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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 In re:

8 DONALD G. HUBER,

9 Debtor,

CASE NO. 14-5083BHS

ORDER AFFIRMING  
BANKRUPTCY COURT

10  
11 MARK D. WALDRON, Trustee for the  
12 estate of Donald G. Huber,

13 Plaintiff,

14 v.

15 DONALD G. HUBER, et al.,

16 Defendants.

17 This matter comes before the Court on Appellants Gary and Constance Dreyer and  
18 the Dreyer Family Trust's (collectively, the "Dreyers") Appeal (Dkt. 1). The Court has  
19 considered the pleadings filed in support of and in opposition to the appeal and the  
20 remainder of the file and hereby affirms the bankruptcy court for the reasons stated  
21 herein.  
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1 **I. PROCEDURAL HISTORY**

2 On January 28, 2014, the Dreyers appealed a summary judgment ruling issued by  
3 the Honorable Paul B. Snyder, United States Bankruptcy Judge. Dkt. 1. On March 9,  
4 2014, the Dreyers filed the opening brief. Dkt. 9. On May 9, 2014, Appellee Mark  
5 Waldron, trustee for the estate of Donald G. Huber (“Trustee”), responded. Dkt. 10. On  
6 May 23, 2014, the Dreyers replied. Dkt. 11.

7 **II. FACTUAL BACKGROUND**

8 The relevant facts are not disputed. In this adversary proceeding, the Trustee  
9 sought to recover various assets Mr. Huber had transferred to a trust, the Huber Family  
10 Trust, pursuant to Bankruptcy Code § 548 (fraudulent transfers). Among these assets  
11 was DGH, LLC (“DGH”), which was the majority owner (85%) of two limited liability  
12 companies, Kimball Center LLC (“Kimball”) and Pioneer Plaza LLC (“Pioneer”). The  
13 Dreyers are minority owners (15%) of Kimball and Pioneer. The issue on appeal is  
14 whether, when the Trustee recovered DGH, it transferred the ownership to the Trustee  
15 pursuant to the Limited Liability Company Agreements of Kimball and Pioneer  
16 (“Operating Agreements”). If it was a transfer as defined in the Operating Agreements,  
17 then the Trustee was an assignee and lost DGH’s voting rights in Kimball and Pioneer.  
18 On the other hand, the Trustee would maintain DGH’s voting rights in Kimball and  
19 Pioneer. Judge Snyder concluded that the Trustee maintained the membership status of  
20 DGH along with voting rights in Kimball and Pioneer.

1 **III. DISCUSSION**

2 **A. Standard**

3 The Court reviews the bankruptcy court’s legal conclusions *de novo* and its factual  
4 determinations for clear error. *Neilson v. United States (In re Olshan)*, 356 F.3d 1078,  
5 1083 (9th Cir. 2004). In this case, the parties agree that relevant facts are undisputed and,  
6 therefore, the Court will review the disputed issue of law *de novo*.

7 **B. Restrictions on Transfer**

8 In this case, the Court concludes that Judge Snyder’s decision was correct.  
9 Essentially, if Kimball or Pioneer intended to restrict the ownership or membership status  
10 of DGH, then they could have written such a restriction into the Operating Agreements.  
11 *U.S. Cellular Inv. Co. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 936 (9th Cir. 2002) (“Had the  
12 partners intended that the sale of stock of a corporate partner be restricted, such intent  
13 could easily have been stated.”). Because the Operating Agreements are silent on this  
14 issue, the Court declines to rewrite the Operating Agreements to include the Dreyers’  
15 desired restrictions. Moreover, the Court declines to dissent from the majority rule that  
16 respects the corporate status of the upstream entity, DGH in this case, regardless of  
17 whether DGH is a single-member LLC or a multi-member LLC. An exception may be  
18 relevant in the event of impropriety, such as a subterfuge or a shell corporation. *Id.* at  
19 937 (“Had the stock sale in this case been a sale to or by a shell entity, we would have a  
20 very different case.”). The Dreyers, however, do not assert any allegations of  
21 impropriety in this case. In summary, the Operating Agreements restrict the transfer of  
22 DGH’s interest in Kimball and Pioneer and do not restrict any member or ownership

1 interest in DGH. Therefore, any transfer in the ownership of DGH, in this case to the  
2 Trustee, does not implicate the Operating Agreements of Kimball and Pioneer, and the  
3 bankruptcy court's decision is affirmed.

4 **IV. ORDER**

5 Therefore, it is hereby **ORDERED** that the bankruptcy court decision is  
6 **AFFIRMED**.

7 Dated this 10th day of July, 2014.

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10 BENJAMIN H. SETTLE  
United States District Judge