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IN THE

Supreme Court of Virginia

RECORD NO. 180120

ERIE INSURANCE EXCHANGE,

Appellant,

v.

EPC MD 15, LLC,

Appellee.

OPENING BRIEF OF APPELLANT

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OPENING BRIEF OF APPELLANT

Appellant, Erie Insurance Exchange ("Erie"), through George E. Reede, Jr., Esq., Matthew J. Youssef, Esq., and Niles, Barton & Wilmer, LLP, respectfully states that it was aggrieved by a Final Decree entered in favor of EPC MD 15, LLC ("EPC"), in the Circuit Court for the City of Winchester on October 24, 2017, the Honorable Clifford L. Athey, Jr. presiding. Erie files this Opening Brief pursuant to Virginia Rule 5:27.

STATEMENT OF THE CASE

The breach of contract action below was captioned *EPC MD 15, LLC v. Erie Insurance Exchange, et al.*, Case No. CL 15000407-00, in the Circuit Court for the City of Winchester. On February 15, 2017, the parties filed an agreed statement of facts with exhibits. *JA 015-165.* The parties then filed cross-motions for summary judgment based on those facts. *JA005-006.* On March 23, 2017, the Honorable Clifford L. Athey, Jr. heard argument on the cross-motions for summary judgment and took the matter under advisement. On April 20, 2017, the Court issued a memorandum opinion and order denying Erie's motion for summary judgment, and granting EPC's motion for summary judgment. *JA 245-265.* The parties subsequently reached an agreement on damages by

way of an appraisal, and then filed an agreed order. *JA 266-271.* A final order was entered on October 24, 2017. *JA 004.* Erie filed its notice of appeal on November 21, 2017. *Id.* On June 1, 2018, after consideration of Erie's Petition, this Court awarded Erie an appeal. *JA 272-273.*

ASSIGNMENT OF ERROR

TO FIND COVERAGE UNDER A COMMERCIAL PROPERTY INSURANCE POLICY, THE TRIAL COURT ERRED WHEN IT HELD THE INSURED "ACQUIRED" THE REAL PROPERTY OF ANOTHER LIMITED LIABILITY COMPANY BY PURCHASING AN INTEREST IN THAT COMPANY (*JA 263*).

STATEMENT OF FACTS[1]

EPC is a Maryland company that was organized on April 25, 2006. *JA 015*, ¶ 1. EPC's principal place of business is 751 E. Gude Drive in Rockville, Maryland. *JA 016*, ¶ 6. Since July 13, 2006, EPC has been the title owner of 751 E. Gude Drive, Unit Two, in Rockville, Maryland, which consists of two condominium units (the "Maryland Property"). *Id.* ¶ 7. Erie issued an insurance policy to EPC for the Maryland Property (the "Policy"). *Id.* ¶ 8. The Maryland Property was the only insured location scheduled on the Policy Declarations. However, the Policy

[1] The Parties filed an agreed statement of facts in support of their cross-motions for summary judgment. *JA 015-165.* That statement (and the documents referenced) is the source for Erie's Statement of Facts.

extends coverage to "newly acquired property." The Policy provides, in relevant part:

> **SECTION VIII– EXTENSIONS OF COVERAGE**
>
> . . .
>
> **B. Extensions of Coverage**
>
> Payments under these Extensions of Coverage are an ADDITIONAL AMOUNT of insurance and will increase the total amount of insurance available for the coverage involved.
>
> . . .
>
> 21. **Newly Acquired or Constructed Property.**
>
> a. If this policy covers Building(s), you may extend that insurance to apply to 50% of the limit for Coverage 1 or $500,000, whichever is less, on:
>
> 1) Newly acquired buildings at other than the locations(s) described in the "Declarations";
>
> 2) New additions, new buildings and new structures when constructed on the insured premises, including materials, equipment and supplies on or within 1,500 feet of the insured premises;
>
> provided there is no other insurance applicable.

. . .

> This extension shall apply for 90 days after the acquisition or start of construction, provided the policy remains in force or is renewed.
>
> You shall report values involved and pay any additional premium.

Id. ¶ 8; *JA 068, 079.*

An individual, Maryam Hashemian ("Ms. Hashemian") has managed EPC since June 9, 2006. *JA 015*, ¶ 3. On December 18, 2013, Ms. Hashemian organized another entity, Cyrus Square, LLC ("Cyrus Square"), as a Virginia limited liability company. *JA 016*, ¶ 11. The same day, Cyrus Square purchased the Zeropak Subdivision at 536 & 598 North Cameron Street, 563 and 537 North Cameron Street and Nos. 15 and 17 Gibbens Street, in Winchester, Virginia, including D-11-Zeropak 1, D-12 Zeropak 2 and D-13 Zeropak 3 (the "Property"). *JA 017*, ¶ 13.

On or about March 1, 2014, Cyrus Square entered into an agreement to have work done on one of the buildings located on the Property. *Id.* ¶ 17. Cyrus Square, however, had no monetary assets. To facilitate work at the site, and to consolidate operations, Ms. Hashemian opted to have EPC purchase a 100% interest in Cyrus

Square. *Id.* ¶ 18. As of March 3, 2014, EPC was the sole member of Cyrus Square, LLC. *E. JA 018,* ¶ 20.

On May 30, 2014, a four-alarm fire damaged the Property – which was still owned by Cyrus Square. *Id.* ¶ 21. As a result of the fire, the Property sustained loss and damage. *Id.* ¶ 22. By letter dated June 5, 2014, EPC's counsel notified Insurance Management Services of the fire, identifying "EPC MD 13, LLC, and/or Cyrus Square, LLC" as the "Insureds." *Id.* ¶ 25. He asked that the agency "provide notice to all insurers of the Clients" of the fire and provide "a copy of all policies in force for any of the Clients as soon as possible." *Id.*; *JA 165.*

Erie denied the claim under EPC's Policy because EPC had not applied for and obtained coverage for the Property, as reflected in the Policy Declarations, and because EPC had not "newly acquired" Cyrus Square's property. *JA 18* ¶ 26. Although Cyrus Square had owned the Property since December of 2013, Ms. Hashemian never notified Erie of the existence of Cyrus Square or its Property until June 5, 2014 – after

the fire. *Id.* ¶ 27. Consequently, Erie had no opportunity to charge a premium for the Property. *ID.* ¶ 28.[2]

AUTHORITIES AND ARGUMENT

Ms. Hashemian purchased insurance from Erie for the property of one of her limited liability companies located in Maryland, and then – by sleight of hand – obtained coverage for the property of another company located in Virginia. Erie now finds itself providing coverage for the property of a company with which Erie had no relationship whatsoever, and doing so for free. "Newly acquired property" coverage, a temporary coverage provided for the convenience of a named insured, should not be subject to such abuse and misuse. Neither the terms of the Erie policy, nor Virginia corporate law, permit such a result.

I. STANDARD OF REVIEW

This assignment of error involves the grant of summary judgment to EPC arising from questions of the interpretation of provisions of a policy of insurance. "'The interpretation of policy provisions presents a

[2] The Circuit Court concluded that EPC "offered to pay any additional premium in compliance with the Insurance Contract." *JA 264-265.* However, no such offer is reflected in the agreed statement of facts or referenced documents.

question of law that [the Court] consider[s] *de novo*.'" *Nationwide Mut. Fire Ins. Co. v. Erie Ins. Exch.*, 293 Va. 331, 336 (2017) (quoting *Lower Chesapeake Assocs. v. Valley Forge Ins. Co.*, 260 Va. 77, 87-88 (2000)). Similarly, "'in an appeal of a decision awarding summary judgment, the trial court's determination that no genuinely disputed material facts exist and its application of law to the facts present issues of law subject to *de novo* review.'" *La Bella Dona Skin Care, Inc. v. Belle Femme Enters., LLC*, 805 S.E.2d 399, 404 (Va. 2017) (quoting *Mount Aldie, LLC v. Land Trust of Va., Inc.*, 293 Va. 190, 196 (2017)). The assignment of error alleged herein is reviewed under the *de novo* standard of review, and no deference should be afforded to the trial court's decision.

II. THE WORD "ACQUIRED" CANNOT MEAN THE MERE EXERCISE OF "CONTROL" OF A BUILDING IN A COMMERCIAL PROPERTY INSURANCE POLICY PROVIDING COVERAGE FOR "NEWLY ACQUIRED PROPERTY."

Contract interpretation should not begin and end with the dictionary definitions of a singular word. In this case, the Circuit Court erred by holding that the existence of two definitions of the word "acquire" rendered the policy ambiguous, without considering the objective intent of the parties reflected by the contract as a whole.

Viewed in that larger context, equating an insured's acquisition of a building with the ability to indirectly control the building *of another company* becomes a patently unreasonable interpretation that must be rejected.

A. Alternative dictionary definitions of contract terms are not dispositive.

The Circuit Court correctly began by observing that "[i]t is axiomatic that when the terms in a contract are clear and unambiguous the contract is construed according to its plain meaning." *Barber v. VistaRMS, Inc.*, 272 Va. 319, 329 (2006). Indeed, "[c]ourts interpret insurance policies, like other contracts, in accordance with the intention of the parties gleaned from the words they have used in the document." *TravCo Ins. Co. v. Ward*, 284 Va. 547, 552 (2012). As such, every phrase and clause "should be considered and construed together and seemingly conflicting provisions harmonized when that can be reasonably done, so as to effectuate the intention of the parties as expressed therein." *Floyd v. Northern Neck Ins. Co.*, 245 Va. 153 (1993). Critically, however, "[i]t is not the function of the Court to 'make a new contract for the parties different from that plainly intended and thus create a liability not assumed by the insurer.'" *Builders Mut. Ins. Co. v. Parallel Design &*

Dev. LLC, 785 F. Supp. 2d 535, 543 (E.D. Va. 2011) (quoting *St. Paul Fire & Marine Ins. Co. v. S.L. Nusbaum & Co., Inc.*, 227 Va. 407, 411 (1984)). "As with other contracts, when interpreting a policy courts must not strain to find ambiguities…contractual provisions are not ambiguous merely because the parties disagree about their meaning." *Id.*

As the Circuit Court recognized, the word "acquired," like virtually all words, has a number of potential meanings. However, while this is a necessary condition to find an ambiguity, it is not sufficient; the analysis cannot stop there. *See* Norman J. Singer & J.D. Shambie Singer, 2A *Statutes and Statutory Construction* 13-14 (2007). ("The requirement that an ambiguity exist before courts will look beyond the text of a statute "is deceptive in that it implies that words have intrinsic meanings. [Rather, a] word is merely a symbol which can be used to refer to different things."). The Circuit Court failed to consider the additional requirement that the alternative interpretations that give rise to the ambiguity be "equally possible," and that the disputed terms contain "doubt as to their meaning." *PBM Nutritionals, LLC v. Lexington Ins. Co.*, 283 Va. 624, 634 (2012).

B. The objective intent of the parties was to provide coverage only to the named insured for the buildings it acquired – not buildings owned by others.

The construction the Circuit Court gave to the word "acquire" in this case is incompatible with the objective intent of the parties "within [the policy's] context." *Gates, Hudson & Assocs. v. Fed. Ins. Co.*, 141 F.3d 500, 502 (4th Cir. 1997). The only analysis given to the context of the word "acquire" was the *ipse dixit* statement that "Plaintiff's interpretation of acquisition as not being synonymous with ownership, is reasonable in the Court's opinion." *JA 263*. There must be something more than the mere presentation of an alternative construction to satisfy the gateway requirement of an ambiguity. *See D.E.W., Inc. v. Local 93, Laborers' Int'l Union*, 957 F.2d 196, 199 (5th Cir. 1992) ("A contract is not ambiguous merely because the parties disagree upon the correct interpretation or upon whether it is reasonably open to just one interpretation."); *New Castle Cty. v. Hartford Accident & Indem. Co.*, 970 F.2d 1267, 1270 (3d Cir. 1992) ("An ambiguity does not exist merely because two conflicting interpretations may be suggested; the insured must proffer more than a possible construction of the policy." (internal quotation omitted)).

A review of the policy as a whole reveals the actual intent of the parties. In the very first paragraph of the Ultraflex Commercial Property Coverage Part, Erie emphasizes the importance of this principle: "Read the entire policy carefully to determine rights, duties, and what is and is not covered." *JA 056*. To begin, the Policy Declarations reflect the nature of the property interest the parties to the contract had in mind:

> INTEREST OF NAMED INSURED IN SUCH PREMISES – OWNER

JA 041. That property owner, EPC, is then referenced as "you" throughout the Policy: the only party that ever applied for and obtained the Policy; the only party Erie vetted through the underwriting process for risk assessment and premium rating; and ultimately the only party Erie agreed to insure.[3] Whenever the Policy intends to protect the interests of strangers to the contract, it says so. By way of example, the Policy provides coverage for "personal property *of others* that is in *your* care, custody, or control." *JA 057*. Note both the distinct treatment of

[3] "Throughout this policy the words 'you' and 'your' refer to the Named Insured shown in the 'Declarations'." *JA 056*.

the insured and "others" and the limited circumstances in which control of property alone is sufficient for coverage to apply.

The newly acquired property coverage itself clearly distinguishes between the coverage available to the insured and the coverage available for the property of "others". *JA 078.* The coverage separately addresses newly acquired buildings, business personal property and property of others, and loss of business income. *Id.* Most important, the newly acquired property coverage is potentially available for the personal property of others – *but not their buildings*. *Id.*

In addition, applying the Circuit Court's interpretation to other policy provisions yields odd – and clearly unintended – results. Consider the potential implications for Erie's subrogation rights. The Policy provides:

> **8. OUR RIGHT TO RECOVER FROM OTHERS**
>
> After we make a payment under this policy, we have the right to recover from anyone else held responsible. This right will not apply under Property Protection if you have waived it in writing prior to loss. Any insured is required to transfer this right to us, and do nothing to harm this right. Anyone receiving payment from us and from someone else for the same loss will reimburse us up to our payment.

JA 048. A related policy condition requires an insured to "[a]gree to help us enforce any right of recovery against any party liable for "loss" under this policy." *JA 083*. Now assume, hypothetically, that an employee of Cyrus Square negligently caused the fire in question. Under the Circuit Court's interpretation, Erie would be required to pay EPC for the damage to Cyrus Square's property, and then EPC would be required to in turn cooperate with Erie in its subrogation efforts to recover what Erie paid – *from Cyrus Square*. Suffice to say that Ms. Hashemian would find herself in a decidedly conflicted position.

Alternatively, assume that Cyrus Square had more than one member, and that a member of Cyrus Square had intentionally set the fire. The policy excludes:

> a. Loss caused by any dishonest or criminal act committed by you, or any of your members of a limited liability company, or any of your partners, whether acting alone or in collusion with other persons.

JA 073. The exclusion only extends to the acts of EPC's members. Applying the Circuit Court's interpretation, Erie would be compelled to pay EPC for a fire intentionally set by Cyrus Square's member – effectively circumventing the language of the exclusion.

While courts routinely look to dictionary definitions to interpret insurance policies, the meaning of a word cannot be "divined in isolation, but instead is informed by the surrounding context of the policies as a whole." *Schwartz & Schwartz of Va., LLC v. Certain Underwriters at Lloyds,* 677 F. Supp. 2d 890, 905 (W.D. Va. 2009); *see, e.g., Atlas Underwriters, Ltd. v. Meredith-Burda, Inc.,* 231 Va. 255, 258 (1986) (in the context of the policy as a whole, the undefined terms "claim" and "claimant" were clear and unambiguous, and "susceptible of but one meaning"). In the present case, the word "acquire," as used in the newly acquired property coverage, can only mean that EPC itself must purchase a building – not merely obtain an interest in another company that owns the building. The Circuit Court's interpretation of the word in isolation is at odds with the objective intent of the parties, and strains other policy provisions beyond the breaking point.

C. The newly acquired property coverage was designed to automatically protect the insured – a known risk – not the additional risk of a stranger to the contract.

The Circuit Court's interpretation of the newly acquired property coverage fails to recognize the intended purpose of such automatic insurance provisions. Insurance policies are negotiated in consideration

of the known risks to a specific insured and its property at the time the policy is written. Jeffrey W. Stempel, Erik S. Knutsen, *Stempel and Knutsen on Insurance Coverage* § 1.03 (4th ed. 2017) ("The very reason for having insurance is to spread risk. People or businesses purchase insurance as a way of spreading risk among a wide group of similarly situated policyholders. By doing this, the policyholder agrees to accept a certain loss (the payment of the premium) in return for obtaining protection should it experience a large but unpredictable loss."). But, so-called "automatic insurance" clauses such as "newly acquired property" provisions are desirable; the insured who applied and pays for the coverage, undergoes the underwriting process, and enters into the insurance contract, has the flexibility to transfer assets without the inconvenience of requiring the presence of their insurance agent at the closing table to immediately write a new policy. *See N. Assurance Co. v. Farm Bureau Mut. Ins. Co.*, 822 P.2d 45, 47 (1991) (purpose of "newly acquired" automatic insurance is a matter of convenience); *Home Mut. Ins. Co. v. Rose*, 150 F.2d 201, 204 (8th Cir. 1945) ("The automatic insurance clause in standard policy forms is intended to meet the necessity for maintaining continuous insurance on cars in the presence

of the recognized custom among insured owners of acquiring other cars by replacements and new purchases during the life of their policies."). The insured remains obligated to schedule its newly acquired property as soon as practicable so that the insured's premium comports with the risks insured against. *Md. Cas. Co. v. Toney*, 178 Va. 196, 201 (1941) ("The manifest purpose of the 'Automatic Insurance' provision is to have the coverage attach to the newly acquired car at the earliest time the insured needs protection, provided he notifies the insurer within ten days of the commencement of such coverage.").

EPC was the insured under the Erie policy – not Cyrus Square. Thus, the rationale and justification for an automatic insurance provision is not present here. Cyrus Square, a stranger to EPC's insurance contract with Erie, cannot automatically obtain coverage for its property under EPC's policy consistent with purpose and intent of newly acquired property coverage.

III. THE CIRCUIT COURT'S ANALYSIS IS BASED UPON AN ERRONEOUS VIEW OF EPC'S RIGHTS AS A MEMBER OF CYRUS SQUARE, LLC.

Pragmatically, the Circuit Court was willing to look past the distinct corporate entities involved here – EPC and Cyrus Square – and

conclude that EPC "acquired" Cyrus Square's building by "gaining control" of Cyrus Square. Specifically, the court held:

> Here, there is no question that the Plaintiff gained control of the property by virtue of its control of Cyrus Square LLC and thus "acquired" the property. During the policy period, as alleged in the Complaint, Plaintiff EPC acquired a 100% ownership interest in, and the full control of, Cyrus Square LLC's assets, which include the Zeropak buildings(s), located at 536 and 598 North Cameron Street, in Winchester, Virginia. See Va. Code Ann. § 13.1-1021.1. As such, the Insured Plaintiff in this case could sell the property, encumber the property, build on the property or tear down the Zeropak Building located on the real property.

JA 263. In reality, EPC could do none of those things. For example, if EPC were to sign a contract to sell the property the contract would be unenforceable. Only Cyrus Square, as the actual owner of the property, could execute a contract to sell the property. EPC and Cyrus Square are distinct entities with distinct rights and interests that cannot and should not be ignored for the sole purpose of finding insurance coverage for an uninsured loss.

A. A member of an LLC does not own the real property of the LLC.

EPC did not acquire Cyrus Square's real property when it purchased a membership interest in Cyrus Square. Va. Code § 13.1-1038 ("A membership interest in a limited liability company is personal property. The ***only*** transferable interest of a member in the limited liability company is the member's share of the profits and losses of the limited liability company and the member's right to receive distributions." (emphasis added)).[4] Thus, "[i]n a Virginia limited liability company, members have no direct interest in the company's property, but members have an economic interest, referred to in the statute as a 'membership interest,' in the profits, losses and distributions of the company." *JTB Enters., L.C. v. D & B Venture, L.C. (In re DeLuca)*, 194 B.R. 79, 88 (Bankr. E.D. Va. 1996). Simply put, EPC – the only named insured, and only beneficiary of the automatic insurance coverage for buildings – never acquired the Property.

A Pennsylvania court faced a similar issue in *Budtel Assocs., LP v. Cont'l Cas. Co.*, 915 A.2d 640, 641 (Pa. Sup. 2005). Two

[4] The authority upon which the Circuit Court relied—Va. Code Ann. § 13.1-1021—merely grants a limited liability company the authority to acquire title to property in its name. That authority is utterly silent on the rights a member exercises over an LLC's property.

telecommunications companies ("Budtel" and "Comptel") began a joint venture aptly named "Budtel-Comptel, LLC" (the "LLC"). By agreement, the LLC was permitted to use a warehouse owned by Budtel. *Id.* at 642. A pipe subsequently burst at the warehouse, and Comptel presented a claim to its insurer for the water damage under the newly acquired property coverage. *Id.* The trial court determined that Comptel's use of the property was sufficient to constitute an acquisition. *Id.* at 645.

The Superior Court reversed on appeal. *Id.* at 647. First, even assuming, for sake of argument, that acquiring the right to use the warehouse was sufficient, the Court was unwilling to ignore *who* acquired that right. The LLC – not Comptel, the insured under the Continental policy – acquired the right to use the warehouse. Second, like Virginia, the applicable New Jersey statute provided that a member of a limited liability company has no interest in the specific property of the limited liability company. *Id.* at 646. Relying on that statute, the *Budtel* court held that "as a matter of law . . . Comptel (as a member) did not own Budtel-Comptel's (the limited liability company's) right to use the Budtel warehouse by default." *Id.* As a result, Comptel

had not "acquired' use of the warehouse, and the newly acquired property coverage was inapplicable.

Similarly, in the present case, who owned the building matters; Cyrus Square – not EPC, the insured under the Erie policy – owned the building. As a member of Cyrus Square, LLC, EPC's interest in Cyrus Square was limited to "the member's share of the profits and losses of the limited liability company and the member's right to receive distributions," and did not extend to ownership of Cyrus Square's real property. Va. Code § 13.1-1038. It necessarily follows that EPC did not "acquire" Cyrus Square's building for purposes of the newly acquired property coverage.

B. The rights and interests of distinct corporate entities cannot be ignored for the sole purpose of finding insurance coverage.

The irony here is that Virginia law permits entities to organize LLCs and other similar entities to achieve the social good that comes from bifurcating the property rights of control and ownership. *See* Robert W. Hamilton et al., *Cases and Materials on Corporations Including Partnerships and Limited Liability Companies* 136 (11th ed. 2007) ("For many years [the power of a Government to issue a corporate

charter] was exercised sparingly, usually limited to ventures of a public or quasi-public nature."). Thus, this Court will generally uphold the sanctity of an entity's individual status unless a challenger makes a strong showing that an owner "has controlled or used the corporation to evade a personal obligation, to perpetrate fraud or a crime, to commit an injustice, or to gain an unfair advantage." *O'Hazza v. Exec. Credit Corp.*, 246 Va. 111, 115 (1993). Nevertheless, in the present case EPC successfully convinced the Circuit Court that it should ignore EPC's distinct status as an LLC to obtain insurance coverage.

No doubt, if anyone sought to enforce one of Cyrus Square's liabilities against EPC, EPC would quickly resort to its liability shield to disclaim liability. For example, returning to a hypothetical fire caused by a Cyrus Square employee, how quickly would EPC argue that its purported control over Cyrus Square did not render it liable to an adjacent landowner for damage caused by the employee? Query then, why EPC and Cyrus Square should be able to engage in the inherently hypocritical exercise of disregarding or enforcing their status as distinct entities depending on how it suits them. *See e.g.*, *Abrahim & Sons Enters. v. Equilon Enters.*, 292 F.3d 958, 962 (9th Cir. 2002) ("Shell and

Texaco argue that Equilon is not a distinct entity because they own and control Equilon. In essence, they ask us to disregard the corporate form they themselves created because the form does not benefit them here. We refuse to do so. Members own and control most LLCs, yet the LLCs remain separate and distinct from their members. Indeed, the separate and distinct nature of LLCs is their reason for existence. Just because it happens not to benefit Shell and Texaco here is no reason to disregard the formation of this entity.")

Similarly, in *Hagan v. Adams Prop. Assocs.*, 253 Va. 217, 218 (1997), the owner of a Limited Liability Company transferred his real property to the company and then attempted to deny the bifurcated ownership and control of his entity when the owner's real estate broker demanded a commission. This Court noted that:

> Under the Virginia Limited Liability Company Act, Code §§ 13.1-1002 through 13.1-1073, a limited liability company is an unincorporated association with a registered agent and office. §§ 13.1-1002, -1015. It is an independent entity which can sue and be sued and its members are not personally liable for the debt or actions of the company. §§ 13.1-1009, -1019. **In contrast to a partnership, a limited liability company in Virginia is an entity separate from its members and, thus, the transfer of property from a member to the limited liability**

> **company is more than a change in the form of ownership; it is a transfer from one entity or person to another.**

Hagan, 253 Va. at 220 (emphasis added).

EPC and Cyrus Square, as distinct corporate entities, have different rights and interests that should not be ignored. Ms. Hashemian formed Cyrus Square to purchase the Property. For reasons of her own, Ms. Hashemian did not purchase property insurance for Cyrus Square's property, but did purchase insurance for EPC's property. EPC's purchase of a membership interest in Cyrus Square had no impact on the ownership of Cyrus Square's property – Cyrus Square remained the owner of property, as it had been since 2013. To nevertheless say that EPC's purchase of a membership interest in Cyrus Square constituted "acquisition" of the Property, for the sole purpose of finding insurance, is decidedly disingenuous.

That said, if corporate forms are to be ignored for insurance purposes, the analysis should not begin with EPC's purchase of an interest in Cyrus Square – it should begin with Ms. Hashemian's purchase of the Property. If we assume, *arguendo*, that acquisition occurs by gaining control alone, the control began in December of 2013,

when Ms. Hashemian (the owner of both Cyrus Square and EPC) purchased the Property through Cyrus Square. Thus, extending the Circuit Court's analysis to its logical conclusion, by the time of the fire the newly acquired property coverage had expired; the fire occurred 163 days after Ms. Hashemian's acquisition of the Property. *Supra*, at 4 (coverage applies for 90 days after acquisition).

CONCLUSION

WHEREFORE, Erie Insurance Exchange respectfully prays that this Honorable Court REVERSE the decision of the Circuit Court for Winchester entering judgment in favor of EPC MD 15, LLC, and enter judgment in favor of Erie Insurance Exchange.

Respectfully submitted,

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CERTIFICATION

I, George E. Reede, Esq., counsel for the Petitioner, the Erie Insurance Exchange, hereby certify that on July 11, 2018:

1. I complied with Rule 5:26(e).

2. This brief was emailed to all opposing counsel.

Respectfully submitted,

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