCATIONS AND DISTRIBUTIONS UPON DISSOLUTION. *** Profit or Loss *** from actual sales of assets, shall then be allocated to the Members in accordance with Section 3.7 prior to any liquidating Distribution to Members. All cash and remaining assets following payment of creditors and reserving for anticipated obligations shall then be distributed to the Members in proportion to the positive balances in the Members' Capital Accounts (following the allocation described above), if any, to the extent of such positive balances, then in accordance with the Members' Profit Interests.

¶ 42 Section 3.7, titled "ALLOCUTION OF PROFITS AND LOSS," is a detailed provision setting forth specific rules for the allocation of the Company's profits and losses during the fiscal year, which begins on January 1 of each calendar year. In addition to governing various allocations and offsets, the provision provides that in the event the

Members' profit interests changed during the fiscal year, the Company's profits and losses should be prorated based on the Members' daily profit interests. Section 3.7 specifically requires proration when the profit interest adjustments were the result of distributions meeting the target amount and the concurrent issuance of additional Class A units.

¶ 43 In this case, both parties requested that the circuit court enter a declaratory judgment as to each Members' profit interest for the purposes of calculating the Members' entitlement to the Company's assets upon dissolution. The parties have presented their calculations as if those interests were static. The operating agreement, however, contemplates situations requiring a daily proration of the Company's profits. In the event that a daily proration is required, a determination of the exact date that the target amount was reached, and the automatic issuance of additional Class A units occurred, would be essential to the final accounting. It is simply not enough to find that the target amount and resulting dilution of the Class B Members interests would have occurred at some point in time.

¶ 44 Based on the foregoing, the circuit court erred in entering summary judgment in favor of the Defendants and against the Plaintiffs on all counts because the court incorrectly held that Susan had the authority to borrow the money used to fund the February 21, 2017, checks issued to the Class B Members and because there are genuine issues of material fact precluding the entry of summary judgment on the parties' claims.

¶ 45 Reversed and remanded.