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Guenther v. Ryerson Appellant's Brief Dckt. 46258

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH GUENTHER, an individual, **Plaintiff/Respondent/Cross-Appellant,** **v.** **MICHELLE RYERSON, an individual,** **Defendant/Appellant/Cross-Respondent.**	**Supreme Court No. 46258-2018** **Ada Co. Case No. CV01-17-11537**

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District for Ada County

The Honorable Lynn Norton, District Judge, presiding.

James F. Jacobson
Residing at Boise, Idaho, for Appellant.

Bradley J. Dixon
Residing at Boise, Idaho, for Respondent.

TABLE OF CONTENTS

I. **STATEMENT OF THE CASE** 3

a. **NATURE OF THE CASE** 3

b. **STATEMENTS OF FACTS AND COURSE OF PROCEEDINGS** 3

II. **ISSUES PRESENTED UPON APPEAL** 14

III. **ARGUMENT** 15

a. Appellate Standard Of Review 15

b. The District Court Erred In Its Application Of The Idaho Uniform Partnership Act And The Long-Standing General Rule Favoring Liquidation In Its Amended Findings Of Fact, Conclusions Of Law, Its Conclusions Of Law, Memorandum Decision Reconsidering Liquidation, And Its Memorandum Decision Granting Summary Judgment. 16

c. The District Court Erred In Its Amended Findings Of Fact, Conclusions Of Law, By Ordering The Buyout Of Appellant's Interest In The Partnership Property. ... 18

d. The District Court Erred In Granting Summary Judgment Regarding The Valuation Of The Partnership Real Property And The Equity Therein As Of The Date Of Dissolution. 27

e. The District Court Erred In Its Amended Findings Of Fact, Conclusions Of Law In Failing To Determine That Appellant Owns 50 Percent Of The Partnership And Is Thus Entitled To 50 Percent Of Any Remaining Surplus After Creditor Obligations And Partner Contributions Are Satisfied. 34

f. The District Court Erred In Its Amended Findings Of Fact, Conclusions Of Law By Fixing The Sale Price Of The Partnership Property If Sold To Appellant Or If Sold On The Open Market, And By Attributing 100 Percent Of Any Gain In Equity After The Date Of Dissolution To Respondent. 37

IV. **CONCLUSION** 41

TABLE OF CASES AND AUTHORITIES

Page(s)

CASES

Arnold v. Burgess,
113 Idaho 786, 747 P.2d 1315 (Ct.App.1987) ..... Passim
BHA Investments, Inc. v. State,
138 Idaho 348, 63 P.3d 474 (2003) 17
Campbell v. Kildew,
141 Idaho 640, 115 P.3d 731 (2005) 17
Fragnella v. Petrovitch 18
Id.,
133 Idaho at 792, 747 P.2d at 1321 22
Kootenai Elec. Coop. v. Washington Water Power Co. 17
Mays v. Davis,
132 Idaho 73, 967 P.2d 275 (1998) 18, 41
Meridian Irrigation Dist. v. Washington Fed. Sav., 135 Idaho 518, 521, 20 P.3d 702, 705 (2001) 17
Rankin v. Caldwell,
15 Idaho 625 ..... Passim
Riley v. Larson,
91 Idaho 831, 432 P.2d 775 (1967) 7, 29
Sales v. Peabody,
157 Idaho 195, 335 P.3d 40 (2014) 17
Steele v. Spokesman Review 17
Warzburg v. Kootenai County,
155 Idaho 236, 308 P.3d 936 (Ct.App.2013) 35
Weaver v. Village of Bancroft,
92 Idaho 189, 439 P.2d 697 (1968) 7, 29, 32, 34

STATUTES

§ 30-23-703(c) ..... Passim
§§ 30-23-806(b) and (e) 19

RULES

Bank). R., p. 483-488-488 7
Bank). R., p. 483-488-488 31

STATEMENT OF THE CASE

NATURE OF THE CASE

This is a partnership dissolution case which primary deals with the application and distribution of the partnership's real property. The two partners were formally involved in a romantic relationship and when the relationship ended, the business partnership dissolved as well. Because the parties had no written partnership agreement, the Idaho Uniform Partnership Act, Idaho Code Section 30-23-101 *et. seq.* governs the winding up of the partnership business. It is Appellant's contention on appeal that the District Court failed to follow the dictates of the UPA and the long established general rule favoring liquidation by the following: (1) ordering a buyout of Appellant's interest in the partnership property, (2) granting summary judgment regarding the value of the partnership property and the equity therein, (3) failing to determine that Appellant owns 50 percent of the partnership and thus is entitled to 50 percent of any remaining surplus after creditor obligations and partner contributions are satisfied, (4) fixing the sale price of the partnership property if it sold to Appellant and attributing 100 percent of any gain in equity after the dissolution to Respondent, and (5) fixing the sale price of the partnership property if it sold on the open market.

Idaho law does not provide for the remedy ordered by the District Court in its Amended Findings of Fact, Conclusions of Law.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

In 2009, Plaintiff/Respondent/Cross-Appellant Joseph Guenther and Defendant/Appellant/Cross-Respondent Michelle Ryerson formed a partnership, West Foothills TIC, for the specific purpose of acquiring and operating real property for residential and investment purposes. R., p. 782. The parties did not have a written

partnership agreement but agreed that the partnership ownership percentage would be a 50/50 split. R., p. 528; 782. On or about June 12, 2009, the parties jointly purchased land located at 8571 N. Lost Sage Lane, Boise, Idaho. R., p. 782. Subsequently, the parties obtained a construction loan, built a home on the property and developed portions of the property to operate as a vineyard. *Id.* The development and operation of the vineyard was intended only to be an investment and not a primary source of income and livelihood for the partners. *Id.* The primary sources of income for the partners was their full-time day jobs. *Id.* The parties' partnership dissolved on March 26, 2017. R., p. 780.

On June 20, 2017, Mr. Guenther initiated this action, and on June 21, 2017, he filed his Amended Complaint. R., p. 60-106. Mr. Guenther's Amended Complaint asserts causes of action against Ms. Ryerson for dissolution of the parties' partnership, unjust enrichment, promissory estoppel and declaratory judgment/quiet title. *Id.* On June 29, 2017, Ms. Ryerson filed an Answer and Counterclaim, seeking judicial dissolution of the parties' partnership as well. R., p. 107-118.

The parties agree that the Idaho Uniform Partnership Act, Idaho Code Section 30-23-101 *et seq.* ("UPA") governs the dissolution and winding up of their partnership's business.

Early on in the litigation, as is very common in partnership dissolution matters, Ms. Ryerson sought liquidation of the partnership assets in order to settle the partnership affairs pursuant to the UPA. R., p. 146-154. Ms. Ryerson filed a Motion to Liquidate Partnership Assets by Sale on October 19, 2017. *Id.* Mr. Guenther opposed the motion and argued that he should be allowed to buyout Ms. Ryerson's interest based on *Arnold v. Burgess*, 113 Idaho 786, 791, 747 P.2d 1315, 1320 (Ct.App.1987), because he wanted to remain living on the property and supposedly believed a sale would reduce the available equity. R., p. 159-171. Ms. Ryerson

argued that liquidation was necessary because the parties disagreed significantly as to the value of the property and the equity therein. R., p. 229-240.

In the District Court's *Memorandum Decision and Order Granting Motion to Liquidate*, the District Court set forth in detail the long-standing general rule favoring liquidation, as well as Idaho's statutory framework for applying partnership assets to discharge the debts and obligations of the partnership. R., p. 371. The District Court provided that while the *Arnold* Court found a buyout was reasonable in that particular case, "*Arnold* is distinctive from the facts of this case because liquidating was not a course of action sought by any of the parties in *Arnold*." R., p. 373. The District Court further provided: "This Court does not have the power to direct a partner to assume all debts and cannot determine the rights of any non-party creditor." R., p. 374. Finally, the District Court held that "[d]espite the possibility that Ryerson may receive less money overall if the Property is liquidated, Ryerson has the right to move for liquidation as a means to discharge the partnership liabilities." R., p. 375.

On January 2, 2018, Mr. Guenther filed a *Motion for Summary Judgment*. R., p. 287-365. Included in the motion was Mr. Guenther's argument that there was no material issue of fact concerning the value and equity in the parties' property, because he had obtained an appraisal that valued the property at $600,000. R., p. 358-359. Mr. Guenther argued that the property's value was $600,000 and the available equity was $144,789.92 given that the parties owed a debt of $455,210.08 on the property. *Id.* Then, on January 25, 2018, Mr. Guenther filed a *Motion to Reconsider Memorandum Decision and Order Granting Motion to Liquidate*. R., p. 378-398. Mr. Guenther argued that the District Court should grant reconsideration because a sale would reduce the available equity and because Plaintiff had obtained approval from Zion's Bank, the parties' creditor, to refinance the Property solely in Plaintiff's name. R., p. 385-388.

On January 18, 2018, Ms. Ryerson filed her *Memorandum in Opposition to Joseph Guenther's Motion for Summary Judgment* along with her declaration. R., p. 399-459. Ms. Ryerson reiterated in her declaration that there was significant disagreement between the parties as to the valuation and equity of the partnership property and that it was her opinion as an owner of the property that the property was worth significantly more than the appraisal Mr. Guenther obtained. R., p. 407 ¶ 12. On January 25, 2018, Ms. Ryerson also filed her *Memorandum in Opposition to Plaintiff's Motion to Reconsider* and argued that the District Court had correctly interpreted *Arnold*. R., 460-472.

On February 16, 2018, the District Court issued a *Memorandum Decision and Order Granting in Part Plaintiff's Motion for Summary Judgment and Granting Plaintiff's Motion to Reconsider*. R., 477-494. As to the Motion for Summary Judgment, the District Court ruled that there was not an issue of fact regarding the valuation of the property and the equity therein and that as of the dissolution in March 2017: (1) the value of the property was $600,000 and (2) there was $144,789.92 of equity in the property (the difference between the property value and partnership's mortgage debt owed to Zions Bank). R., p. 483-488. This ruling on summary judgment was a misapplication of Idaho law and is an issue on appeal as it is settled law in Idaho that the owner of real property is a competent witness to its value and is presumed to be familiar with its value by reason of inquiries, comparisons, purchases and sales. *See Weaver v. Village of Bancroft*, 92 Idaho 189, 439 P.2d 697 (1968), citing *Riley v. Larson*, 91 Idaho 831, 432 P.2d 775 (1967); *Rankin v. Caldwell*, 15 Idaho 625, 99 P.108 (1908).

As to the granting of Mr. Guenther's Motion to Reconsider, the District Court concluded that it could order a buyout of Ms. Ryerson's interest based on I.C. § 30-23-703(c), (a statute introduced by the District Court) and the new evidence presented by Mr. Guenther

– a supposed approval letter from Zion's Bank to refinance the property solely in Mr. Guenther's name. R., p. 491-492. I.C. §30-23-703(c) provides:

> By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for a debt, obligation, or other liability of the partnership.

I.C. § 30-23-703(c). R., p.490-493. The District Court held: "Given the new evidence that the third party creditor will completely release the Defendant of any liability on the mortgage and that evidence has been provided that economic waste is a factor in this case, the Court finds that the Plaintiff's refinance of the Property solely in his name and the release of any mortgage liability for the property will satisfy the requirements set forth by Idaho law regarding partnership dissolution and wind up." R., p. 492.

On March 1, 2018, Ms. Ryerson filed a *Motion for Reconsideration of Memorandum Decision and Order Granting in Part Plaintiff's Motion for Summary Judgment and Granting Plaintiff's Motion to Reconsider*. R., p. 504-537. On March 29, 2018, the Court granted Ms. Ryerson's Motion for Reconsideration from the bench related to its previous decision on liquidation and determined Plaintiff would not be permitted to buy out Defendant's interest in the real property, a position contrary to Idaho statute, since Ms. Ryerson had not consented to such liquidation as would be required under I.C. § 30-23-703(c). TR., March 29, 2018: p. 84-88. The District Court held that liquidation of the partnership would require the sale of the real property on the open market. *Id.* In addition, the District Court held that the sale would "provide an actual accounting of the value of the property for the Court's consideration in the winding up." *Id.*, p. 88. Furthermore, the Court held that liquidation is required under Idaho law in spite of possible economic waste. *Id.*

A court trial was held on April 2 and 3, 2018, during which both parties testified regarding their capital and sweat equity contributions to the partnership. TR., April 2, 2018: p. 31-212. Ms. Ryerson further testified regarding the parties' ownership interests in the partnership and specifically her 50 percent ownership in the partnership and right to 50 percent of the partnership profits or remaining surplus if any remain after all liability and partner contributions are paid, as prescribed by I.C. § 23-806. *Id.*, p. 183-184. Mr. Guenther entered no evidence contradicting Ms. Ryerson's assertion of a 50/50 ownership split and conceded that Ms. Ryerson would be entitled to 50 percent of the profits. *Id.*, p. 141-145.

The District Court entered its *Findings of Fact, Conclusions of Law* on May 14, 2018. R., p. 668-693. Included in the *Findings of Fact, Conclusions of Law* was an order that each of the parties make a specific cash contribution to satisfy the outstanding mortgage debt attached to the partnership Property. R., p. 691. On May 25, 2018, Mr. Guenther filed a *Motion to Clarify*. R., 723-742. Mr. Guenther argued that the District Court's Order was not consistent with Idaho Code § 30-23-806, which only required contributions from partners "if the partnership's assets are insufficient to satisfy all its obligations." R., p. 725-726. Mr. Guenther argued that the partnership's property was sufficient to satisfy the creditor obligations here. *Id.* Mr. Guenther then argued again for reconsideration of the District Court's order to sell the property. R., p. 726-729. Mr. Guenther argued that he should be allowed to buyout Ms. Ryerson's interest in the partnership and represented to the District Court that he had obtained a new approval for a $580,000 loan from Zion's Bank to refinance the property solely in his name. *Id.*

Ms. Ryerson argued the District Court should clarify its requirement that the parties make cash contributions to satisfy the mortgage debt, (which amounts ordered by the District Court did

not add up to satisfy the mortgage debt) but continued to assert that the property should be sold on the open market pursuant to Idaho law. R., p. 746-750.

On July 2, 2018, the District Court entered its *Amended Findings of Fact, Conclusion of Law*. R., p. 779-808. The District Court ordered as follows:

> I. Because Guenther has made the largest share of labor and financial contributions to the partnership, and maintained the property at his own expense after March 26, 2017, if he wants to buy the property from the partnership, in order to satisfy the outstanding mortgage to Zions Bank, Joseph Guenther may purchase the real property (located at 8571 N. Lost Sage Lane, Boise Idaho 83714, including approximately 21.65 acres, conveyed in a 2009 Warranty Deed to "Joseph Guenther and Michelle G. Ryerson, unmarried persons") from the partnership **by** July 31, 2018 by a refinance with Zions Bank that completely terminates the Deed of Trust including Ryerson, then pays $34,749.58 in cash proceeds at the closing to the trust account of Jacobson & Jacobson, PLLC, for distribution in the winding up, and with all closing costs paid at Guenther's expense.
>
> 9. If Guenther is unable or unwilling to buy the real property as ordered in #8 above, then after July 31, 2018, Ryerson may buy the real property (located at 8571 N. Lost Sage Lane, Boise Idaho 83714, including approximately 21.65 acres, conveyed in a 2009 Warranty Deed to "Joseph Guenther and Michelle G. Ryerson, unmarried persons") from the partnership in order to satisfy the outstanding mortgage to Zions Bank for the property value in the appraisal conducted for the Guenther sale. Michelle Ryerson may buy the real property by August 31, 2018 for cash or by refinance that completely terminates the Deed of Trust including Guenther, with all closing costs paid at Ryerson's expense, and then pays $110,040.34 and any increase in value between $600,000.00 and the appraised value at sale in cash proceeds at closing to the trust account of Givens Pursley LLP for distribution in the winding up. The increase in value between $600,000 and the appraised value will be held in escrow. The Court will then require an accounting of mortgage, utility, maintenance, taxes, and labor costs incurred by Guenther for the maintenance of the partnership property between March 26, 2017 and August 31, 2018, and the Court's determination of fees and costs for this litigation has been made. Ryerson must close or file with the Court a notice that she does not intend to purchase the real property by August 31, 2018.
>
> 13. If neither Guenther or Ryerson purchases the real property as directed in #8 or #9 above by August 31, 2018, then the property is to be listed for sale on the open market with the price set as the real property value in the appraisal Guenther obtained in his efforts to refinance the property by July 31, 2018 plus six percent of that value.

R., p. 804-805 (emphasis added). Thus, the Court specifically ordered that Mr. Guenther could buyout Ms. Ryerson's interest by July 31, 2018, through a refinance with Zion's Bank, and if he was unable to do so, then after July 31, 2018, Ms. Ryerson could purchase the property. If Ms.

Ryerson purchased the property, she had to purchase it for the value in the appraisal conducted for the Guenther sale ($725,000) and any increase in value between $600,000 and the newer appraisal at the sale in cash proceeds would go to Guenther. And if neither party purchased the property by August 31, 2018, then the property was to be listed for sale on the open market with the price set at the value in the new appraisal Guenther obtained for the sale ($725,000).

On July 2, 2018, the District Court also entered its *Clarification of Conclusions of Law* wherein it explained its decision to allow Mr. Guenther the first opportunity to purchase the property and buyout Ms. Ryerson's interest. R., p. 761-778. The District Court provided the following:

> While this Court does not have the power to direct a partner to assume all debts and cannot determine the rights of any non-party creditor, Idaho Code § 30-23-703(c) provides a means for the partnership to transfer liabilities to any remaining partner in order to ensure a dissociated partner is not required to repay debts obtained during the partnership. While the Court could not force Guenther to buyout the property, Guenther is consenting to such arrangement. Therefore, the Court has authority to transfer interest, even absent the dissociated partner's consent, to avoid waste of partnership assets and conduct a judicial winding up after an order of dissolution.

R., p. 774. Thus, the District Court based its decision to allow Mr. Guenther to buyout Ms. Ryerson's interest upon I.C. § 30-23-703(c) and Mr. Guenther's supposed agreement with the partnership's third-party creditor – Zion's Bank.

On July 30, 2018, Mr. Guenther filed *Plaintiff's Motion for Amended Order for Sale of Property*. R., p. 863-880. Contrary to Mr. Guenther's previous representations, Zion's Bank refused to refinance the mortgage in Mr. Guenther's name and to remove Ms. Ryerson's name from liability under the mortgage. R., p. 864-865. To be clear, Zion's Bank did not need a few more days to complete the deal, it refused the loan. Mr. Guenther's motion sought additional time to seek financing from another lender. R., p. 865-866. On August 8, 2018, a hearing

was held and the District Court denied Guenther's Motion from the bench and explained that to allow such would have completely contradicted the District Court's Order, the record of the case, and Idaho law. TR., August 8, 2018: p. 12-16. The District Court further explained that its specification of Zion's Bank as the lender for Mr. Guenther's refinance was not a "typographical error" or inconsequential, but purposeful based on Zion's Bank being the third-party creditor for the partnership mortgage and Plaintiff's multiple representations to the District Court throughout the litigation that he had approval from Zion's Bank to refinance the current mortgage. *Id.*, p. 14-16. The District Court stressed that in each of its previous decisions regarding the partnership property, Mr. Guenther's representation that he had approval from Zion's Bank, the third-party creditor of the partnership, to refinance the current mortgage was material to the District Court's decisions. *Id.* Thus, since Mr. Guenther did not purchase the property by July 31, 2018, Ms. Ryerson could purchase the property by August 31, 2018, but for the amount of Guenther's February 2018 appraisal and any and all increases in equity since March 26, 2017 were to be directed to Guenther. *Id.*, p. 15. If neither purchased the property pursuant to the District Court's order, the property was to be sold on the open market at a sales price fixed by the District Court. *Id.*, p. 15-16.

On August 14, 2018, Mr. Guenther filed a *Motion to Reconsider Decision Denying Plaintiff's Motion for Amended Order for Sale of Property.* R., p. 908-918. Mr. Guenther argued that an agreement with the partnership's creditor was unnecessary and the Court should not have applied Idaho Code Section 30-23-703, because the statute concerns the disassociation of a partner and not a dissolution of a partnership. Ms. Ryerson argued that if 30-23-703 is not applicable, Guenther has no legal basis for his buyout and the partnership property should be sold pursuant to Idaho's statutory framework and the long-standing general rule favoring liquidation,

as set forth in *Arnold.* Ms. Ryerson further argued that the Court correctly determined that amending its order as Guenther requested would significantly contradict the District Court's order, the record of the case and Idaho law. On September 5, 2018, at the hearing, the District Court denied from the bench Mr. Guenther's motion and ordered the parties to proceed with selling the property as set forth in the *Amended Findings of Fact, Conclusions of Law* (TR., September 5, 2018: p. 13-18), which provides in pertinent part:

> If neither Guenther or Ryerson purchases the real property as directed in #8 or #9 above, then the real property located at 8571 N. Lost Sage Lane, Boise Idaho 83714, including approximately 21.65 acres, conveyed in a 2009 Warranty Deed to "Joseph Guenther and Michelle G. Ryerson, unmarried persons," is to be listed for sale as follows:
>
> a. Guenther is to choose the names of five realtors by August 15, 2018.
>
> b. Ryerson is to select one of the realtors from that list as the listing agent by August 31, 2018.
>
> c. The property is to be listed for sale with the price set as the real property value in the appraisal Guenther obtained for the 2018 Zions Bank refinance plus six percent of that value.
>
> d. The parties must enter into a sales contract with that listing agent by September 15, 2018. This sales contract is entered by Guenther and Ryerson as partners for purposes of winding up the partnership.
>
> e. The price shall be dropped at the realtor's discretion with notice provided to the court of each sales price reduction.
>
> f. The court reserves jurisdiction over the sale.
>
> g. All closing costs and liabilities to Zions Bank are to be paid at closing from proceeds of the sale, with the balance of the proceeds being held in escrow for distribution by further order of the court in an accounting of expenses during the time of the sale before winding up.

R., p. 805.

On August 13, 2018, Ms. Ryerson filed a Notice of Appeal. R., p. 900-907. Then on August 22, 2018, Ms. Ryerson filed an Amended Notice of Appeal. R., p. 919-928. Ms. Ryerson issues on appeal include, but are not limited to whether the District Court erred in: 1) granting

Plaintiff's Motion for Summary Judgment regarding the valuation of the partnership real property and equity therein; 2) ordering the buyout of Defendant's interest in the partnership real property as opposed to liquidation by sale as required by I.C. § 30-23-806 and Idaho case law; 3) fixing the price of the sale of the partnership real property (once the sale was ordered) at $725,000 plus six percent as opposed to letting the market determine the price; 4) failing to determine that Defendant is entitled to 50 percent of the partnership profits or remaining surplus if funds remain after all liability and contributions are paid as proscribed by I.C. § 30-23-806; 5) determining that the respective percentages of the parties ownership interest in the partnership were based off a ratio of the parties capital contributions as determined by the District Court; and 6) dismissing Defendant's Counterclaim. *Id.*

On September 4, 2018, Mr. Guenther filed a Notice of Cross-Appeal. R., p. 929-932. Then on September 17, 2018, Mr. Guenther filed an Amended Notice of Cross-Appeal. R., p. 945-949. Mr. Guenther's issues on appeal include whether the District Court erred in not granting Guenther's *Motion to Amend Order of Sale of Property*, and in ordering the sale of the partnership real property on the open market.

On October 3, 2018 the parties selected a realtor as prescribed by the District Court's Amended Order. *See Declaration of Counsel in Opposition to Motion to Stay Sale of Property Pending Appeal* ("*Declaration*"), ¶ 10, Ex. I, p. 2. In subsequent emails between counsel for the parties and the realtor, the realtor suggested that the parties obtain a new appraisal and that the parties enter into a written agreement regarding sale procedures to help in facilitating the sale given the parties history of litigation. *Id.*, at pp. 2-3. Mr. Guenther's counsel responded that an appraisal already existed and that the District Court had set the listing price. *Id.* On October 22, 2018, a conference call was held between counsel for the parties and the realtor. *Id.*, at p. 4. The realtor

suggested again obtaining a new appraisal on the property and taking actions to prepare to list the Property. *Id.*

On October 25, 2018, Mr. Guenther filed a Motion to Stay Sale of Property, requesting that the District Court stay the sale of the parties' property until resolution of the appeal before the Idaho Supreme Court. The District Court did not respond. On November 30, 2018, Plaintiff then filed a Motion to Stay Sale of Property Pending Appeal with the Idaho Supreme Court. This Court granted the stay on December 27, 2018.

ISSUES PRESENTED ON APPEAL

I. Whether the District Court erred in its application of the Idaho Uniform Partnership Act and the long-standing general rule favoring liquidation in its Amended Findings of Fact, Conclusions of Law, its Conclusions of Law, Memorandum Decision Reconsidering Liquidation, and its Memorandum Decision Granting Summary Judgment?

II. Whether the District Court erred in its Amended Findings of Fact, Conclusions of Law, by ordering the buyout of Appellant's interest in the partnership property?

III. Whether the District Court erred in granting summary judgment regarding the valuation of the partnership property and equity therein as of the date of dissolution?

IV. Whether the District Court erred in its Amended Findings of Fact, Conclusions of Law in failing to determine that Appellant owns 50 percent of the partnership and is thus entitled to 50 percent of any remaining surplus after creditor obligations and partner contributions are satisfied?

V. Whether the District Court erred in its Amended Findings of Fact, Conclusions of Law by fixing the sale price of the partnership property if sold to Appellant or if sold on the open market, and by attributing 100 percent of any gain in equity after the date of dissolution to Respondent.

ARGUMENT

A. APPELLATE STANDARD OF REVIEW

The Idaho Supreme Court exercises free review over the trial court's conclusions of law to determine if the trial court correctly stated the principles of law and if the legal conclusions are supported by the facts as found. *BHA Investments, Inc. v. State*, 138 Idaho 348, 63 P.3d 474, 477 (2003); *Campbell v. Kildew*, 141 Idaho 640, 646, 115 P.3d 731, 737 (2005). *Nampa & Meridian Irrigation Dist. v. Washington Fed. Sav.,* 135 Idaho 518, 521, 20 P.3d 702, 705 (2001). The Court is "free to draw its own conclusions from the facts presented." *Kootenai Elec. Coop. v. Washington Water Power Co.,* 127 Idaho 432, 435, 901 P.2d 1333, 1336 (1995).

As to the appropriate standard of a district court's ruling on a motion for summary judgment: "[a]ppellate review of a district court's ruling on a motion for summary judgment is the same as that required of the district judge when ruling on the motion." *Sales v. Peabody*, 157 Idaho 195, 199, 335 P.3d 40, 44 (2014); *Steele v. Spokesman Review*, 138 Idaho 249, 251, 61 P.3d 606, 608 (2002). Under I.R.C.P. 56(c), summary judgment is appropriate when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). The Idaho Supreme Court must "liberally construe . . . the record in favor of the party opposing the motion and draw . . . all reasonable inferences and conclusions in that party's favor." *Sales v. Peabody*, 157 Idaho at 199, 335 P.3d at 44. Summary judgment is not appropriate "[i]f the evidence is conflicting on material issues, or if reasonable minds could reach different conclusions." *Id.* "[W]hen the district court grants summary judgment and then denies a motion for reconsideration, 'this Court must determine whether the evidence presented a genuine issue of material fact to defeat summary judgment.' This means the Court reviews the district

court's denial of a motion for reconsideration de novo." *Id.*, quoting *Fragnella v. Petrovitch*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

B. THE DISTRICT COURT ERRED IN ITS APPLICATION OF THE IDAHO UNIFORM PARTNERSHIP ACT AND THE LONG-STANDING GENERAL RULE FAVORING LIQUIDATION IN ITS AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, ITS CONCLUSIONS OF LAW, MEMORANDUM DECISION RECONSIDERING LIQUIDATION, AND ITS MEMORANDUM DECISION GRANTING SUMMARY JUDGMENT.

The Idaho Uniform Partnership Act, Idaho Code Section 30-23-101 et seq., governs the winding up of a partnership's business following dissolution and provides, "A partnership is dissolved, and its business must be wound up [when, i]n a partnership at will, the partnership knows or has notice of a person's express will to withdraw as a partner." I.C. § 30-23-801(a)(1). Even after a partnership is dissolved, the partnership continues for the purpose of winding up its business. I.C. § 30-23-802(a). "In winding up its business, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including the partners that are creditors." I.C. § 30-23-806(a). "[O]rdinarily a trial court will wind up a partnership by ordering liquidation of the assets and payment of any partnership debts." *Arnold v. Burgess*, 113 Idaho 786, 792, 47 P.2d 1315, 1321 (Ct. App. 1987); *see also Mays v. Davis*, 132 Idaho 73, 74, 967 P.2d 275, 277 (1998).

Idaho Code §§ 30-23-806(b) and (e) address disposition of assets when winding up after the discharge of partnership obligations to creditors, stating:

> (b) After a partnership complies with subsection (a) of this section, any surplus must be distributed in the following order . . .
>
> (1) To each person owning a transferable interest that reflects contributions made and not previously retuned, an amount equal to the value of the unreturned contributions; and
>
> (2) Among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership . . .

(e) If a partnership does not have sufficient surplus to comply with subsection (b)(1) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

I.C. §§ 30-23-806(b) and (e).

In the present case, the District Court failed to follow the above statutory framework and the long-standing general rule favoring liquidation. Pursuant to the above, the District Court should have done the following: (1) ordered the sale and liquidation of the partnership property with the sale price being based on the fair market value of the property; (2) ordered that the proceeds from the sale first be applied to discharge partnership obligations to creditors; (3) if any surplus remained, determined the unreturned contributions of the partners and ordered the payment of such; and (4) if any surplus still remained, determined the respective rights of the partner's to share in distributions prior to the dissolution (in other words, their ownership percentages) and ordered the remaining surplus divided according to such ownership percentages.

Instead, the District Court: (1) ordered a buyout of Appellant's interest in the partnership property; (2) granted summary judgment regarding the value of the partnership property and the equity therein at the time of dissolution and then based Appellant's interest in the property based off this number; (3) failed to determine that Appellant owns 50 percent of the partnership and thus is entitled to 50 percent of any remaining surplus after creditor obligations and partner contributions are satisfied; (4) fixed the sale price of the partnership property if it was sold to Appellant and attributied 100 percent of any gain in equity after the dissolution to Respondent; and (5) fixed the sale price of the partnership property if it sold on the open market.

Clearly the District Court acted beyond its mandate under the Idaho Uniform Partnership Act. As will be shown in detail below, Idaho law does not support the remedy sought by Mr.

Guenther nor the District Court's order in its *Amended Findings of Fact, Conclusions of Law*, its *Clarification of Conclusions of Law, Memorandum Decision Reconsidering Liquidation,* nor its *Memorandum Decision Granting Summary Judgment.*

C. THE DISTRICT COURT ERRED IN ITS AMENDED FINDINGS OF FACT, CONSLUSIONS OF LAW, BY ORDERING THE BUYOUT OF APPELLANT'S INTEREST IN THE PARTNERSHIP PROPERTY.

Since the dissolution of the parties' partnership, Appellant Ryerson has sought the simple liquidation and sale of the partnership property pursuant to Idaho's statutory framework and the long-standing general rule favoring liquidation, so that the parties may obtain the best possible return on their investment, be discharged of all liability under the current mortgage and effect a full and complete accounting and windup of the partnership's business. In contrast, Mr. Guenther has maintained throughout the litigation that he is somehow entitled to retain the partnership real property and that an alternative form of distribution, i.e., a buyout of Ms. Ryersoner's interest, should be approved and ordered. While the District Court initially and correctly ordered the liquidation of the partnership property (R., p. 366-377), the District Court flip-flopped on the decision multiple times before it ultimately ordered the buyout based on misinformation. *See* R., p. 779-808; and TR., August 8, 2018: p. 12-16. In the District Court's *Amended Findings of Fact, Conclusions of Law*, the District Court erroneously ordered the forced buyout of Ms. Ryerson's interest, capped the value of the property which significantly limited the available equity to distribute, and ordered that Ms. Ryerson be paid only a pro-rata share of her contributions from the limited equity pool.

The Court specifically ordered in part the following regarding the buyout:

> 8. Because Guenther has made the largest share of labor and financial contributions to the partnership, and maintained the property at his own expense after March 26, 2017, if he wants to buy the property from the partnership, in order to satisfy the outstanding mortgage to

Zions Bank, Joseph Guenther may purchase the real property (located at 8571 N. Lost Sage Lane, Boise Idaho 83714, including approximately 21.65 acres, conveyed in a 2009 Warranty Deed to "Joseph Guenther and Michelle G. Ryerson, unmarried persons") from the partnership **by** July 31, 2018 by a refinance with Zions Bank that completely terminates the Deed of Trust including Ryerson, then pays $34,749.58 in cash proceeds at the closing to the trust account of Jacobson & Jacobson, PLLC, for distribution in the winding up, and with all closing costs paid at Guenther's expense.

9. If Guenther is unable or unwilling to buy the real property as ordered in #8 above, then after July 31, 2018, Ryerson may buy the real property (located at 8571 N. Lost Sage Lane, Boise Idaho 83714, including approximately 21.65 acres, conveyed in a 2009 Warranty Deed to "Joseph Guenther and Michelle G. Ryerson, unmarried persons") from the partnership in order to satisfy the outstanding mortgage to Zions Bank for the property value in the appraisal conducted for the Guenther sale. Michelle Ryerson may buy the real property by August 31, 2018 for cash or by refinance that completely terminates the Deed of Trust including Guenther, with all closing costs paid at Ryerson's expense, and then pays $110,040.34 and any increase in value between $600,000.00 and the appraised value at sale in cash proceeds at closing to the trust account of Givens Pursley LLP for distribution in the winding up. The increase in value between $600,000 and the appraised value will be held in escrow. The Court will then require an accounting of mortgage, utility, maintenance, taxes, and labor costs incurred by Guenther for the maintenance of the partnership property between March 26, 2017 and August 31, 2018, and the Court's determination of fees and costs for this litigation has been made. Ryerson must close or file with the Court a notice that she does not intend to purchase the real property by August 31, 2018.

13. If neither Guenther or Ryerson purchases the real property as directed in #8 or #9 above by August 31, 2018, then the property is to be listed for sale on the open market with the price set as the real property value in the appraisal Guenther obtained in his efforts to refinance the property by July 31, 2018 plus six percent of that value.

R., p. 804-805.

The District Court stated in its *Clarification of Conclusions of Law, Memorandum Decision Reconsidering Liquidation*, that the basis for its decision to order the buyout was *Arnold v. Burgess*, Idaho Code § 30-23-703(c), and economic waste concerns. R., p.774. The District Court concluded that *Arnold* found a buyout under its facts was reasonable to settle the partnership's

accounts with a dissociated partner, while allowing the remaining partners to pursue a mutually satisfying settlement that might save their individual farming enterprises. *Id.* While the District Court acknowledged that under *Arnold* it did not have the power to direct a partner to assume all debts and it could not determine the rights of a non-party creditor, it determined that Idaho Code § 30-23-703(c) provides a means for partners to transfer liabilities to any remaining partner in order to ensure a dissociated partner is not required to repay debts obtained during the partnership. *Id.* While the District Court concluded that it could not order Guenther to buyout the property, since Guenther was consenting to such an arrangement, the District Court had authority to transfer interest, even absent the dissociated partner's consent, to avoid waste of partnership assets and conduct a judicial winding up after an order of dissolution. *Id.*

However, as mentioned above, Idaho law does not provide for the buyout sought by Mr. Guenther and ordered by the District Court.

1. <u>The District Court misinterpreted *Arnold*, as it requires liquidation to accomplish a complete winding up of a partnership.</u>

The District Court relied on quotes from *Arnold to* support its decision; however, those quotes were specific to the facts of *Arnold*, and the District Court ignored the actual holding of the case. In *Arnold*, the partner sought only to be reimbursed for disproportional asset distributions. *Id.*, 133 Idaho at 792, 747 P.2d at 1321. The partner did not seek liquidation, nor termination of the partnership. *Id.*, 113 Idaho at 793, 747 P.2d at 1322. The Court of Appeals found a buyout under the facts was reasonable because "the [district court's] decision settled the partnership's accounts with respect to Arnold [the dissociated partner] while allowing the remaining partners to pursue a mutually satisfactory settlement that might save their individual farming enterprises." *Id.* However, the Court of Appeals noted in allowing the buyout in the *Arnold* case, that the trial court could not have addressed the rights of non-party creditors or have directed that the debts be

assumed by one particular partner with a release of others. *Id.* The Court of Appeals explained: "Without liquidating the partnership assets, a course of action not sought by any parties, the [trial] court could not do more without potentially harming the non-party creditors." *Id.*

The Court of Appeals recognized that the partner being bought out in that particular case was still subject to partner liabilities and the remedy did not provide for a complete winding up. *Id.* The Court of Appeals determined that while "the substance of the result [the buyout] was an incomplete judicial accounting and winding up, it would not serve the policy of judicial efficiency to remand for a judgment amendment not sought by either party." *Id.*, 113 Idaho at 794, 747 P.2d at 1323. It then concluded that "[i]f the parties, desired a more complete judicial winding up, they would have acted to obtain one." *Id.*

Arnold is clearly distinctive from the facts of this case, as the District Court recognized in its initial order, because here a complete winding up of the partnership is sought by the parties and Ms. Ryerson seeks liquidation. R., p. 373. The Court of Appeals in *Arnold* stated: "[T]his case presents the question whether a trial court may simply enter a money judgment for one partner against the remaining partners when substantial partnership liabilities are outstanding." *Arnold*, 113 Idaho at 792, 747 P.2d at 1321. However, here, there is not a remaining partnership, the parties seek a complete winding up. The *Arnold* decision makes clear that a buyout was reasonable in that case only because the parties had not sought liquidation and termination of the partnership. *Id.*, 113 Idaho at 793, 747 P.2d at 1322. Because the parties here seek a complete winding up, liquidation is necessary, because a trial court does not have the power to address the rights of non-party creditors or to direct that the debts be assumed by one of the partners. *Id.* A complete winding up cannot occur if the partnership debts are not addressed. *Id.* Thus, *Arnold* provides that a complete winding up and dissolution of a partnership requires liquidation. *Id.*

While the District Court determined that Idaho Code § 30-23-703(c) provides a means for partners to transfer liabilities to any remaining partner in order to ensure a dissociated partner is not required to repay debts obtained during the partnership, the statute is inapplicable as will be shown below. Accordingly, the general rule of liquidation as articulated in *Arnold* is applicable here and dictates that the District Court should have only ordered that the partnership property be sold.

2. The District Court misapplied I.C. § 30-23-703(c).

To further support the buyout of Ms. Ryerson's interest in the partnership property, given the holding of *Arnold*, the District Court introduced and applied I.C. § 30-23-703(c). R., p. 774. The District Court held that the statute "provides a means for the partnership to transfer liabilities to any remaining partner in order to ensure a dissociated partner is not required to repay debts obtained during the partnership." *Id.* The statute provides the following:

> By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for a debt, obligation, or other liability of the partnership.

I.C. §30-23-703(c). The District Court erroneously applied the above statute on at least three grounds.

a) The District Court ignored the plain wording of the statute.

Idaho Code §30-23-703(c) requires "agreement with a creditor of a partnership and the partnership." Here, the District Court determined that the statute was satisfied because Mr. Guenther represented that he had obtained approval for a $580,000 loan from Zion's Bank, (the third-party creditor), to buy the property and completely release Ms. Ryerson from any liability under the mortgage. R., p. 772-774. However, the supposed agreement was between Mr. Guenther and Zion's Bank only; the agreement was not between Zion's Bank and the partnership. Thus,

because the agreement was not "with a creditor of a partnership and the partnership," the agreement clearly fails to satisfy the statute.

The District Court recognized in its earlier decision that any agreement with the mortgage company would have to be an agreement "between both partners and the mortgage company." R., p. 374. Nonetheless, the District Court concluded in its *Amended Findings of Fact, Conclusions of Law* and its *Clarification of Conclusions of Law, Memorandum Decision Reconsidering Liquidation*, that it had authority to order the buyout under the statute, even absent Defendant Ryerson's consent, given its concerns about economic waste. R., p. 774. The District Court indicated that it had such authority under *Arnold,* because a buyout was ordered in that case; but as shown above, *Arnold* is clearly distinctive from this case and stands solidly for the conclusion that liquidation is required where one of the parties seeks liquidation and both parties seek a complete winding up.

Further, the District Court's economic waste concerns are merely speculative and regard the normal costs associated with selling property. Certainly, such concerns do not warrant ignoring the plain language of the statute and the long-standing rule favoring liquidation and the sale of property. Moreover, the potential for waste is significantly reduced if the sale price of the property is not capped by the District Court as will be further discussed below.

Accordingly, the District Court had no authority to ignore the plain wording of the statute and to order a buyout.

b) There was no actual agreement between Guenther and Zion's Bank.

The District Court also erroneously applied I.C. § 30-23-703(c), because there was no actual agreement between Mr. Guenther and Zion's Bank. Zion's Bank, the third-party creditor in this case, refused to refinance the mortgage in Mr. Guenther's name and to remove Ms. Ryerson

from liability under the current mortgage. R., p. 872. Zion's Bank did not simply need a few more days to complete the deal, it refused the loan. Thus, because there was no agreement at all with the creditor of the partnership, I.C. § 30-23-703(c) was never applicable and the property should have been ordered sold under *Arnold* and the long-standing rule favoring liquidation.

To further explain, the District Court ordered the buyout in its *Amended Findings of Fact and Conclusions of Law* after reversing itself twice upon ordering the sale of the property. Each time the District Court reversed itself it based its decision on Mr. Guenther having approval from Zion's Bank, the third-party creditor, to refinance the current mortgage. TR., August 8, 2018: p. 14-16. Mr. Guenther first represented that he had approval from Zion's Bank for the refinance in the *Affidavit of Joseph Guenther in Support of Motion to Reconsider*, dated January 18, 2018. R., p. 393-394. The District Court then held: "Given the new evidence that the third party creditor will completely release the Defendant of any liability on the mortgage and that evidence has been provided that economic waste is a factor in this case, the Court finds that the Plaintiff's refinance of the Property solely in his name and the release of any mortgage liability for the property will satisfy the requirements set forth by Idaho law regarding partnership dissolution and wind up." R., *Memorandum Decision and Order Granting In Part Plaintiff's Motion for Summary Judgment and Granting Plaintiff's Motion to Reconsider*, p. 492. After that decision was reversed, Mr. Guenther then argued again for a buyout in his *Motion for Clarification*, and again represented to the District Court that he had obtained approval for a $580,000 loan from Zion's Bank. R., p. 733. The District Court, relying upon such misinformation, then ordered the refinance and buyout through Zion's Bank as set forth above. R., *Clarification of Conclusion of Law, Memorandum Decision Reconsidering Liquidation*, p. 772-773. Thus, but for the supposed letters of approval from the

third-party creditor approving refinance solely in Mr. Guenther's favor, the District Court would not have ordered the buyout.

Because there was no actual agreement between the Plaintiff and Zion's Bank, the District Court erred in introducing and applying I.C. § 30-23-703(c) to support a buyout. Accordingly, the property should have been ordered sold under *Arnold* and the long-standing rule favoring liquidation.

c) The statute only contemplates the situation where dissociation of a partner is sought, not the winding up of the partnership business.

Finally, as argued by Mr. Guenther, I.C. § 30-23-703(c) is inapplicable because it only contemplates the situation where dissociation of a partner is sought, but not the winding up of the partnership business. Under the UPA, the statute falls under Part 7 – Partner's Dissociation When Business Not Wound Up. Thus, because the parties seek to wind up the partnership here, not to merely dissociate a partner, the District Court erred in introducing and applying the statute as a means to accomplish a buyout and a winding up of the partnership. The statute is consistent with the holding of *Arnold*, in that a buyout arrangement is only viable when dissociation is sought, not when the parties seek a winding up of the partnership business.

Accordingly, given that I.C. § 30-23-703(c) is inapplicable to the case at bar and *Arnold* dictates that liquidation is necessary to accomplish a complete winding up of the partnership business, the District Court erred in ordering a buyout of Ms. Ryerson's interest and should have ordered the sale of the property and distribution of the asset pursuant to I.C. § 30-23-806.

3. The District Court erred in determining that economic waste concerns were a basis for ordering a buyout in the present case.

The District Court determined that a buyout was reasonable for economic waste concerns based on *Arnold*. However, as set forth in detail above, *Arnold* is distinctive on the facts and holds that liquidation is necessary to address creditors when a complete winding up is sought. Accordingly, the District Court provided no Idaho law which supports a court ordered buyout where a partner seeks liquidation and a complete winding up. However, the District Court correctly and consistently held that Plaintiff's economic waste arguments on their own were not enough to circumvent the holding of *Arnold*, and the out of state cases upon which Plaintiff relied did not present fact patterns which were helpful in reaching a decision under Idaho law. R., *Amended Findings of Fact, Conclusions of Law*, p. 779-780; and R., *Memorandum Decision and Order Granting Motion to Liquidate*, p.373.

It is important to note that in *Arnold*, the remaining partners in that case relied on the partnership assets as a source of livelihood – it was their family farms at issue. This is not the case here. The vineyard business is not a going concern and does not have a history of producing profits or proceeds. R., p. 532-533. In addition, the development and operation of the vineyard was intended only to be a hobby and investment, not a primary source of income for the partners. R., p. 528. The primary sources of income for the partners are their full-time day jobs. R., p. 528. Thus, the District Court's suggestion that a sale here will "destroy a great part of the value of the business and may prevent the continuation of a valuable source of livelihood" is inaccurate.

Furthermore, Mr. Guenther's economic waste arguments are flawed as they are speculative and disingenuous. Guenther argues that he is concerned that his equity will be significantly reduced by costs associated with listing and selling the property, but at the same time he has been insistent upon listing the property at the District Court's fixed price when an independent realtor

has indicated that such price is less than its market value. *Declaration*, ¶ 10 and Ex. I., at p. 2-4. The independent realtor has suggested that the parties seek a new appraisal and that she be allowed to determine the listing price, instead of using the price set by the District Court. *Id.* Mr. Guenther was unwilling to negotiate on this issue, and thus his stance is inconsistent with his alleged concerns about depleted equity. A higher listing price and potentially more equity would benefit Plaintiff and lessen the effects of any costs associated with the sale. Thus, based on all of the above, Plaintiff's economic waste concerns should be given little weight.

Accordingly, because I.C. § 30-23-703(c) is inapplicable and *Arnold* holds that liquidation is necessary to affect a complete wind up of a partnership's business, the District Court erred in ordering a buyout of Ryerson's interest and should have ordered a sale and distribution of the assets pursuant to I.C. § 30-23-806.

D. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT REGARDING THE VALUTION OF THE PARTNERSHIP REAL PROPERTY AND THE EQUITY THEREIN AS OF THE DATE OF DISSOLUTION.

The District Court erroneously concluded that Defendant, an owner of the partnership property, was incompetent to testify as to her property's value. *See* R., p. 483-488; and TR., March 29, 2018: p. 72-81. "It is settled rule in Idaho that the owner of property is a competent witness to its value, as he is presumed to be familiar with its value by reason of inquiries, comparisons, purchases and sales." *Weaver v. Village of Bancroft*, 92 Idaho 189, 439 P.2d 697 (1968), citing *Riley v. Larson*, 91 Idaho 831, 432 P.2d 775 (1967); *Rankin v. Caldwell*, 15 Idaho 625, 99 P. 108 (1908) (emphasis added). In *Rankin v. Caldwell*, the Idaho Supreme Court held:

> The general rule, that to qualify a witness to testify as to market value, a proper foundation must be laid showing the witness to have knowledge upon the subject, does not apply to a party who is testifying to the value of property which he owns. The owner of property is presumed, in a way, to be familiar with its value, by reason of inquiries, comparisons, purchases and sales. The weight of such testimony is another question, and may be affected

> by disclosures made upon cross-examination as to the basis for such knowledge, but this will not disqualify the owner as a witness.

Id., 15 Idaho at 632, 99 P. 108. (Emphasis added). Accordingly, a property owner is competent to testify to the property's value and his/her opinions on value are admissible; an owner of property is not subject to normal foundation rules and he/she is presumed to be familiar with its value, by reason of inquiries, comparisons, purchases and sales.

In the present case, Mr. Guenther filed a *Motion for Summary Judgment* on January 2, 2018. R., p. 287-365. Included in the motion was Mr. Guenther's argument that there was no material issue of fact concerning the value and equity in the parties' property, because he had obtained an appraisal that valued the Property at $600,000. R., p. 298. He argued that the property's value was $600,000 and the available equity was $144,789.92 given that the parties owed a debt of $455,210.08 on the property. Mr. Guenther sought a low fixed value as to the property and equity, because he wanted to refinance the property in his name only and to buyout Ms. Ryerson's interest in the partnership. The lower the available equity to be distributed, the better for Plaintiff, as he sought to retain the property.

On January 18, 2018, Defendant filed her *Memorandum in Opposition to Joseph Guenther's Motion for Summary Judgment* along with her declaration. R., 399-459. Ms. Ryerson's declaration provided that there was significant disagreement between the parties as to the valuation and equity of the partnership property and that it was her opinion as an owner of the property that the property was worth significantly more than the appraisal Mr. Guenther obtained. R., p. 407. It was because of the disagreement on value and equity, that Ms. Ryerson as a partner in the partnership sought liquidation. A sale would provide a natural and accurate fair market value for the property and resulting equity.

On February 16, 2018, the District Court issued a *Memorandum Decision and Order Granting in Part Plaintiff's Motion for Summary Judgment and Granting Plaintiff's Motion to Reconsider.* R., p. 477-494. As to the Motion for Summary Judgment, the District Court ruled that there was not an issue of fact regarding the valuation of the property and the equity therein and that as of the dissolution in March 2017: (1) the value of the property was $600,000 and (2) there was $144,789.92 of equity in the property (the difference between the property value and partnership's mortgage debt owed to Zion's Bank). R., p. 483-488. The District Court narrowly construed Ms. Ryerson's declaration, failed to recognize the presumptions associated with her declaration as a property owner, erroneously required that she provide expert testimony to support her valuation and weighed the evidence against Ms. Ryerson, the non-moving party.

On March 1, 2018, Ms. Ryerson filed a *Motion for Reconsideration of Memorandum Decision and Order Granting in Part Plaintiff's Motion for Summary Judgment and Granting Plaintiff's Motion to Reconsider.* R., p. 504-537. In support of the motion, Ms. Ryerson submitted an additional declaration setting forth her opinion that the fair market value of the property as of March 2017 was $800,000. R., p. 527-533. Ms. Ryerson provided that her opinion was based on her knowledge of the local real estate market, home values similar to her home, vineyards, vineyard businesses and vineyard estates. R., p. 531. She further provided that her valuation of the property considered the vineyard component of the property, which the appraisal offered by Mr. Guenther did not. *Id.* Ms. Ryerson's declaration set forth her experience working and contributing in the vineyard in contrast to Mr. Guenther's general real estate appraiser who had no qualifications in appraising vineyard properties and estates. R., p. 530-531. She further explained that the appraisal performed by Mr. Guenther's appraiser did not include the vineyard, the investment to create the vineyard and/or the potential for the vineyard to produce income in the future. R., p. 531. She

explained that Mr. Guenther's appraiser merely considered the bare land and the structure. *Id.* Ms. Ryerson stated that Mr. Guenther's general appraiser failed to pull appropriate comparisons to arrive at the value and that the property at the time of the appraisal was not in a condition of upkeep to maximize its value. R., p. 531-532. Ms. Ryerson stated that the result of the property being undervalued was the undervaluation of the remaining equity held within the property. R., p. 532. Ms. Ryerson stated that she sought liquidation to obtain the best return on her investment as a sale would provide the natural fair market value. *Id.*

Despite the clear law on this issue and Ms. Ryerson's more than sufficient declarations, the trial court denied Ms. Ryerson's Motion for Reconsideration regarding summary judgment on valuation and capped the value at $600,000 and capped the equity at $144,789.92. TR., March 29, 2018: p. 72-81. While the presumption is straight forward and relatively simple, the District Court offered an erroneous and confusing decision as to why Ms. Ryerson, despite being an owner, would not be allowed to testify as to the valuation of the property and would not be allowed to cross-examine Mr. Guenther's general appraiser as to her qualifications and valuation.

The trial court concluded that the presumption exists, but that it is rebuttable at the summary judgment stage when the witness/owner is incompetent; and in this case Ms. Ryerson was incompetent to testify because she lacked personal knowledge. TR., March 29, 2018: p.72-81. To support this conclusion, the District Court provided that it relied heavily on *Weaver v. Village of Bancroft*, because it held that "...yes, an owner can testify about the value of the property, but at the same time, a judge can exclude them because they are not competent as a witness . . .." TR., March 29, 2018: p. 75-76. In addition, the trial court provided that *Warzburg v. Kootenai County*, states that "the property value is erroneous if it's not supported by substantial and competent evidence and fails to reflect the fair market value." TR., March 29, 2018: p. 76. However, the

District Court's interpretation of these cases is inaccurate and essentially makes the presumption non-existent.

Also inaccurate is the District Court's application of the presumption here. The District Court determined the above cases provide a basis to exclude Ms. Ryerson's testimony on valuation, because Ms. Ryerson made inquiry of a real estate professional and attached a flier from another piece of property. TR., March 29, 2018; p. 73-80. The District Court acknowledged that it made factual determinations regarding this issue, but stated it had the authority to do so because the case would be decided by a bench trial. *Id.*

The District Court's decision confuses the foundation necessary for an owner's testimony along with how and when the presumption may be rebutted. Contrary to the District Court's assertions, *Rankin* specifically provides that the general foundation requirements for a witness are not required for an owner of property due to the presumption that the owner is familiar with the property. *Rankin v. Caldwell*, 15 Idaho 625, 632, 99 P. 108 (1908). In addition, *Rankin* provides that the weight of the presumption is "another question" which may be affected by cross-examination as to the basis for such knowledge, but nonetheless does not disqualify the owner as a witness. *Id.* Thus, an owner is afforded the presumption and is allowed to testify and any weighing or rebuttal of the testimony comes after the testimony and after both parties have presented their evidence.

The cases that followed *Rankin* on this issue, such as *Weaver* and *Warzburg*, are consistent with the holding of *Rankin* and an owner's right to testify. The District Court's decision confuses the holdings of *Weaver* and *Warzburg*; these decisions in no way support the contention that inquiry into the foundation of an owner's testimony should be made prior to the testimony and that

the owner can be precluded from testifying if the testimony is not found by the court to be sufficiently substantiated.

To illustrate, in *Weaver v. Village of Bancroft,* Weaver brought suit against the Village of Bancroft ("Bancroft") alleging that Bancroft had affected certain culverts and ditches near his property such that they isolated and lowered the value of his property. As owner of the property, Weaver testified as to its fair market value to prove damages. *Id.*, 92 Idaho at 191, 439 P.2d at 699. During cross-examination, Weaver was called upon to enumerate those considerations he considered in arriving at the fair market value. *Id.* To contradict Weaver's testimony, Bancroft proffered the testimony of a long-time resident of Bancroft. *Id.* Weaver's attorney objected that the resident was not qualified as an expert witness and the objection was sustained. *Id.*, 92 Idaho at 192, 439 P.2d at 700. The resident then testified that the market value of his home in Bancroft was down 50 percent, but he was not familiar with the property of Weaver. *Id.* Ultimately, the trial court determined that Weaver was not entitled to damages. *Id.*

On appeal, the Idaho Supreme Court determined that Weaver was indeed entitled to damages and thus considered the witness testimony on fair market value provided at trial. *Id.*, 92 Idaho at 193, 439 P.2d at 701. The Idaho Supreme Court reiterated the rule that an owner is a competent witness to its value. *Id.* It then held that the trial court properly ruled the resident was not qualified to testify as an expert witness and determined the resident's testimony was incompetent because he was not familiar with the property under dispute. *Id.* The Idaho Supreme Court then awarded damages pursuant to Weaver's testimony of the fair market value of his property. *Id.* Thus, the Idaho Supreme Court allowed the witness testimony of the owner (Weaver) pursuant to the presumption and weighed it heavily given that the opposing witness was not an expert and was not familiar with the property. Nowhere does the *Weaver* decision conclude, or

even suggest, that an owner's testimony can be excluded as incompetent before it is even given at trial.

In *Warzburg v. Kootenai County*, 155 Idaho 236, 308 P.3d 936 (Ct.App.2013), a co-owner of certain real property disputed the Kootenai County Assessor's valuation of the property. A *de novo* trial on the matter was held, which included Warzburg's testimony as a property owner as to the value, as well as the assessor's testimony as to the methodology he employed in determining the value. The trial court affirmed the assessor's valuation. The Idaho Court of Appeals affirmed the trial court's decision and explained that once both parties presented their evidence the trial court could weigh the evidence to determine whether the assessment represented a fair market value. *Id.*, 308 P.3d at 944. Nowhere does the Court of Appeals state that an inquiry must be made into the foundation of an owner's valuation before it is offered or that an owner's valuation is erroneous if it is not supported by substantial and competent evidence. To the contrary, the Idaho Court of Appeals held that valuation is imprecise, and the trial court may weigh all the evidence to determine whether the assessor's value represented a fair market value. *Id.*

Therefore, the law in Idaho is that an owner may testify as to the value of her property and the weight afforded such testimony occurs after the testimony is given and both parties have submitted their evidence.

Further, the District Court erroneously concluded that Defendant's testimony was incompetent. As set forth above, an owner of property is presumed to be familiar with its value by reason of inquiries, comparisons, purchases and sales. *Rankin v. Caldwell*, 15 Idaho at 132, 99 P. 108. Ms. Ryerson's declarations more than demonstrate that she is familiar with the property value through such bases and many more. However, the District Court determined that she lacked personal knowledge because she made inquiry of a real estate professional and attached a flier (a

comparison) from a similar piece of property to her declaration. These are precisely the type of inquiries and comparisons an owner makes and considers in forming their knowledge and opinion as to the value of the property. Ms. Ryerson's conversation with the real estate agent and the comparison were not set forth in her declaration to establish the truth of what the real estate agent said or the comparison provided, but to show that Ms. Ryerson made inquiries and comparisons in forming her opinion. Furthermore, contrary to the District Court's determination, Ms. Ryerson's opinion is not based solely on the real estate professional's opinion. Ms. Ryerson's declaration specifically states that her valuation regarding the fair market value was based and continues to be based on her own knowledge of the property and that she refenced the real estate professional only to show that her valuation was not an ambiguous number. R., p. 530.

Accordingly, because Ryerson was entitled to the presumption, her testimony created an issue of fact regarding the valuation of the property and the equity therein. Thus, the District Court erred in granting summary judgment on the issue and in denying Ryerson's motion for reconsideration.

E. THE DISTRICT COURT ERRED IN ITS AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW IN FAILING TO DETERMINE THAT APPELLANT OWNS 50 PERCENT OF THE PARTNERSHIP AND IS THUS ENTITLED TO 50 PERCENT OF ANY REMAINING SURPLUS AFTER CREDITOR OBLIGATIONS AND PARTNER CONTRIBUTIONS ARE SATISFIED.

As set forth above, I.C. § 30-23-806 addresses the disposition of assets when winding up, stating:

> (a) In winding up its business, a partnership shall apply its assets, including the contributions required by this section, to discharge the partnership's obligations to creditors, including partners that are creditors.
>
> (b) After a partnership complies with subsection (a) of this section, any surplus must be distributed in the following order . . .

> (1) To each person owning a transferable interest that reflects contributions made and not previously retuned, an amount equal to the value of the unreturned contributions; and
>
> (2) Among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership . . .
>
> (e) If a partnership does not have sufficient surplus to comply with subsection (b)(1) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

I.C. § 30-23-806(a)(b) and (e). Accordingly, in winding up its business, a partnership shall apply its assets to discharge its debts and then if there is any surplus such surplus must first be distributed to each partner according to their unreturned contributions. Then if any surplus still remains, it is to be split among the partners according to their rights to share in distributions, or in other words, pursuant to the partner's transferable interest or interest owned in the partnership. (*See* I.C. § 30-23-102(a)(3) and I.C. § 30-23-102(a)(11).

Ms. Ryerson asserts in her counterclaim that each of the parties owns a 50 percent interest in the partnership and upon judicial dissolution that the proceeds of the winding up should be divided according to Idaho law. R., p. 110-112. Thus, after the partnership assets are applied to satisfy creditor obligations and the unpaid contributions by the partners, any remaining surplus must be equally distributed between the partners given their 50 percent ownership interest. I.C. § 30-23-806.

To support Ms. Ryerson's counterclaim, she offered testimony and evidence of her 50 percent interest in the partnership. TR., April 2, 2018: p. 183-184. Ms. Ryerson testified that the parties did not have a written partnership agreement, but that the parties were in a romantic relationship and agreed that the partnership ownership percentage would be a 50/50 split. *Id.* Ms. Ryerson further testified that the tax returns for the partnership evidenced that each partners' share was 50 percent. *Id.* Mr. Guenther admitted during his testimony that the profits would have been

shared 50/50. TR., April 2, 2018: p. 141-142. He also admitted that the tax returns showed a 50/50 ownership. TR., April 2, 2018: p. 141-143. While Mr. Guenther argued that the tax returns were inaccurate, he nevertheless admitted that he signed the tax returns and knew at the time he signed them, under oath, that they represented a 50/50 ownership split. *Id.* Mr. Guenther further admitted that in a previous litigation regarding zoning complications on the property, he testified under oath during a deposition that he and Ms. Ryerson were partners and each of them owned a 50 percent share in the property. TR., April 2, 2018: p. 144-145. Mr. Guenther provided no evidence that the partnership ownership was anything other than a 50/50 split. Accordingly, the District Court should have concluded that the Mr. Ryerson showed by a preponderance of the evidence that she owned a 50 percent interest in the partnership and thus was entitled to 50 percent of any surplus that remained after the discharge of debts to creditors and distributions of unpaid contributions to the partners.

Instead, the District Court erroneously concluded that the partners' respective ownership percentages were based off the ratio of the parties' capital contributions to the partnership as determined by the District Court. Specifically, the District Court found the following:

> 37. As to Ryerson's Counterclaim claiming that the oral agreement was that partnership profits were to be split 50:50 based on tax deductions claimed or the form of ownership of the real property, Ryerson has failed to show by a preponderance of the evidence that Ryerson actually paid fifty percent of the expenses of the partnership or that Ryerson and Guenther even had an agreement that she would pay fifty percent of the expenses of the partnership. Based upon this failure and considering the application of the UPA above, Ryerson's Counterclaim is DISMISSED.

R., p. 803. The District Court misinterpreted the statute and the test that determines a partner's right to the remaining surplus after debts and contributions have been repaid. The test is not the partner's contributions, but their rights to share in distributions pursuant to their transferable interest. *See* I.C. § 30-23-806((b); I.C. § 30-23-102(a)(3); and I.C. § 30-23-102(a)(11). As Ms.

Ryerson presented uncontested evidence of her 50 percent ownership interest in the partnership, the District Court erred in failing to conclude that she owned a 50 percent ownership interest and is entitled to 50 percent of any surplus that remains following the discharge of debts and the payment of partnership contributions. The District Court further erred in dismissing Defendant's counterclaim for the same reasons.

F. THE DISTRICT COURT ERRED IN ITS AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW BY FIXING THE SALE PRICE OF THE PARTNERSHIP PROPERTY IF SOLD TO APPELLANT OR IF SOLD ON THE OPEN MARKET, AND BY ATTRIBUTING 100 PERCENT OF ANY GAIN IN EQUITY AFTER THE DATE OF DISSOLUTION TO RESPONDENT.

In the *Amended Findings of Fact, Conclusions of the Law*, the District Court ordered that Mr. Guenther could buyout Ms. Ryerson's interest by July 31, 2018, by a refinance with Zion's Bank in an amount which terminated the Deed of Trust, paid expenses and paid $34,749.58[1] to the trust account of Ryerson's attorney. R., p. 804. If Guenther was unwilling or unable to buy the real property as specifically ordered, then Ryerson could buy the real property in order to satisfy the outstanding mortgage to Zion's Bank, but for the property value in the appraisal conducted for the Guenther sale. *Id.* The appraisal conducted for the Guenther sale valued the property at $725,000. R., p. 740. If Ryerson chose to purchase the property, she was required to do so by August 31, 2018, for cash or by refinance that completely terminated the Deed of Trust, paid expenses and then paid $110,040.34 and any increase in value between $600,000.00 and the appraised value at sale in cash proceeds to the trust account of Guenther's attorney. R., p. 804. The Court then ordered that if neither Guenther or Ryerson purchased the real property as set forth in the order, then the property was to be listed for sale on the open market with the price set as the

[1] In regard to Ms. Ryerson's capital contribution, the Court erroneously found Ms. Ryerson never contributed to the mortgage of the subject partnership property. *See Amended Findings & Conclusions*, p. 8, No. 41. This conclusion is contradicted by the evidence presented at trial.

real property value in the appraisal Guenther obtained in his efforts to refinance the property by July 31, 2018 plus six percent of the value. R., p. 805. The District Court erred in fixing these amounts.

To begin with, the District Court based the interests of the partners on the valuation it affixed to the property at the time of dissolution per its granting of Plaintiff's Motion for Summary Judgment. The Court determined that at the time of dissolution that the property was worth $600,000. As demonstrated above, the Court erroneously granted summary judgment on this issue. Nevertheless, the property's value at the time of dissolution is irrelevant under the UPA in winding up a partnership's business. Nowhere does the statute discuss the value of a partnership's assets at the time of dissolution. Instead, the UPA provides that "[e]ven after a partnership is dissolved, the partnership continues for the purpose of winding up its business." I.C. § 30-23-802(a). Thus, partnership property remains partnership property and partnership equity until the winding up is concluded. Then, I.C. § 30-23-806 addresses the disposition of assets when winding up, and states partnerships shall apply their assets to partnership obligations to creditors, then if any surplus exists to the unpaid contributions, then "among partners in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership." Thus, partnership property and equity are distributed at that point, during the winding up, pursuant to their ownership percentages before the dissolution.

Accordingly, the District Court erred in holding that Ms. Ryerson could only purchase the property for the new appraisal price and in attributing all the gain in equity to Mr. Guenther after the March 26, 2017 dissolution. By ordering such, the District Court determined that Ryerson did not have any interest or right to the equity after dissolution. This was inappropriate given that the equity in the property remains partnership property until the winding up is complete. The rights to

the property and equity are determined during winding up and pursuant to § 30-23-806. The ownership of the equity did not change simply because the partnership dissolved on March 26, 2017 and Ms. Ryerson moved away from the property. The property is still titled to both partners and the equity therein is partnership property and should be distributed pursuant to I.C. § 30-23-806. Only the partners' ownership percentages at the time of dissolution are relevant, not the value of the asset because the asset continues to be partnership property. Thus, the UPA contemplates liquidation of partnership assets for the fair market value and the property should have been ordered sold and then distributed pursuant to I.C. § 30-23-806.

As to the District Court's concerns that Mr. Guenther maintained the property after the dissolution date, any appropriate unpaid contributions are taken care of under I.C. § 30-23-806. However, the statute does not provide that Mr. Guenther can live rent free at the partnership property and then capture the total expense of maintaining the property.

Next, the District Court erred in fixing the sale price of the property if sold on the open market. The District Court ordered that if neither Guenther or Ryerson purchased the real property as set forth in the order, then the property was to be listed for sale on the open market with the price set as the real property value in the appraisal Guenther obtained in his efforts to refinance the property by July 31, 2018 plus six percent of the value. R., p. 805. As previously established, the Guenther appraisal valued the property on February 28, 2018 at $725,000. R., p. 740.

As also set forth fully above, in winding up a partnership's business, the UPA contemplates the liquidation of partnership assets at their fair market value and then distributing the proceeds to satisfy creditor obligations, unpaid contributions and the transferable interests of the partners. *See* I.C. § 30-23-806; *Arnold v. Burgess*, 113 Idaho 786, 792, 47 P.2d 1315, 1321 (Ct. App. 1987); *Mays v. Davis*, 132 Idaho 73, 74, 967 P.2d 275, 277 (1998). The District Court cited no authority

for its fixation of the sale price here. Fixing the sale according to an appraisal done in February of 2018, prohibits the partnership from seeking the full market value of its assets at the time of sale. Consequently, there will potentially be less equity to distribute per I.C. § 30-23-806.

To further illustrate, here, neither partner purchased the property by August 31, 2018, thus, pursuant to the District Court's order, the property was to be sold on the open market. On October 3, 2018, the parties selected an independent realtor as prescribed by the District Court's Amended Order. *Declaration*, at ¶ 10, Ex. I, p. 2. In emails between counsel for the parties and the realtor, the realtor suggested that the parties obtain a new appraisal. *Id.*, at pp. 2-3. Mr. Guenther's counsel responded that an appraisal already existed and that the District Court had set the listing price. *Id.* The realtor was provided a copy of the February 28, 2018 appraisal and continued to suggest that a new appraisal was needed. *Id.*, at p. 3. Mr. Guenther's attorney refused to negotiate on the issue, which is perplexing given Plaintiff's supposed economic waste concerns and that it would seem to benefit both parties to obtain the highest price possible for the property. On October 25, 2018, Guenther then filed with the District Court a Motion to Stay Sale of Property until resolution of the appeal before the Idaho Supreme Court. The District Court did not respond. Guenther then filed with this Court a Motion to Stay Sale of Property Pending Appeal with the Idaho Supreme Court. This Court stayed the sale pending appeal. Consequently, if the property is indeed sold on the open market, it will be listed and sold significantly later in time than the February 28, 2018 appraisal. The partners must be free to list the property pursuant to the market at that particular time and to seek the best return from their investment. The independent realtor selected by the partners should determine the listing price, not the District Court.

Accordingly, for the reasons listed above, the District Court erred in fixing the price of the property if sold to Ms. Ryerson and attributing all gain in equity after March 26, 2017 to Mr. Ryerson, and in fixing the sale price if the property is sold on the open market.

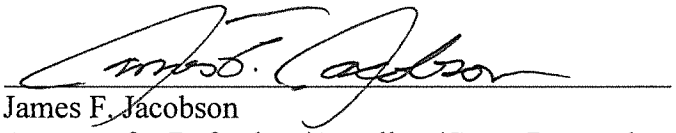
CONCLUSION

Based upon the foregoing, Appellant Michelle Ryerson respectfully requests that the Court: (1) Reverse the District Court's decision ordering the buyout of Ms. Ryerson's interest in the partnership property and hold that the property must be liquidated and sold on the open market for its fair market value; (2) Reverse the District Court's decision granting summary judgment on the issue of valuation of the partnership property and equity, and remand if necessary so Ms. Ryerson may offer her testimony and evidence regarding the value of her property; (3) Reverse the District Court's decision that the partners' respective ownership percentages are based off the ratio of the parties' capital contributions to the partnership, and hold that that Ms. Ryerson owns 50 percent of the partnership and is thus entitled to 50 percent of any remaining surplus after creditor obligations and partner contributions are satisfied; (4) Reverse the District Court's decision fixing the sale price of the partnership if sold to Ms. Ryerson or if sold on the open market and attributing 100 percent of any gain in equity after the date of dissolution to Mr. Guenther, and hold that the property must be sold on the open market for the fair market value as determined at the time of

sale by the parties' independent realtor and the proceeds distributed pursuant to I.C. § 30-23-806 (first to creditor obligations, then to partner contributions and then pursuant to the partner's transferable interest or interest owned in the partnership).

RESPECTFULLY SUBMITTED this 14th day of March, 2019

SASSER & JACOBSON, PLLC

By: 

James F. Jacobson
Attorney for Defendant/Appellant/Cross-Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of March, 2019, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Bradley J. Dixon
Givens Pursley LLP
601 W. Bannock St.
Boise ID 83702

_____ Hand Delivery
__ __United States Mail
_____ Fax Transmission
_____ Email
__x__ ICOURT

James F. Jacobson