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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

TROY BROWER, Plaintiff/Appellant
vs.
DANIEL HOERNER and AUGUSTA HOERNER
Defendants/Respondents

APPEALED FROM SPOKANE COUNTY SUPERIOR COURT
CAUSE NO. 15-2-04696-3
THE HONORABLE RAYMOND CLARY

TROY BROWER'S REPLY BRIEF

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I. INTRODUCTION

The trial court's entire decision rests on the erroneous finding of fact that Mr. Brower voluntarily disassociated himself from the Big Dipper, LCC ("Big Dipper") in a Facebook post on September 22, 2014. This

erroneous finding of fact is the basis for the trial court's decision not to reinstate Mr. Brower's equal ownership/membership in the Big Dipper and award corresponding damages. The documents admitted into evidence show Mr. Hoerner took actions to remove Mr. Brower's ownership interests in the Big Dipper well before Mr. Brower made his Facebook post, and forced Brower out as an owner by fraud.

On August 28, 2014, almost a month prior to the Mr. Brower's removal from the business premises, without Mr. Brower's knowledge, Mr. Hoerner signed a change in ownership form with the intent to submit the form to the Washington Secretary of State stripping Mr. Brower of his ownership interest in the Big Dipper. On September 20, 2019, Mr. Hoerner held a meeting with himself, and sent Mr. Brower an email informing Mr. Brower he no longer had an ownership interest in the Big Dipper. Mr. Hoerner also: (1) hired an attorney, (2) created a false document showing he was the sole owner of Big Dipper, and (3) presented the document to the Spokane County Police to have Mr. Brower removed from the business premises permanently. All of the above-stated events occurred prior to Mr. Brower's Facebook post that the trial court relied upon to deny Mr. Brower's claims.

Considering the admitted evidence, a reasonable person could not conclude that Mr. Brower voluntarily disassociated himself from the Big

Dipper. Especially when Mr. Hoerner's sole defense throughout the entire litigation and trial was that Mr. Brower was never a member or owner of the Big Dipper. Mr. Hoerner insisted on this defense despite signing multiple documents under the penalty of perjury, which he submitted to government agencies, attesting that Mr. Brower was an equal owner/member of the Big Dipper. Based on this evidence, the trial court correctly found Mr. Brower was an equal owner/member, but then somehow concluded Mr. Brower was not entitled to damages.

The Respondent's brief does nothing more than restate the trial court's findings and agrees with the trial court's decision. The Respondent's brief is nonresponsive to the issues raised by Mr. Brower. In supporting the trial court's decision, Mr. Hoerner argues that Mr. Brower cannot recover because he did not sue the Big Dipper, the business that he and Mr. Brower were equal partners. This argument is not supported by law, as Mr. Hoerner is the proper party for this partnership dispute. The fact that the Big Dipper is not a party to this lawsuit has no effect on Mr. Brower's claims or recovery.

The evidence shows Mr. Hoerner breached the parties' partnership agreement, breached his fiduciary obligations to share financial information with Mr. Brower, falsified documents, made fraudulent statements, did not follow the statutory requirements to disassociate Mr.

Brower from the Big Dipper, and failed to dispute the damages presented by Mr. Brower at trial. The trial court made findings not supported by the evidence, mischaracterized evidence, and as a result came to a decision no reasonable person would make. As a result, Mr. Brower has his business interests stripped away without any compensation for his time, efforts, contributions, or value added to the Big Dipper. Instead, Mr. Hoerner was rewarded for fraud, deception, and scheming his 20-year friend and business partner out of his equal interest in the Big Dipper. Justice has not been served, and the trial court's decision must be overturned.

II. ARGUMENT

A. The Trial Court Committed Error by Deciding Mr. Brower Voluntarily Disassociated Himself from the Big Dipper, All Conclusions of Law Based on this Finding are an Abuse of Discretion.

Respondent's brief fails to address any of the issues raised by Mr. Brower in his opening brief regarding the trial court's finding that Mr. Brower voluntarily disassociated himself from the Big Dipper. Instead, Respondent simply restates the trial court's findings and conclusions and agrees the trial court was correct in its decision. The admitted evidence clearly shows Mr. Brower did not voluntarily disassociate himself from the Big Dipper, and the trial court's decision must be overturned.

In its “Decision, Findings, Conclusions of Law and Judgment,” the trial court found:

5. Mr. Brower was a member of The Big Dipper, LLC up until approximately September 20, 2014 or September 26, 2014, when he disassociated in writing and his disassociation was memorialize with the Secretary of State.

CP 523. This conclusion of law is based upon the trial court’s Finding of Fact No. 37, wherein the trial court found:

On or near September 20, 2014, and following the conflict at The Big Dipper, Mr. Brower posted a Facebook announcement on The Big Dipper’s Facebook Page that he was no longer part of The Big Dipper. In part, he wrote, “I am no longer the co-owner of The Big Dipper”; I am burned and out” (syntax original); “I am glad to be gone”; “Time for some rest and solitude.” Plaintiff’s Ex. 43; Defendants’ Exhibit D-107.

CP 519. This Finding of Fact and corresponding Conclusion of Law is not supported by substantial evidence. Because this is the trial court’s jumping off point for its decision, all conclusions and decisions thereafter are erroneous.

The undisputed facts show that starting in June 2014, the partners of the Big Dipper began a dispute regarding Mr. Hoerner’s refusal to provide Mr. Brower with the financial information for their business. RP 134-137; 228-231; 236-238; 330-331; Ex. P-61; Ex. D-107. This initial dispute lead to a series of disputes between Mr. Hoerner and Mr. Brower. On August 28, 2014, after the partners cannot resolve their respective

issues, Mr. Hoerner signs a “Change in Governing People, Percentage Owned and/or Stock/Unit Ownership” form, which he submits to the Secretary of State stripping Mr. Brower of his equal ownership in the Big Dipper. RP 111-113; Ex. P-5. Mr. Brower had no knowledge Mr. Hoerner had signed this form, or that Mr. Hoerner submitted it to the Secretary of State removing his ownership in the Big Dipper.

On September 20, 2014, after signing the form taking away Mr. Brower’s equal ownership in the eyes of the Secretary of State, Mr. Hoerner holds a meeting with himself, wherein he unilaterally decides that Mr. Brower is no longer an equal owner/member of the Big Dipper and sends Mr. Brower an email informing Mr. Brower of his decision. Ex. P-9. The trial court’s Finding of Fact No. 33 finds the above facts to be true. CP 519. On September 20, 2014, when Mr. Brower shows up at the Big Dipper for work, Mr. Hoerner calls the police to have Mr. Brower removed from the Big Dipper premises. RP 127-128; D-106. However, the police will not remove Mr. Brower because Mr. Hoerner cannot show that Mr. Brower is not an equal owner of the Big Dipper.

Because he cannot have Mr. Brower removed from the Big Dipper premises on September 20, 2014, after unilaterally voting Mr. Brower out as an equal owner/member, Mr. Hoerner hires attorney Lisa Dickenson to assist in drafting a document that he can present to police to ensure Mr.

Brower is removed from the Big Dipper premises once and for all. RP 128-129; 241-242; Ex. P-35. The document Mr. Hoerner created stated he was, "*the sole legal owner of The Big Dipper, LLC, and the sole tenant at 171 South Washington Street, Spokane WA 99201,*" the address of the Big Dipper. RP 129-131; P-35. On September 22, 2014, after creating this false document, Mr. Hoerner once again called the police to have Mr. Brower removed from the Big Dipper premises when he showed up for work. RP 128-129; 241-242; Ex. P-35. Because Mr. Hoerner presented the police with the false document, Mr. Brower was removed from the Big Dipper premises permanently.

On September 22, 2014, after being removed by the police from the Big Dipper premises Mr. Brower created the Facebook post referred to the trial court's Finding of Fact No. 37. Despite the undisputed evidence showing what occurred prior to the post and the context of the Facebook post it is completely absent from the trial court's "Finding of Facts." The trial court's ultimate decision is based on half the story. Further, the trial court's Finding of Fact No. 33 mischaracterizes the evidence. This finding states Mr. Hoerner wrote Mr. Brower "*that he needed to remove himself from the partnership and limited liability company,*" which is not what was communicated by Mr. Hoerner to Mr. Brower at all. CP 519. This finding implies Mr. Hoerner requested Mr. Brower leave the

partnership, and by Mr. Brower making his Facebook post he consented to Mr. Hoerner's request, which could not be further from the truth.

On September 20, 2014, Mr. Hoerner sent an email to Mr. Brower after holding a company meeting with himself without notice to Mr. Brower, which stated in pertinent part:

On September 20, 2014, Dan Hoerner, the Managing Member¹ of The Big Dipper, LLC held a meeting regarding your recent conduct and activities as a member of the corporation. The situation was examined and it was concluded that at this time drastic action is required in order to preserve the integrity, viability, and profitability of The Big Dipper, LLC.

...

*As a result of the aforementioned and numerous other acts and failure to act on your part as a member of The Big Dipper, LLC, the Managing Member has voted as follows **EFFECTIVELY IMMEDIATELY**:*

- A. You are no longer a member of The Big Dipper, LLC.*
- B. You have no authority regarding nor right to access any financial information or any matters of whatever kind and nature of The Big Dipper, LLC.*
- C. You are hereby banned from the premises where The Big Dipper, LLC does business and should you enter upon said premises during business hours, you will be arrested for trespass...*

¹ "Managing Member" as used by Mr. Hoerner is nothing more than a self-proclaimed title with no legal significance.

Ex. P-9. This email sent by Mr. Hoerner clearly states he voted Mr. Brower out as an equal member of the Big Dipper, and that if he attempted to return, Mr. Brower would be arrested for trespass. Ex. P-9. Mr. Hoerner's September 20, 2014, email does not inform Mr. Brower that he needs to remove himself from the business, as the trial court finds, it clearly states Mr. Hoerner has unilaterally decided Mr. Brower is out as a member/owner of the business. Ex. P-9; CP 519.

True to his word, Mr. Hoerner called the police to have Mr. Brower removed when he attempted to show up for work at the Big Dipper on September 20, 2014. When Mr. Brower refused to voluntarily relinquish his equal ownership interest in the business and when the police would not remove Mr. Brower from the premises, Mr. Hoerner resorted to creating a fraudulent document indicating he was the sole owner of the Big Dipper. Ex. P-35. On September 22, 2014, only after Mr. Hoerner presented police with the false document he created with the assistance of his attorney, indicating he was the sole owner of the Big Dipper, did the police remove Mr. Brower from the premises. RP 128-131; 241-242; Ex. P-35. Only after all of these events, and being forcibly removed from his equal business premises, did Mr. Brower post a message on Facebook stating he was scammed out of his ownership interest in the Big Dipper by Mr. Hoerner. Ex. P-43; D-107. There is nothing voluntary about Mr.

Brower's Facebook message, it tells of the fraud, deceit, and scheme of Mr. Hoerner to steal his business interest. *Id.* However, none of these undisputed facts appear in the trial court's findings.

"An abuse of discretion is found if the trial court relies on unsupported facts, takes a view that no reasonable person would make, applies the wrong legal standard, or bases its ruling on an erroneous view of the law." Gildon v. Simon Property Group, Inc., 158 Wash.2d 483, 494 (2006). The trial court's decision is based upon supported facts, and a mischaracterization of the undisputed evidence. The result is a decision that no reasonable person would make. The trial court abused its discretion in its Finding of Fact No. 41 by finding that Mr. Brower voluntarily disassociated himself from the Big Dipper, and that Mr. Hoerner simply acquiesced to Mr. Brower's disassociation by filing the necessary paperwork with the Secretary of State on September 26, 2014. CP 529. The document referred to in the court's finding is a document stripping Mr. Brower's equal ownership interest in the Big Dipper. Ex. P-5. This document was signed and dated on August 28, 2014, almost a month prior Mr. Brower's Facebook post or any of the relevant events leading to the removal of Mr. Brower by police. Mr. Hoerner did not memorialize his acceptance of Mr. Brower's disassociation, Mr. Hoerner committed fraud and his actions were supported by the trial court. The

trial court not only disregarded the undisputed facts and evidence, but also disregarded the law requiring parties to dissolve their partnership or disassociate a member in accordance with the law. RCW 25.15.131.

Because the trial court failed to find facts consistent with the evidence and relied upon unsupported facts to come to its conclusion, all of its decision start from a place of error and abuse of discretion. Because the trial court found Mr. Brower voluntarily disassociated himself as a member of the Big Dipper, the trial court denied Mr. Brower's declaratory claim to be reinstated as a member, denied the claim for breach of contract and denied the claim for fraud. There is no support in the record for the trial court's decision, and there is clear evidence that the trial court either omitted or mischaracterized evidence to reach its ultimate conclusions. The trial court's finding that Mr. Brower was an equal partner/owner, but denial of all Mr. Brower's claims stems from the mistaken and unsupported finding Mr. Brower voluntarily relinquished his interest in the Big Dipper.

The trial court's decision should be reversed in accordance with the undisputed evidence, and Mr. Brower should have his equal interest in the business reinstated and be awarded damages. or at the very least this matter should be remanded for a new trial.

B. The Partnership is not a Necessary Party and Mr. Brower Can Recover Damages from Mr. Hoerner.

Respondent argues in his response that the trial court concluded the Big Dipper was a necessary party and Mr. Brower cannot recover damages against Mr. Hoerner or his wife. Respondent cites to RCW 25.15.126 for his authority, however this statute is not on point because it refers to a partnership liability to third-parties. As an equal owner/member of the Big Dipper Mr. Brower is not a third-party.

Further, a lawsuit between partners requires the individuals, not the partnership be a party to the action. Yarbrough v. Pugh, 63 Wash. 140, 145 (1911). This is because the individual members of the partnership are liable for their own conduct. Gildon v. Simon Property Group, Inc., 158 Wash.2d 483, 498-499 (2006). Respondent cites to no authority for the proposition that the Big Dipper is an indispensable party to this action, or that Mr. Hoerner and his wife cannot be held personally liable to Mr. Brower. Respondent's argument in this regard is without merit and should not be considered by this Court.

V. CONCLUSION

The trial court abused its discretion by basing its findings of facts and conclusions of law on unsupported facts. Because the trial court's jumping off point was to find that Mr. Brower voluntarily disassociated

himself from the Big Dipper, all other facts and conclusions thereafter are not supported by substantial evidence and are erroneous. The trial court based its decision on half the story, and either omitted to mischaracterized evidence to support its conclusions. The evidence shows Mr. Brower was at all times an equal member/owner of the Big Dipper, and Mr. Hoerner's unilateral acts cannot change Mr. Brower's status. Mr. Hoerner should not be rewarded for his underhanded and fraudulent removal of Mr. Brower from the business documents and physically from the premises. Because the trial court based its findings on unsupported facts, its entire decision needs to be reversed and Mr. Brower should be awarded damages. At the very least, this matter should be remanded for a new trial in accordance with the facts and evidence.

DATED this 9th day of August, 2019.

ROBERTS | FREEBOURN, PLLC

s/ Chad Freebourn

CHAD FREEBOURN, WSBA #35624

Attorney for Troy Brower

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of August, 2019, I caused to be served a true and correct copy of the foregoing document to the following:

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- HAND DELIVERY
- U.S. MAIL
- OVERNIGHT MAIL
- EMAIL

s/ Chad Freebourn
CHAD FREEBOURN

ROBERTS FREEBOURN

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