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IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

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JORDAN PATTERSON AMERICAN LEGION POST 319
(DAN E. TURNER AND PHILLIP L. TURNER)
Plaintiffs/Appellants

CHARLES YUNKER, ADJUTANT, AMERICAN LEGION KANSAS DEPARTMENT
Intervenor/Appellee

vs.

QUALITY CONTRACTORS, L.L.C., JERRY PRITCHARD; JAMES R. ANDERSON; VERDELL BUGG; CAPITAL TITLE INSURANCE COMPANY, LC; DEANNA M. ZIMMERMAN; 15TH STREET INVESTMENTS, LLC; and COMMERCE BANK AND TRUST COMPANY n/k/a COREFIRST BANK AND TRUST COMPANY,
Defendants/Appellees

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# JOINT BRIEF OF APPELLEES, CHARLES YUNKER, ADJUTANT, AMERICAN LEGION KANSAS DEPARTMENT; VERDELL BUGG; AND THE ESTATE OF JAMES ANDERSON

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Appeal from the District Court of Shawnee County, Kansas
Honorable Franklin Theis, Judge
Case No. 07-C-919

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## I. NATURE OF THE CASE

This appeal is from what began as a quiet title action initiated by Jordan Patterson American Legion Post #319 ("Post 319") and filed by Dan E. Turner and Phillip L. Turner in the District Court of Shawnee County, Kansas on July 5, 2007. The original petition also claimed damages for alleged wrongful conversion and destruction of property. The property which was the subject of the action was the Post 319's headquarters building located at 811 SE 15th Street in Topeka, Kansas. The property had been sold on August 11, 2006 to Quality Contractors, which later sold the property to 15th Street Investments, LLC for $120,000.00. When 15th Street Investments purchased the property, it gave a mortgage to CoreFirst Bank and Trust Company.

Plaintiff sued Quality Contractors, Jerry Pritchard (who owned Quality Contractors), 15th Street Investments, CoreFirst Bank, Capital Title Insurance Company (which acted as closing agent on the transaction), Deanna Zimmerman (an employee of Capital Title), and Post officers and members James R. Anderson and Verdell Bugg. Counterclaims were filed against Post 319 by Pritchard, Quality Contractors, and Zimmerman. Cross-claims were also filed by Quality Contractors, Capital Title, and Zimmerman against Anderson.

Discovery ensued, and thereafter, summary judgment motions were presented to the District Court. The Court granted summary judgment to Quality Contractors, Jerry Pritchard, 15th Street Investments, CoreFirst Bank, James Anderson, Verdell Bugg, and Deanna Zimmerman against Post 319 on all of its claims. The Court later dismissed the counterclaims and cross-claims as being moot. Post 319 timely appealed those decisions to this Court in docket number 105,886. The District Court ordered the sale proceeds of

$120,000.00 held in trust until resolution of the appeal. While the appeal was pending, the District Court, on August 3, 2011, allowed Charles Yunker, in his capacity as Adjutant of the American Legion Kansas Department, to intervene. The basis for the allowed intervention was that the Post 319 had been dissolved by its membership, and that on account of that dissolution and by virtue of the charter of the Kansas Department, it acceded to the rights and responsibilities of Post 319.

The Court of Appeals entered its memorandum decision on April 21, 2012, dismissing the appeal and remanding the case to the District Court for a final decision on all issues. The Court of Appeals ruled that the District Court's order was not a final order because it was "not a final decision on all issues," and that as a result, the Court of Appeals did not have jurisdiction.

The case returned to District Court on remand. On July 11, 2013, the District Court entered a memorandum decision and order which held that "no question is raised that the Kansas American Legion [intervenor] is the proper successor of any Post 319 interest in the proceeds of the sale." The Court then noted that Dan Turner and Phillip Turner were claiming that they were entitled to a part of the sale proceeds by virtue of a contingent fee contract which they had entered into "with the purported officers of Post 319 at the time of the suit's filing." The Court denied this attorney fee claim, holding that the suit was brought to undo the sale which resulted in the $120,000.00, and that as a result, the Turners had recovered nothing for their client and that by the terms of their own contract they were entitled to no fee. The Turners filed a motion to reconsider.

On January 31, 2014, the District Court entered its memorandum opinion and entry

of judgment disposing of all issues in the case. The Court did not change its previously entered summary judgment ruling or its earlier denial of the Turners claim for attorney fees. The Court determined that defendants Bugg and the Estate of James Anderson (who had died while the case was pending), were entitled to their attorney fees as officers of Post 319 under K.S.A. 17-6305( c), the same to be paid out of the $120,000.00 sale proceeds. Finally, the Court found that Post 319 had ceased to exist, and that as a result, Post 319 did not have standing to prosecute the suit, that right having devolved to the Kansas American Legion, "which clearly has assumed the ownership of the proceeds from the sale of the Post." The Turners appealed from that decision.

The Turners apparently had a contingent fee agreement with their now defunct client. They filed a notice of attorney's lien on June 18, 2010 (R., Vol. XXII, pp. 2-7), but did not attach a copy of their contract to it. Their lien does not state the basis for their claim for compensation, i.e., hourly, flat fee, or contingent fee. On July 24, 2010, the Court ordered the sale proceeds deposited at CoreFirst Bank (R., Vol. X, p. 884). Then on September 18, 2010, the Court ordered the Turners to open an interest bearing account for the sale proceeds at CoreFirst Bank. The Turners had the $120,000.00 check at that time, but were ordered to deposit it at CoreFirst (R., Vol. X, pp. 896-900). The money has never been withdrawn from CoreFirst.

## II. <u>ISSUES ON APPEAL</u>

1. Whether Dan E. Turner and Phillip L. Turner have standing to prosecute this appeal.

2. Whether the Defendants were entitled to summary judgment.

3. Whether the Turners have any attorney's lien on the sale proceeds.

## III. STATEMENT OF FACTS

Post 319 owed real property at 811 SE 15th Street, Topeka, Kansas, which had been Post 319's headquarters and meeting building. The building was old and had been seldom used by Post 319 for a number of years, and could not be used without making substantial repairs (R., Vol. XI, p. 959). Post 319 closed the building in 2005 (R., Vol. XI, p 971). Since then, the members of Post 319 had been meeting at Verdell Bugg's place of business (R., Vol. XI, pp. 988-989).

James R. Anderson was elected as Commander of Post 319 in November 2005 (R., Vol. XI, pp. 962; 991). At the same time, Robert Taylor, Ulysses Wright, and Ervin Jones were elected to the Executive Board of Post 319 (R., Vol. XI, pp. 962,982-83, 996, 1003). Several officers from the Kansas Department of the American Legion also attended this election meeting, including District Commander A.C. Byrd (R., Vol. XI, pp. 978-79).

At this same meeting, the sale of Post 319's property at 811 SE 15th was discussed. The membership elected Verdell Bugg to be assist with the proposed sale of this property (R., Vol. XI, pp. 967, 9987, 1000, 1004). Bugg had previous real estate experience and also owned properties in Topeka (R., Vol. XI, p. 875). Acting on that directive from the membership, Bugg obtained a map of the platted area comprising the property as well as aerial photos (R., Vol. XI, p. 980). He also obtained appraisal records of the property from the Shawnee County Appraiser, who had appraised the property at $115,000.00 (R., Vol. XI, pp. 973, 980).

On December 6, 2005, the members of Post 319 met and voted 17-0 in favor of

selling the property for $115,000.00 (R., Vol. XI, pp. 965-66, 992, 1007, 1008). On January 5, 2006, Post 319 entered into a contract to sell the property to Quality Contractors LLC for $120,000.00. Commander James Anderson and Executive Committee members Wright, Taylor and Jones signed the contract on behalf of Post 319 (R., Vol. XI, pp. 1015-19). Jerry Pritchard of Quality Contractors was present when these officers signed the contract. He did not do anything to coerce or intimidate any of these individual concerning the sale of the property (R., Vol. XI, pp. 968, 972, 989-90).

Verdell Bugg had known Commander Anderson for over 30 years. He stated that Commander Anderson was in good physical condition when he signed the contract on behalf of Post 319. Commander Anderson appeared to be competent to Mr. Bugg and to be able to make decisions on behalf of Post 319 (R., Vol. XI, pp. 969- 70; 976, 986). Commander Anderson did not receive any gifts, money or any other benefit from any individual or entity in exchange for signing the contract (R., Vol. XI, p 995).

Wayne Wright, Ervin Jones, and Robert Taylor, all members of the Executive Committee, signed the contract on behalf of Post 319 because the membership had voted to sell, and therefore, they believed that they had the authority to sell (R., Vol. XI, pp. 984-85, 989, 1005-06). None of these officers were threatened or coerced by anyone to sign the real estate contract, and none received any money or payment as a result of signing the contract (R., Vol. XI, pp. 984-85, 997, 1002, 1005-06). Taylor did think he was pressured into signing the contract because Pritchard stated that he would withdraw the offer if the contract was not signed on January 5, 2006 (R., Vol. XI, p. 1002).

On January 15, 2006, State Adjutant Charles M. Yunker and State Judge Advocate

Dan Wiley met with Commander Anderson and Executive Officers Wright, Jones, and Taylor. They suggested that ballots should be sent to all paid members of Post 319 asking for them to vote on the sale of the property (R., Vol. XI, p. 965; XVI, pp. 2155-56). Thereafter, Commander Anderson sent notification to all paid members of Post 319 of the proposed sale, along with ballots to each member, and also notified each member of a regular meeting on February 18, 2006 to take up this issue (R., Vol. XVI, pp. 21167-68).

On February 18, 2006 at 2:00 p.m. the membership meeting was called to order by Commander Anderson. During the meeting, the membership voted 20-9 to sell the property for $120,000.00 to Quality Contractors (R., Vol. XI, pp. 965, 998, 1020-59).

On May 9, 2005, Kenneth Hill, a member of Post 319, attempted to hold an election to get himself elected as post commander, this being done on two days notice to the membership. Commander Anderson's term had not expired. This election was held despite the fact that the Article IX of the Post 319 by-laws required that written notice of the annual election of officers must be given to each member at least one week prior to the annual election (R., Vol. XIII, pp. 1573-74; Vol. XVI, pp. 2211, 2213, 2237).

On August 11, 2006, Commander Anderson attended the closing of the real estate contract with Quality Contractors at Capital Title and executed a corporation warranty deed transferring the real estate to Quality Contractors, which it turn issued a check to Post 319 for $120,000.00 (R., Vol. XVI, pp. 2215-23). Prior to that date, the Post 319 membership had never voted to rescind the contract (R., Vol. XI, pp. 965, 968).

Eleven months after the sale was closed, on July 5, 2007, the petition which initiated this case was filed by the Turners in the name of Post 319 (R., Vol. I, p. 29). After the sale

was closed, the membership of Post 319 voted to dissolve the Post. On March 29, 2011, State Adjutant Yunker filed his motion to allow the American Legion Kansas Department to intervene, on the basis that Post 319 had been dissolved by its membership, with the assets of the Post becoming the property of the Kansas Department (R., Vol. XVIII, pp. 2445-46). The Turners, responding ostensibly for the now defunct Post 319, objected to this motion (R., Vol. XVIII, pp. 2456-57), but the motion to intervene was allowed on August 3, 2011. The Kansas Department has participated fully in this case since that time.

On January 31, 2014, the District Court entered its memorandum opinion and entry of judgment disposing of all issues in the case. The Court did not change its previously entered summary judgment ruling or its earlier denial of the Turners claim for attorney fees. The Court determined that defendants Bugg and the Estate of James Anderson (who had died while the case was pending), were entitled to their attorney fees as officers of Post 319 under K.S.A. 17-6305( c), the same to be paid out of the $120,000.00 sale proceeds. Finally, the Court found that Post 319 had ceased to exist, and that as a result, Post 319 did not have standing to prosecute the suit, that right having devolved to the Kansas American Legion, "which clearly has assumed the ownership of the proceeds from the sale of the Post." (R., Vol. XIV, pp. 2489-2506). On February 26, 2014, Dan Turner and Phillip Turner filed a notice of appeal in their own names and not in the name of Post 319, or for that matter, any other party to the litigation (R., Vol. XIX, pp. 2507-08).

## IV. ARGUMENT AND AUTHORITIES

### A. The Turners lack standing to appeal.

1. Standard of review.

The existence of standing and jurisdiction are both questions of law over which appellate courts exercise de novo review. *Board of Sumner County Comm'rs*, 286 Kan.745, 751, 189 P.3d 494 (2008); *Mid-Continent Specialists, Inc. v Capital Homes*, 279 Kan. 178, 185, 106 P.3d 483 (2008). Additionally, to the extent that review of this issue requires statutory interpretation, appellate review is unlimited. *Double M Constr. v. Kansas Corporation Comm'n*, 288 Kan. 268, 271, 202 P.3d 7 (2009).

2. The Turners are not parties in this case.

The Notice of Appeal in this case, which gave rise to this appeal, states: "COMES NOW, Dan E. Turner and Phillip L. Turner of Turner & Turner and files [*sic*] this Notice of Appeal . . ." They further signed the appeal on their own behalf and without mention of any party. Of course, they no longer have a client, since the record demonstrates that Post 319 was dissolved by its membership and that as a result of this dissolution, all rights and assets of Post 319 accrued to the American Legion Kansas Department, an intervenor in this case.

K.S.A. 60-2103(a) requires a proper notice of appeal to perfect an appeal to the Court of Appeals. That statute specifies that, "A party may appeal from a judgment by filing with the clerk of the district court a notice of appeal. Additionally, K.S.A. 60-2103(b) requires that "the notice of appeal shall specify the parties taking the appeal."

First, the Turners notice of appeal is defective in all respects and has failed to comply with the K.S.A. 60-2103. The Turners are not, themselves, parties to this case, nor does their notice specify which parties they are representing in filing the notice of appeal. This notice contrasts with the earlier notice of appeal filed in this case on March 17, 2011, wherein they specified that they were filing the notice as "Attorneys for Plaintiff." In that previous notice

of appeal, the Turners stated that it was brought on behalf of "Jordan Patterson American Legion Post #319." (R., Vol. XVIII, pp. 2443-44). Furthermore, the brief that they have now filed in this case is titled "Brief of Appellants Dan E. Turner and Phillip L. Turner."

Not only did the District Court allow the Kansas Department to intervene in this case, but the District Court found, following remand from the first appeal, that

> Certainly, no facts were proffered post-appeal to suggest that Post #319 has proper standing or, for that matter, impeach its standing at any point afterwards, except as it relates to the fact of the Post's dissolution. Nevertheless, whatever standing may or may not have once existed, standing now resides with the Kansas American Legion, which clearly has assumed ownership of the proceeds from the sale of the Post. (R., Vol. 19, p. 2505).

Our Supreme Court has already spoken to this issue. A nonparty has no standing to appeal. The Turners, in their brief at page 7, make the bald assertion that they "have standing to assert this issues" without citing any case law to support this claim there or anywhere in the brief. They cite no cases because there are none in this jurisdiction. They have no standing.

*Simon v. Bazzano*, 250 Kan. 673, 829 P.2d 576 (1992), arose out of the settlement of a medical malpractice action. Defendant Stephan J. Bazzano was an osteopathic physician practicing in Galena. He was a Missouri resident but a licensed Kansas health care provider. A medical malpractice action was filed in July 1987. On March 18, 1991, with the approval of the district court, the case was settled for $900,000. The Kansas Health Care Stabilization Fund appeared at and participated in the settlement proceedings. It was undisputed that the Fund was responsible for $700,000 of the judgment. The district court found that the

Kansas Insurance Guaranty Fund and the Missouri Insurance Guaranty Association had joint and several liability for the first $200,000.00 of the settlement, which was the primary coverage for the defendant doctor. The Kansas Insurance Guaranty Fund (KIGA) appealed, and on appeal contended that (1) under K.S.A. 40-2910(b) the Missouri Insurance Guaranty Association (MIGA) was primarily liable for the $ 200,000 coverage and that, accordingly, it was error for the district court to hold KIGA and MIGA jointly and severally liable therefor; and (2) K.S.A. 40-2915 precluded any entry of judgment against KIGA.

The Supreme Court dismissed the appeal, stating that:

> KIGA was never a party to the action herein and never requested to be made a party. In the absence of express statutory authorization, those who are not parties to an action have no standing to appeal. See *Frey, Inc. v. City of Wichita*, 11 Kan. App. 2d 116, 715 P.2d 417 (1986). We find no legal basis upon which to support a finding that KIGA has standing to bring the appeal herein. Accordingly, the appeal must be dismissed.

The Turners are not parties to this action, and were never made parties in the District Court proceedings. Their appeal, like that of the Kansas Insurance Guaranty Fund in *Simon v. Bazzano*, must be dismissed. The Turners have no standing to appeal, and because the notice of appeal is defective in that no party to the lawsuit appealed, this Court has no jurisdiction to consider this appeal.

Even though the Turners cite no cases to support their standing claim, these defendants acknowledge that there are few federal cases involving federal law which have found limited standing for attorneys to appeal concerning attorney fee awards, *e.g., Mather v. Bd. of Trs. of S. Ill. Univ.*, 317 F.3d 738, 741-42 (7th Cir. 2003) (holding attorneys to be

actual parties in interest, entitled to appeal award of attorneys' fees to their client, where award was not intended as additional compensation to plaintiff and plaintiff did not dispute award); *Samuels v. Am. Motors Sales Corp.*, 969 F.2d 573, 576-77 (7th Cir. 1992) (allowing attorney to appeal attorney's fee award in Magnuson-Moss Act case, despite Act's allowance of attorneys' fee award to prevailing consumer, where there was no evidence that plaintiff contested fee his attorney had sought and appeal would not interfere with plaintiff's control over case); *Lowrance v. Hacker*, 966 F.2d 1153, 1156-57 (7th Cir. 1992) (holding that attorney had standing to appeal for reasonable and uncontested attorneys' fees incurred in postjudgment proceedings notwithstanding that contractual entitlement to fees belonged to his client, but he could not petition for fees incurred during garnishment proceedings when attorney and client were estranged and difference between attorney and client no longer was technicality); and *Lipscomb v. Wise*, 643 F.2d 319, 320-21 (5th Cir. 1981) (stating that "when they are the real parties in interest, attorneys are entitled to a day in court," and holding that attorneys for intervenors could appeal denial of attorneys' fees).

Despite these cases, our Supreme Court has decided that non-parties cannot appeal, based upon its interpretation of our appeals statute. *Simon v. Bazzano*, *supra.,* is the law in this jurisdiction. Thus, the Turner's appeal must be dismissed for lack of standing and failure to comply with K.S.A. 60-2103. They are not parties, and were never made parties to this case. Further, their former client no longer exists.

**B. <u>The District Court properly granted summary judgment in this case</u>**

1. <u>Standard of review</u>.

Summary judgment is appropriate when the pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. When opposing a motion for summary judgment, an adverse party must come forward with evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issues in the case. *Nungesser v. Bryant*, 283 Kan. 550, 53 P.3d 1277 (2007). Appellate courts apply the same rules and where the appellate court finds reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied. *State ex rel. Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005).

2. The Contract to Sell Real Estate was properly authorized.

The constitution and by-laws of Post 319 were submitted to the Court via an affidavit of Mr. Yunker, the adjutant of the American Legion Kansas Department (R., Vol. XXIII, pp. 2-45 ). Article V of the constitution provides that "the administrative affairs of this post of the American Legion shall, except as my be otherwise provided in the by-laws, be under the supervision of the executive committee which shall consist of six members in addition to the officers of the post." The by-laws provided that the executive committee consisted of fourteen members, with eight being elected from the designated officers of Post 319 (commander, first vice commander, second vice commander, adjutant, finance officer, historian, chaplain, service officer, sergeant-at-arms, and judge advocate), and six other members, all elected annually by the membership. The by-laws provided that the actions of

the executive committee needed a quorum of six members.

Four members of the executive committee signed the contract to sell the real estate to Quality Contractors. The record is silent as to whether there was a meeting of the executive committee, and if so, whether a quorum was present. Regardless, the by-law provisions of the executive committee do not include the power to sell real estate. Therefore, this power remained with the membership, since the membership created the constitution and by-laws and by not assigning the right to sell real estate to the executive committee, retained that right to itself. In this regard, he record shows that two votes were taken by the **membership** of the post to sell the real estate, and both votes were decidedly in the affirmative. Moreover, neither the constitution nor the by-laws require that special meetings be "in person" or "face-to-face." Regular meetings are to be held at the post, but there is no similar language as to special meetings. Therefore, Commander Anderson, in consultation with the executive committee and representatives of the Kansas Department, determined that a membership election should be held to consider the question of selling the building.

The Turners argue that the vote to sell the property "was not taken at a duly noticed meeting." Section 2 of the by-laws state that "the post commander **or** a majority present at any executive meeting shall have the authority to call a special meeting of the post, at any time." (Emphasis added). Again, there is nothing in that section which states that special meetings "shall be held at the post home," in contrast to language which is found in Section 1 for regular meetings. Further, there is not a notice requirement spelled out for special meetings. There is such a requirement under Section 3 for special meetings called by the

membership, but this contrasts to the absence of any notice requirements for special meetings called by the commander. Further, even though the ballots were mailed to members, who then voted and returned them to Commander Anderson by mail, these ballots were then counted in an open members meeting held on February 18, 2006. The notice of this meeting was sent out on January 27, 2006, well in advance of the February 18 members' meeting.

The Turners apparently agree that sale of the property required approval of the membership, not the officers or executive committee, because they argue as much at pages 9 and 10 of their brief (although they then argue that the two votes of the membership were not "proper" - this will be addressed below). Regardless, the Turners cannot show that there was noncompliance with the Post 319 constitution and by-laws. The District Court correctly found that "none of these facts advanced by Plaintiff establish any contravention of any constitution or by-law in such fashion as might impeach the validity of the vote."

The Turners complain that the contract was not closed by June 15, 2006, the extended date set by the contract and an amendment thereto. However, the contract also stated that if "Buyers fail to comply with any of the terms of this Contract, then this Contract shall, **at the option of the Sellers**, become immediately null and void . . ." (Emphasis added.) Post 319, as seller, never elected to exercise this option, and thus, the contract was not terminated by failure to close on June 15 (R., Vol. XVI, pp. 2160-66).

The Turners further argue that Post 319 failed to comply with a letter from Kansas Department Adjutant Yunker to Post 319 Adjutant Henry Holley, dated January 5, 2006, which stated that "the standard time from such notice [on a vote to sell] is 30 days. . . " (Turner brief at p. 11). However, by sworn affidavit, Adjutant Yunker stated that "neither

the national organization nor a Department have any authority to control, supervise, or influence day to day activities or operations of any local Post . . ." (R., Vol XXIII, pp. 2-22). Thus, the Yunker letter to Holley is of no aid to the Turners. Further, they never controverted Adjutant Yunker's affidavit with opposing affidavits, or for that matter, any other evidence to contradict his sworn statement. While they argue in their brief these were requirements imposed by the Kansas Department on Post 319 (brief at page 11), and assert that defendants had failed to give the District Court contrary authority "disputing State Adjutant Yunker's letter," this is a false statement, which the Turners would have known was false had they bothered to read Adjutant Yunker's affidavit, quoted above. It is the Turners who have failed to come forward with any evidence whatsoever to controvert this affidavit, and because of that failure, the contents of this affidavit must be accepted as true.

The Turners continue to argue that there were other deficiencies: There was no resolution by the Executive Committee to approve the sale; Post 319 Adjutant Holley failed to make any minutes of any executive committee meeting; there was no notice and ballot send to members; Adjutant Holley thought the signature of James Anderson was a forgery; that there was a "threatening letter" from Commander Anderson "using language that he would never use"; and that Commander Anderson was not authorized by the by-laws to send letters on the proposed sale to members (Turner brief at page 12). These assertions ignore, as they must, the fact that there were two separate votes of the membership, both of which were decidedly in favor of the sale. Further, the Turner's assertion that three members were denied the right to vote is not supported by the record. One of those persons, Kenneth Hill, was not a member of Post 319 until May 2006 (R., Vol. XI, p. 1010). There is no evidence

presented by the Turners that the other two were members in good standing. The Turners present no evidence that even if these three persons were eligible to vote, that they would have voted against the sale. Even had that voted against the sale, since the vote was 20-9 in favor of selling, their votes would not have changed the outcome.

In challenging election results, the challenging party is required to plead and prove the irregularities that supposedly changed the election result. *Thomason v. Stout*, 267 Kan. 234, 978 P.2d 918 (1998). The Turners have completely failed that any purported irregularities would have changed the outcome.

In *Childress v. Lucky Jew Lead & Zinc Co.*, 134 Kan. 743, 8 P.2d 376 (1932), the Kansas Supreme Court held that;

> Where the president and secretary of a corporation execute a contract in behalf of the company, which is regular on its face and not shown to be outside of the regular business of the corporation, it is *prima facie* evidence that it was executed with authority, and those who deny the authority take upon themselves the burden of establishing their claim. That rule has been followed many times in Kansas.

Here, Commander Anderson and members of the Executive Committee signed the contract to sell the Post 319 meeting hall following two separate votes by the membership. The signatures of these officers is *prima facie* evidence that the contract was executed by them with proper authority. These defendants have, however, gone beyond that *prima facie* evidence of regularity and shown that the membership, which clearly had the authority to sell the meeting hall, voted overwhelmingly to so. The Turners have no evidence that these votes did not occur because there is none. That should be the end of the inquiry.

The Turners argue that there was "failure of consideration" by claiming that the

property was worth a lot more than $120,000.00. That argument overlooks the fact that the Shawnee County Appraiser had valued the property in that amount, and further ignores evidence that the parties agreed to **increase** the value when the county's appraised value increased during the process of negotiating the sales contract. The Turners rely upon opinions of people who were not owners of the property and who were not shown to have the qualifications as appraisers to determine the value of the property. They never presented any valuation other than the county value, which matched the sale price exactly. The only person who had any knowledge of real estate value, Verdell Bugg, was not asked what he thought the value of the building was. Robert Taylor testified that he thought Mr. Bugg believed the $120,000.00 was a "cheap price", but this was his hearsay statement about Mr. Bugg's opinion, and even if admissible, does not reveal Mr. Bugg's opinion as to what he thought the value should be (R., Vol. 13, p. 1227).

A contract will not fail for lack of consideration "unless the consideration is so disproportionate to value as to amount to fraud." *Shepard v. Dick*, 203 Kan. 164, 169, 453 P.2d 134 (1969). The appellate courts have long recognized that almost any benefit, however slight, conferred on the promisor may be sufficient consideration so long as the promisor would not have received that benefit but for the contract. Thus, "the legal sufficiency of a consideration" does not rest on "the comparative economic value of the consideration and of what is promised in return." *In re Estate of Shirk*, 186 Kan. 311, 321, 350 P.2d 1 (1960). A significant disparity in consideration may reflect a bad bargain, but it does not create a legally unenforceable one. The Turners have presented no value, other than the county's $120,000.00 to support their "failure of consideration" claim, and therefore, must lose on that

assertion.

Finally, the Turners argue that the contract is void because Commander Anderson was not physically and mentally competent to sign the contract, and that the signing Executive Committee members did so under "duress." Of course, they make these claims with no medical evidence showing any lack of competency on the part of Commander Anderson and only vague statements by Executive Committee Member Robert Taylor that he was "pressured" to sign. As noted in the Statement of Facts, Mr. Taylor was "pressured" because Mr. Pritchard, on behalf of Quality Contractors, told Mr. Taylor that he would withdraw from the contract if it weren't signed by the committee. First, that statement is not coercive but only a statement of fact – if Post 319 did not want to sign the contract, Mr. Pritchard wasn't going to waste any more time on it. Second, that statement by Mr. Taylor shows that he was concerned that Post 319 would lose the sale of he did not sign. Finally, none of this matters, again, because the membership twice voted to sell the property, and therefore, whatever evidence the Turners offer on these assertions is not relevant.

**C. The Turners have no lien against the sale proceeds under K.S.A. 7-108.**

1. Standard of Review.

A question of statutory interpretation is a question of law that is subject to unlimited review. Well-known principles of statutory interpretation apply: when reviewing courts are called upon to interpret a statute, they first attempt to give effect to the intent of the legislature as expressed through the language enacted. When a statute is plain and unambiguous, they do not speculate as to the legislative intent behind it and will not read the statute to add something not readily found in it. They need not resort to statutory

construction. It is only if the statute's language or text is unclear or ambiguous that they move to the next analytical step, applying canons of construction or relying on legislative history construing the statute to effect the legislature's intent. *143rd St. Investors, L.L.C. v. Bd. of County Comm'rs*, 292 Kan. 690, 259 P.3d 644 (2011).

2. The Turners have no claim or lien against the sale proceeds.

K.S.A. 7-108 provides that:

> An attorney has a lien for a general balance of compensation upon any papers of his or her client which have come into the attorney's possession in the course of his or her professional employment, **upon money due to the client and in the attorney's hands belonging to the client, and upon money due to the client and in the hands of the adverse party**, in any matter, action or proceeding in which the attorney was employed, from the time of giving notice of the lien to the party; such notice must be in writing and may be served in the same manners as a summons, and upon any person, office or agent upon whom a summons under the laws of this state may be served, and may also be served upon a regularly employed salaried attorney of the party (Emphasis added).

First, this is not money due the Turner's client, because they no longer have a client. The Kansas Department of the American Legion is the successor to Post 319, and that entity is not the Turner's client. Second, the money is not in the hands of an adverse party. It is in the hands of CoreFirst Bank, on order of the District Court. CoreFirst Bank is not a party to this case.

Our Supreme Court has stated that when a statute is plain and unambiguous, courts must give effect to its express language rather than determine what the law should or should not be. Courts will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statutory language is clear, no need exists to resort

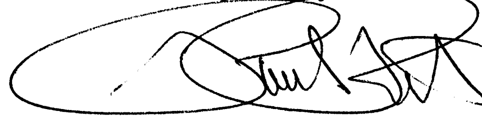
to statutory construction. *Graham v. Dokter Trucking Group*, 284 Kan. 547, 554, 161 P.3d 695 (2007); *Bergstrom v. Spears Mfg. Co.*, 289 Kan. 605, 608, 214 P.3d 676 (2009). The cited statute is plain and unambiguous. The money is not due their client. It is due the Kansas Department. The money is not in their hands. It is in the hands of CoreFirst Bank. Under the statute, the Turners have no claim against the funs.

As the District Court correctly noted, the Turners through the seven year history of this case **opposed** the sale of Post 319's meeting lodge. For the Turners to now claim that they have "recovered" any money upon which their claimed contingent fee could attach is nothing more that chutzpah. The claim is totally without merit and should be summarily denied by this Court.

## V. CONCLUSION

The Turners have no standing to prosecute this appeal under the statute, K.S.A. 60-2103(a). The are not parties, and the party they formerly represented has long been defunct. Further, the District Court properly entered summary judgment against the Turner's former client, on all claims which were presented in the case. Finally, the Turners "notice of lien" is void and of no effect, because the have not met the requirements of K.S.A. 7-108, and moreover, have recovered nothing for their former client upon which any claimed lien could attach.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing Brief were deposited in the U.S. mail on October 15, 2014, postage prepaid, addressed to:

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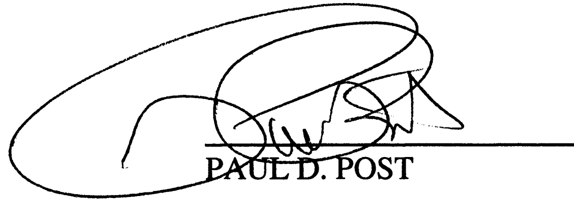

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