

APPELLATE NO. 44823-8-II

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APPELLATE DIVISION II
COURT OF APPEALS
STATE OF WASHINGTON
JAN 11 2018
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COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

NORTHWEST HUNTER TV, LLC,

Appellant,

v.

RIVERS WEST APPAREL, INC.,

Respondent.

BRIEF OF APPELLANT

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Assignments of Error:

Error No. 1:	5
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The trial court *erred* in ruling that the settlement with Rick Young and buyout of his membership interest in NWH, coupled with the parties' subsequent voluntary dismissal of the Young Lawsuit with prejudice, did not render the Young Lawsuit and all prior orders, rulings and judgments therein a "nullity".

Error No. 2:	7
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The trial court *erred* in concluding that the August 17, 2007 partial summary judgment in the Young Lawsuit was a *final judgment* and not merely interlocutory – despite the fact that no proper CR 54(b) certification of finality was set forth in the Order. Being only interlocutory in nature, the judgment was vacated upon dismissal of the Young Lawsuit.

Error No. 3:	8
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The trial court *erred* in failing to construe the facts including the parties' settlement, buyout and dismissal, as well as the parties intent to abandon dissolution and sale of company assets, in favor of NWH, who was the non-moving party.

Issues Pertaining to Assignments of Error:

No. 1:	5
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A voluntary dismissal typically renders the proceedings a nullity – including all orders, decisions and judgments entered therein. Did the dismissal of the Young Lawsuit do so as well?

No. 2: 6

Following settlement, the buyout of Young and dismissal of the Young Lawsuit, was the company’s sole remaining members allowed to continue NWH pursuant to the Article X of the company’s Operating Agreement?

No. 3: 7

If the original statutory grounds for “judicial dissolution” under RCW 25.25.275 ceased to exist following the settlement, buyout and dismissal of the Young Lawsuit, was NWH still required to dissolve?

No. 4: 8

Did Judge Lewis’ August 17, 2007 partial summary judgment satisfy the certification requirements of CR 54(b) to constitute a “final” judgment? If not, was that judgment vacated or “brought down” upon voluntary dismissal of the action?

No. 5: 9

Did the trial court construe all material facts and reasonable inferences therefrom in favor of NWH as required? And, if not, did the facts of settlement, dismissal of the lawsuit and Young’s decision to opt for a buyout rather than dissolution of NWH create a triable issue of fact thus precluding summary judgment?

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I.
INTRODUCTION AND OVERVIEW

This is an appeal from a March 7, 2013 order granting summary judgment dismissal of Northwest Hunter TV, LLC's ("NWH") breach of contract action against Rivers West Apparel, Inc. ("RWA"). The grounds and basis for dismissal, however, had nothing to do with the merits or validity of NWH's claim against RWA or the facts therein, but rather stemmed from the trial court's conclusion that NWH had been previously "dissolved" in August, 2007 by court order in a separate and unrelated case entitled *Northwest Hunter TV, LLC v. Rick M. Young* (Clark County Superior Court Case No. 06-2-03061-7((hereinafter the "Young Lawsuit").

Rick Young had been one of two members of NWH and owned a 35% interest in the company. A dispute had arisen between Young and NWH's majority owner and Young thereafter sought, among other things, judicial dissolution of NWH. On August 17, 2007, Judge Robert Lewis granted Young's motion for *partial* summary judgment confirming his demand for NWH's "dissolution" and ordered an immediate "Wind Up" of its affairs according to NWH's Operating Agreement and Washington law. Separate time lines and deadlines

for doing such were entered thereafter in December, 2007.

In May 2008, however, while the Young Lawsuit remained pending, Rick Young and NWH's majority owner agreed to settle the Young Lawsuit rather than sell NWH's assets, apportion the proceeds and close the company. Rick Young's 35% minority membership interest in NWH was bought out and the entire case and all claims and related matters therein were **dismissed with prejudice** on July 11, 2008 by stipulated order, signed again by Judge Lewis, which read:

THIS MATTER having come on regularly for hearing ***upon stipulation and consent of all parties*** herein, ... it is hereby

ORDERED and adjudged that ***all causes herein*** including all claims, counterclaims, and third party Complaints and ***all RELATED matters and CLAIMS OF WHATEVER KIND*** be and the same ***are hereby dismissed with prejudice*** and without attorney fees, reasonable or statutory, or costs to any party.

(CP 78-80)(emphasis added).

Following the parties' settlement, the buyout of Young's membership interest and the dismissal of the Young Lawsuit with prejudice, NWH's remaining owner filed a new Master Business License with the State of Washington (reporting the change in

ownership) and has continued to operate NWH as a viable and ongoing entity at all times from 2008 to present.

Notwithstanding the settlement and buyout of Young's interest in NWH, and the parties' joint Order dismissing the Young Lawsuit, RWA claimed – and the trial court agreed – that NWH had been “dissolved” in August 2007 and *nothing* that the parties did thereafter could resurrect or save it. The trial court thus granted RWA's summary judgment dismissing the case.

NWH asserts that this position is erroneous and contravenes both common sense and established Washington law. The *effect* of the parties' settlement and voluntary dismissal of the Young Lawsuit rendered the case a “**nullity**” and brought down all prior orders, judgments and rulings previously entered in the case – including the August 17, 2007 partial summary judgment order requiring NWH's dissolution. See *Wachovia SBA Lending, Inc. v. Kraft*, 138 Wn.App. 854, 861 (Div. 2 2007) citing *Beckman v. Wilcox*, 96 Wn.App. 355, 359 (Div. 2 1999) .

Moreover, the August 17, 2007 partial summary judgment order regarding dissolution was *interlocutory* in nature and lacked proper CR 54(b) certification to be a “final” judgment. See *e.g.*,

Washburn v. Beatt Equip. Co., 120 Wn.2d 246, 300 (1992)(“an order which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties is **subject to revision at any time ... and [is] not a final judgment**)(emphasis added).

Finally, in granting RWA's summary judgment motion and dismissing NWH's lawsuit against it, the trial court failed to construe all material facts and reasonable inferences in favor of NWH – which was the nonmoving party. *Magula v. Benton Franklin Title Co.*, 131 Wn.2d. 171, 930 P.2d 307 (1997); CR 56. Factual issues existed as to Young's and other owner's intent to abandon dissolution (as permitted by the company's Operating Agreement) and to allow NWH to continue in business. Those facts were material and *should have been construed in NWH's favor* – resulting in a denial of RWA's motion.

If the owners of NWH (or any other privately held company) resolve their individual differences through settlement and a buyout of the disgruntled owner's interest, why would a court or legislature compel dissolution of the company? Dissolution would, at that point, serve no valid, beneficial or practical purpose. Thus, Judge Nichols' March 7, 2013 summary judgment dismissal of NWH's lawsuit against

RWA was contrary to Washington law and must be reversed.

II.
ASSIGNMENTS OF ERROR
AND ISSUES RELATED THERETO

Error No. 1: The trial court *erred* in ruling that the settlement with Rick Young and buyout of his membership interest in NWH, coupled with the parties' subsequent voluntary dismissal of the Young Lawsuit with prejudice, did not render the case and all prior orders, rulings and judgments therein a “**nullity**” – particularly Judge Lewis' August 17, 2007 partial summary judgment order confirming NWH's dissolution.

Issues: Judge Nichols' March 7, 2013 order granting RWA's motion for summary judgment stated, in pertinent part:

...[T]he **prior order entered by Judge Lewis was a sufficiently final determination that the LLC was dissolved. The subsequent voluntary dismissal was of no effect on this final determination. Thus, NWH is precluded from asserting that the settlement/dismissal with prejudice rendered the prior court's decision a nullity.**

(CP at 270)(emphasis added). NWH asserts that this ruling was error and contrary to established law. See e.g., *Wachovia SBA Lending, Inc. v. Kraft*, 138 Wn.App. 854, 861 (Div. 2 2007) citing *Beckman v. Wilcox*, 96 Wn.App. 355, 359 (Div. 2 1999) (“the effect of a voluntary

dismissal 'is to render the proceedings a **nullity** and leave the parties as if the action had never been brought.'" Id. (emphasis added). See also 24 Am.Jur.2d, "Dismissal, Discontinuance and Nonsuit" § 89 (2008):

The effect of a voluntary dismissal of an action is to render the proceedings a nullity. More specifically, dismissal or discontinuance of an action ...generally **operates to to annul orders, rulings or judgments previously made in the case** and leaves the parties as if the action had never been brought.

Id. (citations omitted)(emphasis added). A "nullity" is defined as: "Nothing; no proceeding; *an act or proceeding in a cause which . . . has absolutely no legal force or effect.*" Black's Law Dictionary (Revised 4th ed. 1968)(emphasis added).

The initial issue is whether the parties' 2008 settlement, the buyout of Young's ownership interest and voluntary dismissal of the Young Lawsuit rendered Judge Lewis' August 17, 2007 order regarding dissolution a "nullity"? If so, there was no factual or legal basis for the trial court to dismiss NWH's case against RWA and the decision granting summary judgment must be reversed.

The second issue is whether NWH's members elected to abandon dissolution and continue the business as allowed by the

company's Operating Agreement? Article X of the Operating Agreement states in pertinent part:

DISSOLUTION: The Company shall dissolve and wind up its affairs, upon the first to occur of the following events, **UNLESS the Members unanimously agree to continue the business.**

(CP 52)(emphasis added).

The final issue is whether the original statutory grounds for "judicial dissolution" under RCW 25.15.275 became moot and irrelevant once the parties opted to settle, buy out Rick Young's membership interest and dismiss the Young Lawsuit with prejudice?

There are only two grounds for judicial dissolution of an LLC pursuant to RCW 25.15.275: **(1) It is not reasonably practicable to carry on the business** in conformity with a limited liability company agreement; or **(2) other circumstances render dissolution equitable.**" These two grounds disappeared upon settlement and the buyout of Young's membership interest.

Error No. 2: The trial court *erred* in concluding that the August 17, 2007 partial summary judgment in the Young Lawsuit was a *final* judgment and not merely interlocutory – despite the fact that no proper CR 54(b) certification of finality was set forth in the Order.

Issues: Washington courts have repeatedly held that, absent a proper certification of finality under CR 54(b), the order or judgment is *not* final and has *no binding effect*. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 300 (1992)(“an order which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties is **subject to revision at any time ... and [is] not a final judgment**)(emphasis added). See also K. Tegland, Vol. 15A “Handbook on Civil Procedure” § 85.12 (2011-2012 ed.)(discussing “four formal prerequisites for entry of a final judgment”)

Did Judge Lewis’ August 17, 2007 order re dissolution meet the four formal requirements for a “final” judgment or was such decision merely interlocutory? If not, the voluntary dismissal rendered it moot. And, if the order was “sufficiently final” at the time of entry, did the parties’ subsequent settlement, buyout and dismissal render the August 17, 2007 order moot? The statutory grounds for dissolution no longer existed as set forth above.; and

Error No. 3: The trial court *erred* in failing to construe the parties’ settlement, buyout and dismissal – and the purported intent to abandon dissolution and forced sale of company assets – in favor of NWH, who was the non-moving party.

Issues: If, as set forth in the Declaration of J. Patrick Boyer in opposition to RWA's summary judgment motion (hereinafter "Boyer Dec.")(CP 131-134), after the parties agreed to settle, Young no longer "required or demanded" NWH's dissolution, but instead opted to "sell his interest in the company." (CP 132, Boyer Dec. at ¶ 8). Following Young's buyout, the sole remaining member of NWH – Sundance Magnetics, Inc. – opted to continue the business as allowed by Article X of the Operating Agreement. At the very least, these are factual issues that should have precluded summary judgment.

All of the above errors and issues are addressed below. The trial court's March 7, 2013 order granting summary judgment to RWA and dismissing the case was in error and must be reversed.

III. STATEMENT OF THE CASE

The following material chronology and procedural history sets the stage for this appeal and references the relevant documents:

1. On January 16, 2004, NWH was formed with two members:
(1) Sundance Magnetics, Inc., which owned a 65% interest in the company; and (2) Rick Young, who owned a 35% interest. (CP 31

RWA timeline; CP 33 and 60 (relevant pages of NWH's Operating Agreement; and CP 131, Boyer Dec. at ¶ 2);

2. On January 11, 2006, NWH sues Young for alleged misconduct and other claims. Young files a counterclaim against NWH and also files a third-party complaint against Pat Boyer and his wife, as well as against various companies they owned. The suit was entitled *Northwest Hunter TV, LLC v. Rick M. Young* (Case No. 06-2-00168-4), and was filed in Clark County Superior Court (hereinafter the "Young Lawsuit"). (CP 31 – RWA timeline; CP 131-132, Boyer Dec. at ¶¶ 3-4);

3. On June 13, 2006, NWH sues RWA for the alleged breach of an advertising sponsorship agreement. (CP 1-9; CP 134, Boyer Dec. at ¶ 13B);

4. On May 4, 2007, Young demands dissolution of NWH pursuant to Article X of the Operating Agreement, and withdraws or resigns as a member. (CP 75-76);

5. On August 17, 2007, Judge Lewis grants partial summary judgment confirming NWH's dissolution. (CP 78-80);

6. On December 14, 2007, Judge Lewis enters an Order Setting Timeline and Deadlines for selling NWH assets and, if not

sold within that time, a public auction is to be held. (CP 82-85);

7. On May 30, 2008, all parties in the Young Lawsuit agree to a settlement. Rick Young's interest in NWH would be purchased for a designated amount of cash and certain assets and equipment were to be transferred to Young as set forth in the "Motion to Enter the Stipulation and Settlement Agreement of Record". (CP 106-108; CP 132, Boyer Dec. At ¶ 6);

8. On July 8, 2008, Judge Lewis signs a stipulated Judgment and Order of Dismissal in the Young Lawsuit – dismissing the entire case and all claims, causes of action and related matters therein. (CP 124-125; CP 132, Boyer Dec. at ¶ 7);

9. On November 27, 2008, following the settlement, buyout and dismissal of the Young Lawsuit, Boyer files a new Master Business License with the State of Washington reporting the change in NWH's ownership. (CP 127-130);

10. At all times from 2004 to present, NWH has continued to operate and conduct business as that was the intent of all parties to the Young Lawsuit. NWH is and has been a duly licensed company in Washington at all times from 2004 to present. (CP 133, Boyer Dec. at ¶ 10);

11. On January 29, 2013, RWA moves for summary judgment dismissal of NWH's lawsuit against it on the basis that NWH had been "dissolved" in 2007. (CP 18 - 111);

12. On February 19, 2013, NWH files its opposition memorandum to RWA's motion, along with the Boyer Declaration. (CP 112-135);

13. On March 7, 2013, Judge Nichols files an opinion granting RWA's motion for summary judgment (CP 266-270);

14. On March 18, 2013, NWH files a Motion for Reconsideration. (CP 249-270);

15. On March 25, 2013, Judge Nichols files the formal Order granting RWA's motion for summary judgment and dismissing NWH's case against RWA. (CP 284-288);

16. On April 15, 2013, Judge Nichols enters an Order denying NWH's motion for reconsideration. (CP 289); and

17. On April 24, 2013, NWH files its Notice of Appeal.

IV. SUMMARY OF ARGUMENT

- A. The Voluntary Dismissal of the Young Lawsuit Rendered the Proceedings a Nullity.**
- B. The Partial Summary Judgment affirming Young's**

Demand for Dissolution was Not a Final Judgment, but rather Interlocutory and could be Revised or Vacated at anytime and was, in fact, Vacated upon Dismissal of the Entire Case.

- 1. CR 54(b) Requires Proper Certification Before a Judgment is Considered Final, and no Such Certification Existed.**
 - 2. Partial Summary Judgments Under CR 56 Are Usually Considered to be Interlocutory Only.**
- C. The Trial Court did Not Construe the Facts and Reasonable Inferences in NWH's favor as Required.**

V. ARGUMENT

A. The Voluntary Dismissal of the Young Lawsuit Rendered the Proceedings a Nullity.

Division 2 of the Court of Appeals has repeatedly held that a CR 41(a) voluntary dismissal renders the proceeding a nullity. "The effect of a voluntary dismissal of a complaint is to render the proceedings a *nullity* and leave the parties as if the action had never been brought." *Wachovia SBA Lending, Inc. v. Kraft*, 138 Wn.App. 854, 861 (Div. 2 2007) citing *Beckman v. Wilcox*, 96 Wn.App. 355, 359 (Div. 2 1999); See also *Spice v. Pierce County*, 149 Wn.App. 461, 467, 204 P.3d 254 (Div. 2 2009)("The effect of a party's voluntary dismissal or withdrawal of an action **renders the proceeding a**

nullity and leaves the parties in the same position ***as if the action had never occurred.***").

When the parties' voluntary stipulated to dismissal of the Young Lawsuit with prejudice, the dismissal brought down with it all prior orders and rulings in the case, including Judge Lewis' interlocutory partial summary judgment order. This is and has been the law for decades, if not longer:

The effect of a voluntary dismissal of an action is to render the proceedings a nullity. More specifically, dismissal or discontinuance of an action ...generally **operates to to annul orders, rulings or judgments previously made in the case** and leaves the parties as if the action had never been brought.

24 Am.Jur.2d, "Dismissal, Discontinuance and Nonsuit" § 89 (2008)(citations omitted))(emphasis added). See also "Dismissal or Nonsuit -- Orders", 11 ALR2d 1407, 1410 and 1411 (a "dismissal or discontinuance of a suit ... ***annuls orders, rulings or judgments previously made***" and "leaves the situation as if the suit had never been filed ***and carries down with it previous rulings and orders in the case.***").

A "nullity" is defined as: "Nothing; no proceeding; *an act or proceeding in a cause which . . . has absolutely no legal force or*

effect." Black's Law Dictionary (Revised 4th ed. 1968)(emphasis added).

Obviously, with Young opting for a buyout of his membership interest in NWH, rather than a sale and/or auction of NWH's assets in dissolution followed by a pro rata distribution of the proceeds after creditors are paid, Judge Lewis' partial summary judgment order confirming Young's *initial* demand for dissolution would no longer serve any legal or practical purpose. Young had demanded and sought judicial dissolution when the parties were at odds with one another.¹

The parties' settlement, the buyout of Young's membership interest in NWH and the voluntary dismissal of the Young Lawsuit ended the controversy and mooted all claims and demands between the parties, including Young's demand for dissolution, and annulled Judge Lewis' prior interlocutory order confirming Young's demand for dissolution.

1

RCW 25.15.275 entitled "Judicial Dissolution" states: "On application by or for a member or manager the superior courts may decree dissolution of a limited liability company ***whenever: (1) It is not reasonably practicable to carry on the business*** in conformity with a limited liability company agreement; or (2) ***other circumstances render dissolution equitable.***" (Emphasis added). Those circumstances disappeared upon settlement, the buyout of Young's interest and voluntary dismissal.

The parties changed their minds as to how to proceed, settled their disputes and moved on without the need for dissolution of NWH. Judge Nichols' decision dismissing NWH's lawsuit against RWA in light of these facts and the cited law is inexplicable and baffling to say the least. The decision must be reversed and the case remanded for trial.

B. The Partial Summary Judgment affirming Young's Demand for Dissolution was Not a Final Judgment.

The "linchpin" for the court's decision appears to be its' conclusion that the August 17, 2007 partial summary judgment order was "a sufficiently final determination" such that the subsequent voluntary dismissal had "no effect" on that order. (CP 270). This conclusion runs counter to both the Civil Rules and established Washington law and is incorrect.

1. CR 54(b) Requires Proper Certification before the Judgment is Considered Final

Washington courts have repeatedly held that, absent a proper certification of finality under CR 54(b), the order or judgment is *not* final and has *no binding effect*. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 300 (1992) ("an order which adjudicates fewer than all claims or the rights and liabilities of fewer than all parties is **subject**

to revision at any time ... and [is] not a final judgment(emphasis added); *Ledcor Industries (USA), Inc. v. Mutual of Enumclaw Ins. Co.* 150 Wn.App. 1, 14, fn.32 (2009)("Under CR 54(b), a decision that adjudicates fewer than all of the claims in an action is **not final** unless the court makes written findings that there is no just reason for delay for the entry of judgment. In the absence of such findings, a [partial summary] judgment . . . 'is subject to revision at any time.'"); *Fluor Enterprises, Inc. v. Walter Const., Ltd.*, 141 Wash.App. 761, 768, 172 P.3d 368 (2007)("If the trial court does not enter the requisite findings [under CR 54(b)], the **judgment has no binding effect...**"). See also CR 54(b); 15A Wash. Prac., *Handbook on Civil Procedure* § 85.12 (2011-2012 ed.)("In general, a partial judgment is not final and is subject to revision at any time").

As Karl Tegland noted in his "*Handbook on Civil Procedure*", there are "four formal prerequisites for entry of a final judgment under CR 54(b):

(1) [there must be] more than one claim for relief or more than one party against whom relief is sought;

(2) [there must be] an express determination that there is no just reason for delay;

(3) [there must be] written findings supporting the determination that there is no just reason for delay; and

(4) [there must be] an express direction for entry of the judgment.

Id. at § 85.12. At the very least, Judge Lewis' August 17, 2007 order omitted points 2 and 4.

There was certainly no express direction for entry of judgment, nor any arguable determination that there was no just reason for delay. Tegland cited *West v. Thurston County*, 144 Wn.App. 573, 183 P.3d 346 (Div. 2 2008) for the proposition that, if the trial court does not enter an express determination under CR 54(b), then the partial summary judgment is not considered "final" and will not be able to be appealed until a timely notice of appeal has been filed for all claims after entry of the final judgment. Id.

Moreover, because Judge Lewis' August 17, 2007 order was only interlocutory, that order could be amended, revised or vacated at any time. The parties' settlement and dismissal of the entire case effectively vacated and annulled the dissolution order.

**2. Partial Summary Judgments Under CR 56
are Usually Considered to be Interlocutory.**

Although CR 56(d) specifically addresses adjudications of less than the entire action, but does not purport to authorize a final judgment. See 10A Charles A. Wright, Arthur N. Miller & Mary K. Kane, Federal Practice § 2737, at 463 (2d ed.1983). This has been the law in Washington for decades.

In *Grill v. Meydenbauer Bay Yacht Club*, 57 Wn.2d 800, 804 (1961), the Supreme Court discussed partial summary judgments under CR 56 in part as follows:

The effect and function of [a partial summary judgment] is succinctly described in 6 Moore's Federal Practice (2d ed.) 2311 (1958), as follows:

'It has been pointed out that Rule 56 provides for a 'partial summary judgment', namely, a summary judgment that is not rendered upon the whole case or for all the relief asked; but that ***the term 'partial summary judgment' is usually a misnomer, and that a more accurate term would be an interlocutory summary adjudication.***

Id. (emphasis added). See also K. Tegland, 14A Wash. Prac., *Civil Procedure* § 25:26 (2d ed.)(Supp. 2012)("A partial summary judgment is appealable, but **only if** the trial court makes an express determination, supported by written findings, that there is no just reason for delay. In the absence of the requisite finding, **a partial summary judgment is interlocutory only**").

Such was the nature of Judge Lewis' August 17, 2007 order granting partial summary judgment – it was interlocutory only. But even if, for the sake of argument, it was a final judgment, the settlement, buyout and dismissal equitably mooted it as the grounds for judicial dissolution under RCW 25.15.275 no longer existed.

C. The Trial Court did Not Construe the Facts and Reasonable Inferences in NWH's favor as Required.

The court's function on summary judgment is to determine whether a genuine factual issue exists, not to resolve factual issues on their merits. *Balise v. Underwood*, 62 Wn.2d 195, 381 P.2d. 966 (1963); Washington Civil Procedure Deskbook, Vol. III at 56-29 (WSBA 2d. ed. 2002 and Supp. 2006). Moreover, the court is to consider all material evidence and all *inferences* from the evidence in the light most favorable to the non-moving party -- which was NWH. *Magula v. Benton Franklin Title Co.*, 131 Wn.2d. 171, 930 P.2d 307 (1997). CR 56. The trial court did not do so.

Boyer's declaration expressly stated the following facts in opposition to RWA's summary judgment motion:

6. On May 30, 2008, **all parties agreed to a settlement** of the [Young Lawsuit]. **Rick Young's interest in NWH would be purchased for a designated amount of cash and certain assets and**

equipment were to be transferred to Mr. Young as set forth on Ex. 10 to defendant's summary judgment motion (i.e., "Motion to Enter the Stipulation and Settlement Agreement of Record").

7. On July 11, 2008, as a result of the settlement, and pursuant to consent of all parties to the Action, **Judge Lewis entered a "Judgment and Order of Dismissal" in the Action** -- terminating the case and dismissing all claims, counterclaims, third-party claims and related matters with prejudice. . . .

8. The settlement and buy-out of Mr. Young's membership interest in NWH, coupled with the dismissal of the Action with prejudice, mooted all prior claims and demands between the parties. **Dissolution was no longer required or demanded and, instead, Mr. Young elected to sell his interest in the company.**

Id., CP 132, Boyer Dec. at ¶¶ 6-8.

If Young elected to proceed with a buyout of his interest rather than proceeding with dissolution of the company and sale of its assets as he originally demanded, and both Young and Boyer operated on that basis at all relevant times, including their agreement to dismiss the Young Lawsuit with prejudice, then a factual issue arguably existed as to whether the grounds and statutory basis for Judge Lewis' August 17, 2007 dissolution decision still existed. If the facts and circumstances changed between NWH's two owners, then the basis for dissolution changed as well.

VI. CONCLUSION

The settlement, buyout and dismissal of the Young Lawsuit annulled Judge Lewis' August 17, 2007 partial summary judgment order, which was interlocutory in nature anyway. This decision, like all other claims, causes of action, demands and related matters, was brought down and rendered a nullity upon dismissal. NWH had every right to continue the business in light of the parties' settlement and Young's buyout and did so pursuant to Article X of the company's Operating Agreement.

The trial court's March 7, 2013 decision dismissing NWH's case against RWA was erroneous and ignored long-standing precedent on the effect of a voluntary dismissal upon orders, rulings and judgments previously entered in a given case. The decision also ignored the obvious fact that the basis and grounds for dissolution no longer existed as set forth in both the Operating Agreement and in RCW 25.15.275. Young elected a buyout of his membership interest.

Following the buyout, settlement and dismissal, the sole remaining member of NWH elected to continue NWH as allowed by the Operating Agreement and state law. Those facts cannot be

ignored and justice be served. The trial court must be reversed and the case remanded for trial.

RESPECTFULLY SUBMITTED this 4th day of November, 2013.

A handwritten signature in black ink, appearing to read "Larry E. Hazen". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Larry E. Hazen, WSB #31046
Attorney for Appellant

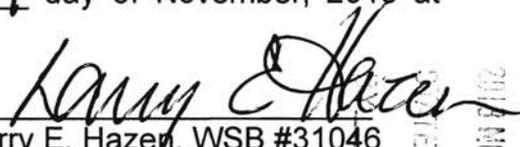
CERTIFICATE OF SERVICE

I, Larry E. Hazen, hereby certify under penalty of perjury under the laws of the State of Washington that, on **November 4, 2013**, I served the foregoing BRIEF OF APPELLANT upon the following individuals or entities via the method indicated:

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SIGNED and DATED this 4 day of November, 2013 at
Vancouver, Washington.



Larry E. Hazen, WSB #31046
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COURT OF APPEALS
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