

NO. 38975-4-II

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

CO. 11/19/17 11:27
STATE OF WASHINGTON
BY _____

NORMAN C. IVERSON,

Respondent,

v.

KIRI JOINT VENTURE, a Washington general partnership,
ROBERT J. KNUTSEN, a single man, and ARTHUR J. REDFORD
and DALLAS J. REDFORD, husband and wife; PENNY C. DUKE
and ROBERT DUKE, wife and husband, and the marital community
of them composed; JEFFREY B. IVERSON and SUSAN IVERSON,
husband and wife, and the marital community of them composed;
and IVERSON REAL ESTATE, LLC, a Washington limited liability
company,

Appellants.

BRIEF OF APPELLANTS

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INTRODUCTION

Kiri Joint Venture held a piece of raw land from 1977 to 2008, when Kiri sold the land. The Joint Venture Agreement (“JVA”) provided that all Kiri members would participate in Kiri’s management. But when a sale was on the table in 1996, Nick Iverson began claiming a “management fee” from Kiri’s other members. Under the JVA, plaintiff Nick Iverson could not be Kiri’s manager, or be paid a fee, without the unanimous consent of Kiri’s members after a member-meeting. There was no meeting and the agreements Nick Iverson produced do not even have a simple majority of Kiri’s members.

Any agreement to pay Nick Iverson a fee is an illusory promise as it says nothing about what Nick Iverson was actually supposed to do. When Kiri held its first official meeting in 2003, the members unequivocally told Nick Iverson that no management agreement ever existed, or was terminated. Nick Iverson filed suit 4.5 years later. 1.5 years after the statute of limitations had expired.

The trial court granted summary judgment to Nick Iverson for his alleged fee, despite the many fact questions precluding summary judgment in Nick Iverson’s favor. The undisputed facts demand summary judgment in defendant’s favor. The Court should

reverse with instructions to grant summary judgment in defendants' favor. Alternatively, the Court should reverse and remand for trial.

ASSIGNMENTS OF ERROR

1. The trial court erred in granting Nick Iverson's summary judgment motion and in denying Kiri's summary judgment motion. CP 485-88.
2. The trial court erred in entering judgment for Nick Iverson. CP 516-18.

ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Did the trial court incorrectly conclude as a matter of law that a majority of Kiri's members signed the Management Agreement¹, where the evidence overwhelmingly suggests that the Agreement was created and signed in 1995, and only one of the Kiri members who signed the Management Agreement had an interest in Kiri in 1995?
2. Did the trial court incorrectly rule as a matter of law that a majority of Kiri's members ratified the Management Agreement, where (a) a majority of Kiri's members did not sign the Agreement

¹ The Management Agreement is attached as Appendix A.

Among Partners² that Nick Iverson relied on to allege ratification;
(b) the Agreement Among Partners does not promise Nick Iverson a management fee and pertains only to the Hawk's Prairie sale, which fell through 12 years before the property sold?

3. Where Kiri's Joint Venture Agreement³ plainly states that all Kiri members will manage Kiri, and where any JVA amendment requires a unanimous vote, did the trial court incorrectly conclude (a) that a simple majority vote was sufficient to make Nick Iverson Kiri's manager; and (b) that a majority of Kiri's members agreed to pay Nick Iverson a management fee?

5. Is the promise to pay Nick Iverson a management fee an illusory promise, where the Management Agreement states simply that Kiri will pay Nick Iverson for "services rendered," and says nothing about Nick Iverson's tasks or duties with respect to Kiri's real property?

6. Does the three-year statute of limitations applicable to oral contracts apply, such that Nick Iverson's claims are time-barred, where the only way to ascertain Nick Iverson's promise under the

² There are two versions of the Agreement Among Partners, both of which are attached as Appendix B. The only difference in the two agreements is Norman Iverson's signature. *Infra*, Argument § C 2.

³ Relevant pages of the JVA are attached as Appendix C.

Management Agreement is to look at his subsequent conduct, which is parol evidence?

STATEMENT OF THE CASE

A. The “Kiri” Joint Venture.

The Kiri Joint Venture is a general partnership formed June 20, 1977, by Norman L. and Marie K. Iverson⁴ (25.5%), Norman L. Iverson as trustee of Iverson Trust (25.5%), Robert Knutsen (24.5%), and Arthur and Dallas Redford⁵ (24.5%). CP 1-2, 5. Kiri was formed to hold or develop “raw land” located just off I-5 at the “Hawks Prairie” exit. CP 128, 212. The land was originally in unincorporated Thurston County, but was later annexed by the City of Lacey. *Id.*

Kiri’s Joint Venure Agreement (“JVA”) provides that Kiri will be member-managed, each member promising to “use their best efforts in [Kiri’s] management.” App. C ¶ 8. All management decision were to be made by a vote of all Kiri members, based on their ownership interest, following an opportunity to discuss the issue at hand. *Id.*

⁴ Norman L. Iverson was the father of plaintiff Norman C. Iverson (“Nick Iverson”) and Nick Iverson’s siblings Penny Duke and Jeff Iverson.

⁵ Unless otherwise specified, this brief refers only to Arthur Redford, who acted on behalf of his wife Dallas, regarding their community interest in Kiri. CP 308.

The Iverson parents began gifting their personal interest to the Norbeck trust in the late 1980s, intending that the beneficial interest would then be transferred to the three Iverson children – Penny Duke, Jeff Iverson, and Nick Iverson. CP 163, 275. The Iversons' interest was transferred to the Norbeck Trust over time, from 1989 to 1994. *Id.* By June 1994, Norman and Marie Iverson had gifted their entire 25.5% interest to the Norbeck trust (*id.*), and the Norbeck trust had transferred its interest to the Iverson children, 8.5% to Penny Duke, 8.5% to Jeff Iverson, and 8.5% to Nick Iverson (held by the Nor Rae trust). CP 275. From that point forward, the Norbeck trust had no ownership interest in Kiri. *Id.*

In 1994, the Iverson parents transferred the interest held by the Iverson trust (25.5%) to Iverson Real Estate, LLC, owned equally by the three Iverson children. CP 163. From 1994 forward, the Iverson parents held no ownership interest in Kiri, personally or in trust. *Id.* Kiri was then owned as follows: Penny Duke personally, 8.5%; Jeff Iverson personally, 8.5%; Nor Rae trust, 8.5%; Iverson Real Estate LLC, 25.5%; Knutsen, 24.5%; Redford, 24.5%. *Id.*

The following chart shows Kiri's ownership at year's end, from 1977 to present. Norman and Marie Iverson gifted their

interest in Kiri to the Norbeck trust through four separate transfers. Since the parties dispute how much was gifted at each transfer, the chart simply reflects that Norman and Marie Iverson's interest decreased as the Norbeck trust gained an interest over a period of years. When the transfers to the Norbeck trust were complete, the trust transferred the interest to the Iverson children.

Kiri Owner-ship	1977	1989	1990	1992	1994	1995 to sale
Iverson Parents	25.5%	<25.5%	<25.5%	<25.5%	0%	0%
Iverson Trust	25.5%	25.5%	25.5%	25.5%	0%	0%
Knutsen	24.5%	24.5%	24.5%	24.5%	24.5%	24.5%
Redford	24.5%	24.5%	24.5%	24.5%	24.5%	24.5%
Norbeck Trust	0%	>0%	>0%	>0%	25.5% before June. 0% after June.	0%
Nor Rea Trust	0%	0%	0%	0%	8.5%	8.5%
Penny Duke	0%	0%	0%	0%	8.5%	8.5%
Jeff Iverson	0%	0%	0%	0%	8.5%	8.5%
Iverson Real Estate	0%	0%	0%	0%	25.5%	25.5%

B. To provide Nick Iverson with an income, his father employed him through the Iverson trust to represent the trust's interest in Kiri.

This lawsuit arose when Nick Iverson sued Kiri's other members for a "management fee" after Kiri sold the property in 2008. CP 2, 4. The following provides background about Nick Iverson's claimed management of Kiri.

To provide Nick Iverson with an income, the Iverson parents, through the Iverson Trust, employed Nick Iverson between the 1970s and late 1980s or early 1990s. CP 162. The trust paid Nick Iverson a salary to "represent the Iverson Trust[']s interest in" Kiri. CP 162, 302. Nick Iverson handled "menial" "day-to-day" responsibilities for the Iverson trust. CP 162-63. Nick Iverson had no other "position" in Kiri. CP 303. He has never owned a property management company. CP 302, 334. He also is not a licensed real estate agent. CP 32.

Nick Iverson claims that he is entitled to a management fee for doing things like consulting with realtors about selling the property and meeting with the City about annexation. CP 132-34. But Redford also met with the City. CP 213. And Redford dealt with annexation and realtors, just as Nick Iverson claims he did. *Id.* Redford reviewed Nick Iverson's "chronology of services performed

for Kiri” (CP 135) and calculated that Nick Iverson spent approximately 300 hours on Kiri since 1977. CP 213. Redford spent “far more hours” than Nick Iverson “dealing with the property.” CP 213.

C. For the first time in 1995 (at which time the Iverson trust no longer held any interest in Kiri) Nick Iverson gave Knutsen and Redford a “Management Agreement” allegedly signed in 1977, under which he claimed to be entitled to a “management fee.”

For the first time in 1995, Nick Iverson began claiming that he managed Kiri and was entitled to a “management fee,” producing a never previously discussed “Management Agreement.” App. A; CP 306, 308. In his September 4, 2008 deposition, Nick Iverson repeatedly stated that he has “no idea” when the Management Agreement was signed. CP 242, 335. In his subsequent declarations in support of his motion for summary judgment, however, Nick Iverson unequivocally swore that he received a copy of the Management Agreement in 1977, signed by all of Kiri’s then members, except Redford. CP 127, 131 (November 3, 2008 declaration), CP 374, 375 (December 16, 2008 declaration).

There are also discrepancies in the parties who allegedly signed the Management Agreement in 1977. App. A. The

Management Agreement has signature lines for the Iverson trust, by Norman Iverson, trustee, the Norbeck trust, by Norman Iverson, trustee, Marie Iverson, Arthur Redford, Dallas Redford, and Robert Knutsen. *Id.* Although Norman Iverson had a personal interest in Kiri in 1977, there is no signature line on for Norman in his personal capacity. *Id.*

Norman Iverson signed the Management Agreement for the Norbeck trust. App. A. Nick Iverson alleged that he did so in 1977. CP 375. But the Norbeck trust had no interest in Kiri until late 1980s. CP 162. The Norbeck trust did not receive its full interest in Kiri from the Iverson parents until 1994. *Id.*

As discussed in the following paragraphs, the only clear evidence of the date of the Management Agreement came from Knutsen and Redford, who testified unequivocally that it was first presented to them in 1995. But by 1995, the Norbeck Trust, which appears as a signatory on the Management Agreement, had transferred its entire interest in Kiri to Nick Iverson, Penny Duke and Jeff Iverson – none of whom appear on the document. The Iverson Trust, which appears as a signatory on the Management Agreement, had already transferred its interest to Iverson Real Estate LLC – which does not appear on the document.

Knutsen, a Kiri member from its inception, did not see or sign the Management Agreement until 1995. CP 306. Knutsen never heard Nick Iverson claim that he managed Kiri (or was entitled to a management fee) until 1995, when Nick Iverson first produced the Management Agreement. *Id.*

Like Knutsen, Redford never saw the Management Agreement until 1995. CP 308. Nick Iverson represented himself to Redford – a Kiri member since its inception – as the “authorized representative” of the Iverson family. CP 212-13. Since the Iverson family collectively owned 51% of Kiri, Redford believed that Nick Iverson had the right to act as an owner, which, under the JVA, meant Nick Iverson had the right to participate in Kiri’s management, along with all other Kiri members. App. C ¶ 8; CP 212-13. As such, Redford did not think that he had the right to stop Nick Iverson “from taking any actions that he took.” CP 213. Redford repeatedly told Nick Iverson that Nick Iverson was not Kiri’s manager and that Nick Iverson did not have authority to manage Redford’s interest in the property. *Id.*

When Nick Iverson gave Redford the Management Agreement in 1995, Nick Iverson told Redford that the parties who had already signed the Agreement – Knutsen, Marie Iverson, and

Norman Iverson for the Iverson trust and Norbeck trust – had signed “recently.” CP 308-09. In other words, Nick Iverson acknowledged that the Management Agreement was signed in or near 1995, not 1977. *Id.*

Redford refused to sign the Management Agreement, telling Nick Iverson that Kiri’s management was vested in all of Kiri’s members. *Id.* Nick Iverson claimed that the JVA required only a majority vote of Kiri’s members to hire him as a manager. CP 309. Redford replied, in writing, that the JVA required a unanimous vote, and that Redford would not agree to hire Nick Iverson as a manager. CP 310.

D. When it appeared that Kiri had a firm sale pending in 1996, Nick Iverson gave Penny Duke and Jeff Iverson the Management Agreement and Purchase and Sale Agreement Addendum, telling them for the first time that he claimed a right to a management fee from the sale proceeds.

In 1996, it appeared that Kiri had a firm Purchase and Sale Agreement to sell the raw land to the Hawk’s Prairie Development Company. CP 122, 133. While the PSA was pending, Nick Iverson told Penny Duke and Jeff Iverson for the first time that he expected to be paid a management fee from the sale proceeds. CP 276 (Penny Duke), 302-03 (Jeff Iverson). Nick Iverson gave Penny

Duke the Management Agreement, telling her that it had been in place since 1977. CP 276. Nick Iverson had never previously claimed to manage the property and no other Kiri member ever told Penny Duke that Nick Iverson claimed to be Kiri's manager. *Id.*

Jeff Iverson also first learned that Nick Iverson claimed to manage Kiri in 1996 when the Management Agreement was brought to Norman Iverson's office for Jeff Iverson to sign. CP 302-03. Jeff Iverson believes that Nick Iverson drafted the Management Agreement. CP 304. Nick Iverson was asked who prepared the Management Agreement at an Iverson Real Estate meeting in 2007 or 2008. *Id.* Nick Iverson first claimed that Norman Iverson's attorney drafted it. *Id.* But when Jeff Iverson argued that "no attorney would prepare a document of such poor quality," Nick Iverson claimed that Norman Iverson himself had drafted it. *Id.* When Jeff Iverson continued to press him, Nick Iverson stated that he did not have to say who drafted it. *Id.* The Management Agreement is "of the type [and] quality" Nick Iverson would prepare. *Id.*

In anticipation of the Hawk's Prairie deal closing, some of the parties entered an "Agreement Among Partners" in March 1996. App. B. The Agreement Among Partners includes a series of

recitals, providing that (1) the Kiri members want to expedite the closing between Kiri and the Hawk's Prairie Development Company; (2) all Kiri members but Redford are willing to pay Nick Iverson a management fee of 3.5% of the gross sales price; and (3) the Kiri members want Nick Iverson and Redford to resolve their dispute independent of closing. CP 122. The substantive portion of the Agreement Among Partners authorized Nick Iverson to sue the Redfords to recover their share of the management fee, anticipated that management would end upon completion of the Hawk's Prairie sale, and reaffirmed the desire to close the Hawk's Prairie sale: (CP 123):

The undersigned do hereby vote their proportionate partnership interests in the Kiri Joint Venture to expedite the closing of the sale of the joint venture property and endorse the suit by [Nick] Iverson against [the Redfords] to recover their share of the management fee, sue [the Redfords], if necessary, for declaratory judgment, deeming that the majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete management and to expedite the closing of the Purchase and Sale Agreement by and between Kiri Joint Venture and Hawk's Prairie Development Company

Penny Duke, Jeff Iverson, Nick Iverson and Knutsen signed the Agreement Among Partners, totaling 50% of the ownership interest in Kiri. App. B. Norman Iverson also signed personally and on behalf of Iverson Real Estate, but had no interest in Kiri or in

Iverson Real Estate in 1996. App. B; CP 163. Redford refused to sign. App. B. Fifty-percent is not a majority.

E. An Addendum to the 1996 Purchase and Sale Agreement purports to give Nick Iverson a 3.5% management fee, but Kiri members claimed fraud and all Kiri members, including Nick Iverson, voted to nullify the addendum.

Even though Redford refused to sign the Management Agreement, Nick Iverson asked Redford to sign an Addendum to the Hawk's Prairie PSA, giving Nick Iverson a 3.5% fee. CP 310.⁶ Redford refused and took the Addendum to his attorney, who negotiated a different Addendum. *Id.* Redford was asked to go to Nick Iverson's attorney's office to sign the new Addendum, and signed what had been represented to him as the Addendum his attorney had approved. *Id.* Redford later learned that he had been presented with and signed an Addendum approving a 3.5% fee for Nick Iverson, not the Addendum his attorney approved. CP 310-11.

Nick Iverson "fraudulently signed" Jeff Iverson's name to the PSA addendum. CP 303. Nick Iverson called Jeff Iverson and told him that the sellers wanted the buyers to sign additional "original"

⁶ A copy of the PSA Addendum is attached as Appendix D.

copies of the PSA. *Id.* Nick Iverson asked Jeff Iverson for written approval to sign additional copies of the PSA on Jeff Iverson's behalf and Jeff Iverson sent Nick Iverson a note allowing him to do so. *Id.* Instead, Nick Iverson signed Jeff Iverson's name on the PSA Addendum. *Id.* Nick Iverson never mentioned the Addendum to Jeff Iverson. *Id.*

Redford's attorney subsequently negotiated a second Addendum voiding the Addendum giving Nick Iverson a fee. CP 165-66, 311.⁷ All KIRI members, including Nick Iverson, signed the second Addendum. App. E; CP 164.

F. After the Hawk's Prairie sale fell through, Nick Iverson falsely told Knutsen and Redford that "the Iversons" agreed to a listing agreement with a commission and management fee.

On November 20, 1996, Nick Iverson sent Redford and Knutsen a letter stating "the Iversons" had agreed to a one year listing agreement with commission, and had agreed to pay Nick Iverson a management fee:

KIRI PARTNERSHIP LATEST DEVELOPMENTS
MY PROPOSAL

⁷ A copy of the second PSA Addendum, voiding the first Addendum, is attached as Appendix E.

1. WORK OUT A 1 YEAR LISTING WITH HODGES.

A. PRICE AT \$8.00 A SQUARE FOOT

C. 4% COMMISSION NOT TO EXCEED \$300,000.00

1. IF SOLD ON CONTRACT THE COMMISSION TO BE PAID ON A CONTRACT, IF WISHED. (NEGOTIATED)

2. NICKS MANAGEMENT FEE ALSO.

...

THE IVERSONS AGREE TO THE ABOVE

CP 305. Nick Iverson signed this letter, "Nick." *Id.* Of the 4,400 documents Nick Iverson produced in discovery, counsel found one that he signed as Kiri's "managing partner." CP 315. This occurred in 1996. *Id.*

Nick Iverson never consulted Penny Duke or Jeff Iverson, and neither agreed to a listing agreement. CP 277, 303. Nick Iverson had no authority to act on Penny Duke's or Jeff Iverson's behalf. CP 303.

G. Penny Duke and Jeff Iverson had almost no contact with Nick Iverson until 2003, when the Kiri members unequivocally told Nick Iverson that he did not and could not represent Kiri.

After the Hawk's Prairie sale fell through, Penny Duke had almost no contact with Nick Iverson until 2003. CP 276. She did not know what, if anything, Nick Iverson was doing with respect

Kiri's raw land, other than paying the taxes and listing the property for sale "on and off." *Id.* Jeff Iverson also had no contact with Nick Iverson between 1996 and 2003, when Jeff Iverson began taking an active role in "getting the property sold." CP 303.

In September 2003, Nick Iverson told a third-party, Ron Sloy, that Jeff Iverson was trying to "remove" Nick Iverson as Kiri's "managing partner." CP 246-47, 338-39, 340-41, 360. Nick Iverson's representations got back to the Kiri members, and Jeff Iverson told Sloy that all Kiri members represented their own interests, plainly stating Kiri "never has had a managing partner." CP 360-61. Jeff Iverson subsequently asked all Kiri members to meet and discuss Nick Iverson's representations to Sloy, stating "I have always been of the opinion that each party represents it's [*sic*] own interests in the joint venture." CP 362.

Kiri held its first official meeting on October 15, 2003, at which Penny Duke, Jeff Iverson, Redford, and Knutsen told Nick Iverson "in no uncertain terms" that he was not Kiri's manager. CP 277, 304. The Kiri members told Nick Iverson that they did not recognize any agreement making him the manager and terminated any such agreement to the extent that there ever was one. *Id.* They told Nick Iverson that he had no authority to represent Kiri in

any management capacity and specifically that he could not deal with the City of Lacey on Kiri's behalf. *Id.*

Nick Iverson sent an email to Kiri's attorney, Jim Cathcart, later the same day, confirming his presence at the meeting. CP 247, 363. Nick Iverson also confirmed his understanding of the meeting, stating "the lines of battle have been set." *Id.*

A week later, all Kiri members except Nick Iverson sent Cathcart a letter, disputing the "the misconception that Nick Iverson was ever a managing partner for the KIRI Joint Venture." CP 364. Rather, the Kiri members always represented their own interests. *Id.*

H. When the Kiri members got word in 2004 that Nick Iverson was still purporting to represent Kiri, they again told Nick Iverson that he did not represent Kiri and was not entitled to a management fee.

In July 2004, the Kiri members received a letter from Thurston County to Nick Iverson regarding noxious weeds on the property. CP 248, 351-52. Jeff Iverson asked the County to change its records to reflect that neither Nick Iverson nor the Nor-Rea trust (which held Nick Iverson's interest in Kiri) had authority to represent Kiri. CP 248, 354. Nick Iverson did not contact Jeff Iverson claiming to still be Kiri's manager. CP 354.

The following November, all Kiri members but Nick Iverson met to (among other things) restrict Nick Iverson's involvement in Kiri and select a point person. CP 365, 367. Although Nick Iverson had notice of the meeting, he elected not to attend. CP 277. Nick Iverson received Jeff Iverson's memo setting the meeting agenda and the minutes. CP 345-48. Jeff Iverson's memo states his concern that Nick Iverson's "personal agenda" is incompatible with the other Kiri members' 91.5% interest. CP 365. Jeff Iverson suggested restricting Nick Iverson's involvement in any preliminary negotiations regarding the Kiri property because: (1) Nick Iverson represents only 8.5% of the ownership (2) "Nick's personal agenda impairs his judgment and is not compatible with the goals of the Group (91.5%); (3) Nick Iverson has "clearly shown that he is unable or unwilling to follow" direction from the majority of Kiri's members; and (4) Nick Iverson is "untrustworthy" and "not forthcoming." CP 365-66.

The minutes clearly reflect that the Kiri members (other than Nick Iverson) discussed Nick Iverson's claim to a management fee and that no member supported a fee of any kind. CP 367. The members unanimously agreed that "they never have and never will support any partner receiving a fee, commission, or payment of any

type.” *Id.* The other Kiri members selected Redford to serve as Kiri’s contact person. *Id.*

I. The property sold in 2008.

The Kiri members sold the property to the Nisqually Indian Tribe in May 2008. CP 306-07, 488. Knutson had a contact in the Tribe, whose name was given to Kiri’s listing agent. CP 306-07. The property sold through Knutson’s contact. *Id.*

J. Procedural History.

In February 2008, Nick Iverson filed this suit for a declaratory judgment that he was entitled to management fee of 3.5% of the sale price. CP 1-4. The remaining Kiri members moved for partial summary judgment, raising several contract defenses and the statute of limitations. CP 31, 59-69. Nick Iverson cross-moved for summary judgment, asking the trial court to dismiss the Kiri members’ claims and award Nick Iverson nearly \$500,000. CP 72.

The trial court denied the Kiri’s member’s summary judgment motion by a letter ruling. CP 239. The letter ruling – issued before argument on Nick Iverson’s summary judgment motion – found a material questions of fact as to who was performing work on the property:

The Redford affidavit raises credibility issues as to who was performing work to market the property in question. Those factual questions cannot be determined by affidavit.

Id. The court subsequently heard argument in Nick Iverson's summary judgment motion. CP 391.

The trial court issued a letter decision on January 15, 2009 (CP 409-10) and an order granting partial summary judgment on January 30, 2009. CP 485-88. In its written order, the court stated that the following "facts" are "uncontroverted":

- ◆ In the 1977 Management Agreement, a majority of Kiri members agreed to pay Nick Iverson a 3.5% management fee for management services;
- ◆ A majority of Kiri ratified "the 1977 Agreement" in 1996;
- ◆ Ratification of the 1977 Agreement created an enforceable agreement to compensate plaintiff for work performed;
- ◆ The management fee became payable when the sale closed in May 2008; and
- ◆ Nick Iverson is owed at least \$496,019 (3.5% of the sale price).

CP 487-88. The trial court denied attorney fees. CP 488. The court subsequently entered a judgment for \$541,772.40, including the management fee, interest, and statutory costs and fees. CP 516.

The Kiri members (other than Nick Iverson) timely appealed. CP 521-26.

ARGUMENT

A. Standard of Review.

This Court reviews “summary judgment order[s] de novo, engaging in the same inquiry as the trial court and viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party.” *King v. Rice*, 146 Wn. App. 662, 668, 191 P.3d 946 (2008), *rev. denied*, 165 Wn.2d 1049 (2009). Summary judgment is proper only where there is no “genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Shields v. Enter. Leasing Co.*, 139 Wn. App. 664, 670, 161 P.3d 1068 (2007); CR 56(c). The evidence must be such that “reasonable minds could reach but one conclusion.” *Shields*, 139 Wn. App. at 670.

This Court will not consider findings of fact entered on summary judgment. *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 249 n.10, 178 P.3d 981 (2008); *Davenport v. Wash. Educ. Ass’n*, 147 Wn. App. 704, 715 n.22, 197 P.3d 686 (2008). Such findings are “superfluous.” *Oltman*, 163 Wn.2d at 249 n.10; *Davenport*, 147 Wn. App. at 715 n.22. The role of the trial court on summary judgment is to “determine whether or not a genuine issue

of fact exists, not to determine issues of fact.” *Davenport*, 147 Wn. App. at 715 n.22.

B. A majority of Kiri’s current members never agreed to the Management Agreement.

The trial court incorrectly ruled (1) that a majority vote of Kiri’s members was sufficient to create an enforceable agreement authorizing Nick Iverson to manage the property in exchange for a management fee; and (2) that a majority of Kiri’s members agreed hire Nick Iverson and pay him a management fee. CP 487-88 ¶¶ 1, 3. The JVA requires unanimity, as addressed below. *Infra*, Argument § D. Assuming, however, that a majority vote is sufficient, a majority of Kiri’s members did not sign the Management Agreement (or the Agreement Among Partners, *infra*, Argument § C). This Court should reverse.

The trial court did not decide whether the Management Agreement was entered in 1977 or 1995, but concluded nonetheless that a majority of Kiri’s members agreed to the Management Agreement. CP 487 ¶ 1. The trial court could not determine whether a majority of Kiri’s members agreed to be bound by the Management Agreement without first deciding when the Agreement was entered.

The trial court should have entered summary judgment that the Management Agreement was not signed until 1995. There is no date on the Management Agreement. App. A. The evidence overwhelmingly points to 1995, and even Nick ultimately abandoned his claim that the Management Agreement was entered in 1977. When the Agreement was signed in 1995, only one Kiri member – Knutsen – representing 24.5% of Kiri’s ownership interest, signed the Management Agreement. *Id.* The other signatories had no interest in Kiri, so could not bind Kiri. The trial court’s “uncontroverted” fact on this point is plainly erroneous.

Nick Iverson’s declarations cannot undo his candid admission that he has “no idea” when the Management Agreement was executed. CP 242, 335. A party cannot create a material issue of fact where none exists by filing a declaration that contradicts his earlier sworn statements. ***Beers v. Ross***, 137 Wn. App. 566, 571-72, 154 P.3d 277 (2007); ***State Farm Mut. Auto. Ins. v. Treciak***, 117 Wn. App. 402, 406-08, 71 P.3d 703 (2003), *rev. denied*, 151 Wn.2d 1006 (2004); ***Marshall v. AC & S. Inc.***, 56 Wn. App. 181, 185, 782 P.2d 1107 (1989). In ***Marshall***, for example, the plaintiff gave an unequivocal answer in his deposition about when he first learned that he was injured, placing his claim

outside of the statute of limitations. **Marshall**, 56 Wn. App. at 183. The plaintiff's subsequent affidavits contradicted his deposition testimony, and other evidence. 56 Wn. App. at 183. The appellate court held that the plaintiff's affidavit was insufficient to create a material issue of fact supporting the plaintiff's position, where (1) the affidavit was inconsistent with the plaintiff's earlier deposition testimony; and (2) the plaintiff did not explain the inconsistency. *Id.* at 185.

Nick Iverson's declarations cannot create a question of fact as to when the Management Agreement was executed. **Marshall**, 56 Wn. App. at 185. Nick Iverson's claims that the Management Agreement was executed in 1977 plainly contradict his prior admission that he has "no idea" when the Management Agreement was executed. *Compare* CP 131, 375 *with* CP 242, 335. His declarations do not explain this contradiction. CP 131, 375. This Court should hold that Nick Iverson's declarations are insufficient to create a material issue of fact as to when the Management Agreement was executed and rule as a matter of law that it was executed in 1995. **Marshall**, 56 Wn. App. at 185.

All other evidence indicates the Management Agreement was signed in 1995. The Norbeck trust signature on the

Management Agreement strongly suggests that the Agreement could not have been created in 1977, as Nick Iverson originally claimed. CP 375. The Norbeck trust had no interest in Kiri until the late 1980s. CP 163, 275. As such, the Norbeck trust would not have signed the Agreement in 1977. *Id.*

Knutsen states that he did not see or sign the Management Agreement until 1995. CP 306. Redford never signed the Management Agreement, but also plainly states that Nick Iverson did not present him with the Management Agreement until 1995. CP 308. When Nick Iverson gave Redford the Management Agreement, he told Redford that the parties who had already signed the Management Agreement had done so “recently”:

In 1995, Nick Iverson presented [Redford] three originals of the “Management Agreement” that he is suing on in this case. [Nick Iverson] told [Redford] that he had recently had them signed by the parties who had executed the document and asked [Redford] to sign it.

CP 308. In short, in 1995, Nick Iverson admitted to Redford that the Management Agreement was not executed until “recently.” *Id.*

If, as the evidence plainly suggests, the Management Agreement was executed in 1995, only 24.5% of Kiri’s ownership interest executed the Management Agreement. App. A. Neither the Iverson parents nor the Iverson trust had any interest in Kiri in

1995. CP 163, 275 By June 1994, the Iverson parents had conveyed all of their ownership interest to the Iverson children. *Id.* By the end of 1994, the Iverson trust had conveyed all of its interest in Kiri to Iverson Real Estate *Id.* Marie Iverson's signature and Norman Iverson's signature for the Iverson trust are meaningless.

The Norbeck trust signature on the Management Agreement is also meaningless. CP 163, 275. The Norbeck trust had no interest in Kiri in 1995. *Id.* Rather, the Norbeck trust had transferred its full interest to the Iverson children by 1994. *Id.*

Thus, Knutsen – who owns 24.5% of Kiri – is the only Kiri member who signed the Management Agreement at a time when he owned an interest in Kiri. As such, the trial court plainly erred in stating that a majority of Kiri's members agreed to the Management Agreement. CP 487 ¶ 1.

This Court should hold that the Management Agreement was executed in 1995, and therefore that a majority of Kiri's members did not sign the Management Agreement. The Court should direct the trial court to enter summary judgment for Kiri.

C. A majority of Kiri's members never ratified the Management Agreement.

1. The trial court apparently found that the Kiri members ratified the Management Agreement in 1996, apparently relying on the Agreement Among Partners.

Ratification, based in agency, is the principal's affirmance of an act that he did not commit and which did not bind him, but was done or purportedly done on his behalf.⁸ *Riss v. Angel*, 131 Wn.2d 612, 636, 934 P.2d 669 (1997) (citing RESTATEMENT (SECOND) OF AGENCY § 82 (1958)). To ratify an agent's unauthorized act, "the principal must act with full knowledge of the facts, accept the benefits of the acts, or without inquiry assume an obligation imposed." *Riss*, 131 Wn.2d at 636 (citing *Stroud v. Beck*, 49 Wn. App. 279, 286, 742 P.2d 735 (1987)). If a principal ratifies a prior act, that act is given effect as if he originally authorized it. *Riss*, 131 Wn.2d at 636.

⁸ The trial court concluded that Kiri ratified the Management Agreement in 1996, at which time Kiri would have been governed by Uniform Partnership Act (UPA) former RCW Chapter 25.04, General Partnerships, not the Revised Uniform Partnership Act (RUPA), RCW Chapter 25.05. (Copies of all relevant statutes are attached as Appendix F). RCW 25.05.901. Under former RCW 25.04.090 every partner was an agent of the partnership, defined as "an association of two or more persons to carry on as co-owners a business for profit." Former RCW 25.04.060(1). Under RCW 25.05.100, each partner is an agent of the partnership, which is now considered "an entity distinct from its partners." RCW 25.05.050(1).

The trial court incorrectly ruled that a majority of Kiri's members ratified the Management Agreement in 1996. CP 487 ¶ 2. Although the trial court did not specify, it was likely relying upon the Agreement Among Partners, the document that Nick Iverson claimed ratified the Management Agreement.⁹ CP 391-92. But a majority of Kiri's members did not sign the Agreement Among Partners, and it is not a ratification in any event, where it applied only to the Hawk's Prairie sale (which fell through) and does not include a promise to pay Nick Iverson a fee.

2. A majority of Kiri's members never signed the Agreement Among Partners.

The Agreement Among Partners could not ratify the Management Agreement because a majority of Kiri's members did not sign the Agreement Among Partners. CP 122-23, 163. The Nor Rae trust (Nick Iverson), Penny Duke, Jeff Iverson, and Knutsen signed the Agreement Among Partners, totaling 50% of Kiri's ownership interest. CP 123. This is not a majority, so it cannot bind Kiri even if the JVA requires a majority, and not unanimous consent. *Infra*, Argument § D.

⁹ All Kiri members, including Nick Iverson, voided the PSA Addendum, the only other document the trial court could have relied on. CP 164-66.

There are two different versions of the Agreement Among Partners, but the only significant difference is the signature line for Iverson Real Estate LLC. App. B. On one of the Agreements (“version A”), the signature line appears as follows:

IVERSON REAL ESTATE LLC

By _____

Its _____

Id. The other Agreement (version B) does not include the second line for designating the signatory’s title. *Id.* Norman Iverson signed version A “Norman L. Iverson, Trustee,” on the first line, leaving the second line blank. *Id.* He signed version B “Norman L. Iverson.” *Id.* When Norman Iverson signed the Management Agreements, he was not a member of Iverson Real Estate LLC, and had no authority to sign on its behalf. CP 163.

The Iverson parents signed both versions of the Agreement Among Partners, but had no interest in KIRI in 1996. App. B.; CP 123, 163, 382. Norman Iverson signed both Agreements as trustee for the Iverson Trust, which also had no interest in KIRI in 1996. *Id.*

The Iverson children did not purport to sign the Agreement Among Partners on the Iverson Real Estate LLC’s behalf. App. B. The signature lines for the Iverson children state only their names –

there is no “By” or “Its” line. *Id.* There is one signature line for the party signing on behalf of Iverson Real Estate LLC, and Norman Iverson signed it. *Id.* Nick Iverson, Jeff Iverson, and Penny Duke all signed in their personal capacity, representing their personal interests in Kiri. *Id.*

Nick Iverson’s claim that he intended to bind Iverson Real Estate LLC with his signature contradicts the plain face of the Agreement Among Partners. App. B. No matter what Nick Iverson says, it is a fact that he did not purport to sign for Iverson Real Estate LLC. *Id.* Since Iverson Real Estate LLC is member-managed (CP 375), its members, Nick Iverson, Jeff Iverson, and Penny Duke were Iverson Real Estate LLC’s agents. RCW 25.15.150. But none of them signed as the LLC’s agent. App. B. Again, only Norman signed as Iverson Real Estate LLC’s agent and he had no actual or apparent authority to do so. RCW 25.15.150.

3. The Agreement Among Partners cannot ratify the Management Agreement, where it is not an agreement to pay Nick Iverson a management fee.

Even if a majority of Kiri’s members had signed the Agreement Among Partners, it could not ratify the Management Agreement, where its only substantive provision is not an agreement to pay Nick Iverson a management fee. App. B. The

language Nick Iverson relies on is contained only in the recitals, which, incorrectly state that Kiri's original members (other than Redford) signed the Management Agreement giving Nick Iverson a 3.5% fee, and that Kiri's current members (other than Redford) are "willing to have the escrow agent deliver their share of the management fee." *Id.* These recitals, however, are not enforceable contract terms. ***Rains v. Walby***, 13 Wn. App. 712, 716, 537 P.2d 833 (1975), *rev. denied*, 86 Wn.2d 1009 (1976).

Recitals do not constitute the parties' agreement or a "promise or condition which would amount to a contractual element of the agreement." ***Rains***, 13 Wn. App. at 716 (*quoting Northern State Constr. Co. v. Robbins*, 76 Wn.2d 357, 365, 457 P.2d 187 (1969) and *citing Seattle-First Nat'l Bank v. Pearson*, 63 Wn.2d 890, 389 P.2d 665 (1964)). The recitals are only "background" for the contract's substantive provisions. 13 Wn. App. at 716. They can be used as a construction aid, but only where the substantive provisions are ambiguous. 13 Wn. App. at 716-17. Thus, even assuming a majority signed the Agreement Among Partners, the recitals do not create an enforceable promise. ***Rains***, 13 Wn. App. at 716.

The only substantive provision of the Agreement Among Partners does not ratify the Management Agreement because it does not promise to abide by the Management Agreement or promise Nick Iverson a management fee. App. B. Rather, the Agreement Among Partners authorizes Nick Iverson to sue the Redfords to recover their share of the management fee. *Id.*

4. The Agreement Among Partners cannot ratify the Management Agreement, where it pertains only to the Hawk's Prairie sale, not a different sale 12 years later.

Fifty-percent of Kiri's members signed the Agreement Among Partners to "expedite" the closing on the Hawk's Prairie sale. App. B. This intent is plainly stated twice in the Agreement's only substantive provision. *Id.* Thus, the Agreement's plain language suggests that it is intended to apply only to the Hawk's Prairie sale, not to an unrelated sale occurring 12 years later. *Id.* This alone is a material issue of fact precluding summary judgment.

5. The Kiri members did not impliedly ratify any agreement to pay Nick Iverson a management fee, where Nick Iverson's work was required under the JVA and did not financially benefit Kiri in any event.

Nick Iverson also argued that the Kiri members impliedly ratified an agreement to pay Nick Iverson a management fee by accepting the benefit of his services. CP 87. A principal may ratify

his agent's unauthorized act when the principal, "with full knowledge of the material facts," accepts the benefits of the agent's action. **Consumers Insurance v. Cimoch**, 69 Wn. App. 313, 323, 848 P.2d 763 (1993) (citing **Smith v. Hansen, Hansen & Johnson, Inc.**, 63 Wn. App. 355, 369, 818 P.2d 1127 (1991), *rev. denied*, 118 Wn.2d 1023 (1992)). Whether an implied ratification has occurred is a question of fact. **Barnes v. Treece**, 15 Wn. App. 437, 443, 549 P.2d 1152 (1976).

There can be no implied ratification here because all Kiri members, including Nick Iverson, were required under the JVA to participate in Kiri's management. App. C. ¶ 8. As such, Kiri members would have accepted the benefit of Nick Iverson's work – if any – simply because Nick Iverson was participating in Kiri's management as required by the JVA. *Id.* Redford and other Kiri members also participated in Kiri's management, albeit without claiming the right to compensation. CP 213, 303, 306-07. All the while, the Iverson trust was paying Nick Iverson a salary. CP 276.

Nick Iverson also plainly failed to meet the elements of any implied ratification. **Cimoch**, 69 Wn. App. at 323. Nick Iverson concedes that he did not do anything that increased the value of Kiri's property. CP 468. And the Kiri members did not have "full

knowledge” of Nick’s acts – Penny Duke had no idea what, if anything, Nick was even doing from 1996 to 2003. CP 276.

In sum, the Agreement Among Partners is not a ratification as a matter of law, where a majority of Kiri’s members did not sign the Agreement, and where the Agreement pertained only to the Hawk’s Prairie sale and did not actually grant Nick Iverson a fee at all. Without a ratification, nothing binds Kiri to pay Nick Iverson a management fee, making summary judgment for Kiri appropriate. This Court should reverse and remand for the entry of summary judgment in Kiri’s favor.

D. The Kiri members could not authorize Nick Iverson to manage Kiri’s property and agree pay him a management fee without first holding a member meeting and unanimously voting to pay Nick Iverson a fee, which never occurred.

1. The Kiri members could authorize Nick Iverson to manage Kiri for a fee only by meeting and unanimously voting, per their percentage interest, to amend the JVA.

The JVA provides that all Kiri members will manage Kiri’s property and vote on all management decisions after the opportunity to meet and discuss the pending issue:

The parties shall use their best efforts in the management and leasing of said real property All decisions relating to the conduct, management and operation of the business of the joint venture . . . shall be made by a vote of the parties according to their interests in the joint venture . . . which vote

shall be taken after the parties have been afforded the opportunity to meet and fully discuss such matters.

App. C ¶ 8. This provision has three key components: (1) management is “vested” in all Kiri members; and (2) management decisions would be made only after a meeting affording each party “an opportunity to discuss and participate in any management decision,” and (3) the Kiri members will vote according to their ownership interests. CP 309.

The JVA requires a unanimous vote to amend any JVA provision: “This agreement may be amended only by written agreement signed by all parties or their authorized representatives.” App. C ¶ 18. “Paragraph 18 [of] the [JVA] made paragraph 8 modifiable only with 100% of the partners.” CP 309.

JVA paragraphs 8 and 18 are consistent with the UPA, former RCW chapter 25.04, which governed partnerships when Kiri formed in 1977. RCW 25.05.901. The UPA provided that “[a]ll partners have equal rights in the management and conduct of the partnership business.”¹⁰ Former RCW 25.04.180(5) (1997). A partner’s “right to participate in the management” of the partnership

¹⁰ This is also consistent with RUPA, RCW 25.05.150, which provides that each partner in a partnership “has equal rights in the management and conduct of the partnership business.”

is a property right, along with his rights in specific partnership property, and his interest in the partnership. Former RCW 25.04.240 (1997). The partners could resolve differences as to “ordinary” partnership matters by a majority vote, but could not change an agreement amongst the partners “without the consent of all the partners.” Former RCW 25.04.180(8) (1997).

Redford would not have signed the JVA without paragraphs 8 and 18. CP 309. The Iversons always collectively held a 51% interest in Kiri, and Redford did not want the Iversons to be able to control Kiri without any input from the other Kiri members. *Id.* Paragraphs 8 and 18 prevented the Iversons from unilaterally managing Kiri.¹¹ *Id.*

2. Kiri’s current members did not meet when Knutsen signed the Management Agreement or when the members signed the Agreement Among Partners.

It is undisputed that Kiri’s current members never held a membership meeting until October 2003. CP 277. As such, it is impossible that Kiri met – as required by the JVA ¶ 8 – before Knutsen signed the Management Agreement in 1995, or before

¹¹ Redford and Knutsen are the only surviving original Kiri members. Only Redford addresses the meaning of JVA paragraphs 8 and 18. CP 308-09.

signing the Agreement Among Partners in 1996. App. C ¶ 8; CP 277. Nick Iverson does not claim otherwise.

Nick Iverson well-knew that a member-meeting was required – he has had the JVA since 1977 and remained familiar with its contents. CP 36-37. Yet he never called a member-meeting, instead approaching Kiri's other members individually to try to persuade them to sign the Management Agreement and later the Agreement Among Partners. CP 276, 303, 306, 308-09. There is a fair inference that Nick intentionally avoided a meeting, preferring to attempt to persuade the other Kiri members in isolation.

The mandatory-meeting requirement is in the JVA to prevent exactly what Nick Iverson accomplished – unilateral decision-making without any discussion amongst Kiri's members. CP 309. The first time Kiri's members discussed Nick Iverson's claim to a management fee, they unequivocally told him that he did not have a management agreement and that a management agreement never existed or was "terminated" if it had existed. CP 277.

3. There was never a unanimous vote in favor of the Management Agreement or the Agreement Among Partners.

The Kiri members did not unanimously agree to the Management Agreement or Agreement Among Partners and could

not have authorized Nick Iverson to manage Kiri (and agreed to pay him a management fee) without (1) holding a meeting and (2) unanimously voting (3) according to their ownership interests to amend paragraph 8. CP 47 ¶ 8, 54 ¶ 18. JVA paragraph 8 plainly makes Kiri a member-managed joint venture. App C ¶ 8. Kiri could not change to a manager-managed joint venture – hire Nick Iverson – without amending paragraph 8. Amending the JVA requires unanimous consent from Kiri’s members, both under paragraph 18, and under former RCW 25.04.180(8) (1997). App. C ¶ 18.

Nick Iverson’s argument that unanimity was not required puts him in a catch-22. In arguing that a majority vote of Kiri’s members was sufficient to make him Kiri’s manager, Nick Iverson necessarily concedes that Kiri did not amend paragraph 8, so remains member-managed. As such, Nick Iverson does not have any greater management authority than any other Kiri member, in which case it defies common sense that Kiri would pay Nick Iverson a fee for doing nothing more than the other Kiri members.

In fact, Redford did “far more” work than Nick Iverson, but has never claimed to manage Kiri. CP 213. Redford worked with the City and realtors, just as Nick Iverson claims he did. *Id.* Jeff Iverson actively marketed the property. CP 303. Knutson brought

the purchaser to the table. CP 306-07. None of these Kiri members have every demanded payment for their management services. Nick Iverson, however, was already compensated – the Iverson trust paid Nick Iverson a salary to represent its interest in Kiri for over 20 year. CP 162.

In short, Kiri's members never met and discussed the Management Agreement and Agreement Among Partners and never voted to Amend the JVA. Less than all Kiri members signed these agreements, so they are unenforceable. This Court should reverse and remand with instructions to enter summary judgment for Kiri.

E. The promise to pay Nick Iverson a fee is illusory, where the Management Agreement says nothing about what Nick Iverson was actually supposed to do to “manage” Kiri.

The Management Agreement promises that Kiri will pay Nick Iverson a fee for his “services rendered,” and says nothing about what Nick Iverson was actually supposed to do to benefit Kiri. In actuality, Nick Iverson did less than Redford, and ultimately had nothing to do with the property being sold. Yet since the Management Agreement does not define the services Nick Iverson was supposed to render, Kiri is left remediless, paying Nick Iverson

a fee for doing less work than Redford. This Court should hold that the Management Agreement is illusory, reverse, and remand with instructions to enter summary judgment for Kiri.

A promise is “illusory” if it is “so indefinite that it cannot be enforced.” *Bakotich v. Swanson*, 91 Wn. App. 311, 317 n.3, 957 P.2d 275 (1998) (quoting *Spooner v. Reserve Life Ins. Co.*, 47 Wn.2d 454, 458, 287 P.2d 735 (1955)). If a promise is illusory, “there is no consideration and therefore no enforceable contract between the parties.” *Omni Group v. Seattle First Nat’l Bank*, 32 Wn. App. 22, 24-25, 645 P.2d 727, *rev. denied*, 96 Wn.2d 1036 (1982).

Kiri’s entire “promise” in the Management Agreement is to pay Nick Iverson a “management fee” for his “services rendered”:

The Joint Venture Agreement signed June 20, 1977 (known as KIRI) agrees to pay [Nick] Iverson a management fee of 3.5% of the gross for his services rendered.

App. A. The remainder of the Agreement outlines how Nick Iverson would be paid: in a lump sum if Kiri sells the property for cash, in three installment payments over not more than three years if Kiri sells the property on a contract, or under a new agreement if Kiri develops the property. *Id.* The Agreement says nothing about the

“services” Nick Iverson had already “rendered” or was apparently supposed to render in the future. *Id.*

Nick Iverson agrees that the Management Agreement does not define his duties, assign him specific tasks, or set any hours. CP 40, 209. Nick Iverson also agrees that he never discussed any duties with any Kiri members. CP 210. Nothing in the Management Agreement prevented Nick Iverson from quitting at any time. CP 41.

The Management Agreement is so indefinite that Kiri could never enforce it. *Bakotich*, 91 Wn. App. at 317 n.3. Since the Management Agreement fails to define what it is that Nick Iverson is supposed to do, Kiri has no way to determine whether Nick Iverson has performed – or breached. This leaves Kiri remediless, and worse yet, owing Nick Iverson a fee when other Kiri members have done the same or more work.

In sum, the Management Agreement is illusory, so is unenforceable. This Court should reverse and remand for entry of summary judgment in Kiri’s favor.

F. Nick Iverson's claims on the Management Agreement are barred by the three-year statute of limitations.

The three-year limitations period applicable to oral contracts applies where parol evidence must be used to fill in a missing contract term. The Management Agreement is silent on what Nick Iverson was supposed to do to “manage” Kiri, leaving Nick Iverson’s subsequent acts – parol evidence – the only way to determine his duties. As such, the three-year limitations period applies and began running in October 2003, when all other Kiri members unequivocally told Nick Iverson that any management agreement was “terminated.” CP 277. Nick Iverson’s claims are time-barred.

RCW 4.16.040(1) provides a six-year statute of limitations for “[a]n action upon a contract in writing, or liability express or implied arising out of a written agreement.” **DePhillips v. Zolt Constr. Co.**, 136 Wn.2d 26, 31, 959 P.2d 1104 (1998). A written contract falls under the six-year limitations period only if it contains all the essential contract elements, which are “the subject matter of the contract, the parties, the promise, the terms and conditions, and . . . the price or consideration.” **DePhillips**, 136 Wn.2d at 31. If parol evidence is necessary to establish any essential term, then

the contract is partly oral and the three-year statute of limitations in RCW 4.16.080(3) applies. 136 Wn.2d at 31.

The Management Agreement misses an essential term – the “terms and conditions” – so it is “partly oral,” and thus governed by the three year statute of limitations. *Id.* As discussed above, Nick Iverson readily admits that the Management Agreement does not define his “duties” or “tasks.” CP 209-10. Nick Iverson would apparently have this Court look at his list of activities related to the property to define what it is that Nick Iverson allegedly promised to do. CP 131-33. But Nick Iverson’s “acts and conduct” are parol evidence. ***Hearst Communications, Inc. v. Seattle Times***, 154 Wn.2d 493, 502, 115 P.3d 262 (2005). Since parol evidence must be used to establish Nick Iverson’s promise, the three-year limitations period applies. ***DePhillips***, 136 Wn.2d at 31.

The three-year limitations period started running on October 15, 2003, when Kiri’s members (other than Nick Iverson) unequivocally “terminated” any agreement to pay Nick Iverson a fee (while maintaining that no such agreement existed). CP 277. ***Macchia v. Salvino***, 64 Wn.2d 951, 955, 395 P.2d 177 (1964) (holding that a claim to collect a fee on a contract for continuous services “does not begin to run until the contract is terminated”);

Richards v. Pacific Nat'l Bank., 10 Wn. App. 542, 549, 519 P.2d 272, *rev. denied*, 83 Wn.2d 1014 (1974) (same). In ***Richards***, the plaintiff performed photograph services – without a contract – for Tacoma sport's personality Ben Cheney for over 25 years. 10 Wn. App. at 544-45. Cheney never terminated the services in his lifetime, so the three-year limitations period began running when Cheney passed away. 10 Wn. App. at 549.

Under ***Richards*** (and ***Macchia, supra***), the statute of limitations began running on October 13, 2003, when Kiri's members unequivocally "terminated" any agreement to pay Nick Iverson a fee (without recognizing that any such agreement existed). CP 277; ***Richards***, 10 Wn. App. at 549. Nick Iverson did not file suit until February 2008, long-after the statute of limitations expired. CP 1-4.

The trial court plainly erred in ruling that Nick Iverson's claims would "not be barred by the three year statute of limitations" under ***Richards***. CP 239. In ***Richards***, the contract was never terminated, so terminated automatically when performance became impossible because the recipient of the services died. 10 Wn. App. at 549. Kiri's members unequivocally terminated Nick Iverson's Agreement – if any – 4.5 years before he filed suit. CP 277. From

that day forward, Nick Iverson knew that all of the other Kiri members (*id.*):

- ◆ denied that Nick Iverson was Kiri's manager;
- ◆ did not recognize an agreement making Nick Iverson Kiri's manager;
- ◆ "terminated" any management agreement to the extent that one ever existed;
- ◆ told Nick Iverson that he had no authority to represent Kiri in a management capacity; and
- ◆ restricted Nick Iverson from dealing with the city on Kiri's behalf.

Telling Nick Iverson the contract (if any) was "terminated" no doubt triggered the statute of limitations.

Finally, the trial court also erred in stating the Nick Iverson did not know until November 2004 that he had no authority to manage Kiri. CP 409 (letter ruling). Even if that were true, however, Nick Iverson's claim would still be time-barred. CP 1-4.

CONCLUSION

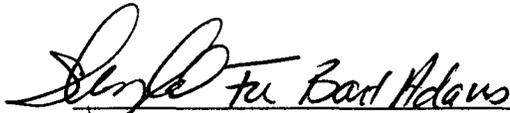
Many material issues of fact preclude summary judgment in Nick Iverson's favor. The evidence overwhelmingly suggests that the Management Agreement was entered in 1995. The Agreement Among Partners cannot ratify the Management Agreement, where a majority of Kiri's members never signed it, it does not promise Nick Iverson a fee, and it related only to a sale that fell through 12

years before the property sold. Any agreement to hire Nick Iverson for a fee required a member-meeting and unanimous vote, neither of which occurred. This Court should reverse and remand with instructions to enter summary judgment in Kiri's favor. Alternatively, the Court should reverse and remand for trial.

RESPECTFULLY SUBMITTED this 17th day of August 2009.

ADAMS & ADAMS LAW PS

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CERTIFICATE OF SERVICE BY MAIL

I certify that I mailed, or caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 17 day of August 2009, to the following counsel of record at the following addresses:

Co-counsel for Appellants

Bart L. Adams
ADAMS & ADAMS LAW PS
2626 N. Pearl Street
Tacoma, WA 98407

BY  STATE OF WASHINGTON
09 AUG 2009 11:27
COURT OF APPEALS

Counsel for Respondent

Douglas V. Alling
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Tacoma, Washington 98402


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Attorney for Appellants

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OFFICE
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NORMAN L. IVERSON & ASSOCIATES

P. O. BOX 99370
TACOMA, WASHINGTON 98499

KIRI JOINT VENTURE

The Joint Venture Agreement signed June 20, 1977 (known as KIRI) agrees to pay Norman C. Iverson a management fee of 3.5% of the gross for his services rendered.

If the property is sold for cash, the management fee is due immediately.

If the property is sold on a contract, the management fee will be pro-rated over three equal payments over a period no longer than three years.

If the property is developed by the owners, another management fee basis must be agreed upon before development can begin.

IVERSON TRUST, NORMAN L. IVERSON TRUSTEE *Norman L. Iverson Trustee*

NORBECK TRUST, NORMAN L. IVERSON TRUSTEE *Norman L. Iverson Trustee*

MARIE K. IVERSON *Marie K. Iverson*

ARTHUR J. REDFORD

DALLAS J. REDFORD

ROBERT J. KNUTSEN *Robert J. Knutsen*

COPY

Appendix A

AGREEMENT AMONG PARTNERS

THIS AGREEMENT is made and entered into this ___ day of March, 1996, by and between IVERSON REAL ESTATE LLC, NOR-RAE TRUST, JEFFREY B. IVERSON, PENNY C. DUKE, NORMAN L. IVERSON, MARIE K. IVERSON, IVERSON TRUST, dated June 19, 1970, Norman L. Iverson Trustee, NORMAN C. IVERSON and ROBERT J. KNUTSEN.

WHEREAS, Norman L. Iverson, Marie K. Iverson, Norman L. Iverson, as Trustee of the Iverson Trust Agreement dated June 19, 1970, Robert J. Knutsen, Arthur J. Redford and Dallas J. Redford, entered into a Joint Venture Agreement on June 20, 1977, known as the Kiri Joint Venture; and

WHEREAS, on June 20, 1977, all of the partners except Arthur J. Redford and Dallas J. Redford, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract, prorated over three (3) equal payments over three (3) years; and

WHEREAS, the undersigned believes that the Kiri Joint Venture has the authority under Paragraph 8 of the Joint Venture Agreement to enter into a Management Agreement with Norman C. Iverson subject to a vote of their proportionate interest; and

WHEREAS, Arthur J. Redford and Dallas J. Redford have declined to execute the Management Agreement; and

WHEREAS, Norman C. Iverson has acted as the manager of the Joint Venture since 1977; and

WHEREAS, all of the parties to the joint venture have assigned their interests in one form or another, subject to approval of the other joint venture partners pursuant to Paragraph 12 of the Joint Venture Agreement; and

WHEREAS, the undersigned are willing to approve all of the assignments of partnership interest, including the assignments by Arthur J. Redford and Dallas J. Redford.

WHEREAS, the undersigned are desirous of facilitating the execution of a Purchase and Sale Agreement for the property between the joint venture and Hawk's Prairie Development Company and/or assigns; and

WHEREAS, the undersigned are desirous that Norman C. Iverson and Arthur J. Redford and Dallas J. Redford resolve their dispute independent of the closing; and



WHEREAS, the undersigned are willing to have the escrow agent distribute their share of the management fee due to Norman C. Iverson pursuant to the Management Contract from the closing proceeds; now, therefore;

THE UNDERSIGNED parties, individually and as joint venture partners of Kiri Joint Venture, agree as follows:

The undersigned do hereby vote their proportionate partnership interests in the Kiri Joint Venture to expedite the closing of the sale of the joint venture property and endorses the suit by Norman C. Iverson against Arthur J. Redford and Dallas J. Redford to recover their share of the management fee, sue Arthur J. Redford and Dallas J. Redford, if necessary, for declaratory judgment, deeming that the majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete management and to expedite the closing of the Purchase and Sale Agreement by and between Kiri Joint Venture and Hawk's Prairie Development Company and/or Assigns pursuant to its terms, and to recover the costs for the undertaking from Arthur J. Redford and Dallas J. Redford and to ratify the assignments that have taken place between the joint venturers and the individuals or entities set forth above.

Further, Norman C. Iverson agrees that Bonneville, Viert, Morton and McGoldrick, P.S., shall be compensated for their services from a portion of the management fee or through Norman C. Iverson, and the undersigned agree that the representation by Bonneville, Viert, Morton and McGoldrick, P.S., of the Kiri Joint Venture and Norman C. Iverson does not constitute a conflict of interest.

DATED this _____ day of _____, 1996.

IVERSON REAL ESTATE LLC

NOR-RAE TRUST

By Norman L. Iverson, Trustee
Its _____

By Norman C. Iverson, Trustee

Jeffrey B. Iverson
JEFFREY B. IVERSON

Penny C. Duke
PENNY C. DUKE

Norman L. Iverson
NORMAN L. IVERSON

Marie K. Iverson
MARIE K. IVERSON

Norman C. Iverson
NORMAN C. IVERSON

Robert J. Knutsen
ROBERT J. KNUTSEN.

IVERSON TRUST

By Norman L. Iverson
NORMAN L. IVERSON, Trustee

MAR 28 '96 16:20 BONNEVILLE VIERT

P.2

AGREEMENT AMONG PARTNERS

THIS AGREEMENT is made and entered into this ____ day of March, 1996, by and between IVERSON REAL ESTATE LLC, NOR-RAE TRUST, JEFFREY B. IVERSON, PENNY C. DUKE, NORMAN L. IVERSON, MARIE K. IVERSON, IVERSON TRUST, dated June 19, 1970, Norman L. Iverson Trustee, NORMAN C. IVERSON and ROBERT J. KNUITSEN.

WHEREAS, Norman L. Iverson, Marie K. Iverson, Norman L. Iverson, as Trustee of the Iverson Trust Agreement dated June 19, 1970, Robert J. Knutsen, Arthur J. Redford and Dallas J. Redford, entered into a Joint Venture Agreement on June 20, 1977, known as the Kiri Joint Venture; and

WHEREAS, on June 20, 1977, Norman L. Iverson, Trustee of the Iverson Trust, Norman L. Iverson as Trustee for the Norbeck Trust, and Marie K. Iverson and Robert J. Knutsen, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract, prorated over three (3) equal payments over three (3) years; and

WHEREAS, the undersigned believes that the Kiri Joint Venture has the authority under Paragraph 8 of the Joint Venture Agreement to enter into a Management Agreement with Norman C. Iverson subject to a vote of their proportionate interest; and

WHEREAS, Arthur J. Redford and Dallas J. Redford have declined to execute the Management Agreement; and

WHEREAS, Norman C. Iverson has acted as the manager of the Joint Venture since 1977; and

WHEREAS, all of the parties to the joint venture have assigned their interests in one form or another, subject to approval of the other joint venture partners pursuant to Paragraph 12 of the Joint Venture Agreement; and

WHEREAS, the undersigned are willing to approve all of the assignments of partnership interest by Iverson Trust to Iverson Real Estate LLC, Norman L. Iverson and Marie K. Iverson, the assignment by Arthur J. Redford and Dallas J. Redford to their family limited partnership and the assignment by Robert J. Knutsen to Key Bank.

WHEREAS, the undersigned are desirous of facilitating the execution of a Purchase and Sale Agreement for the property between the joint venture and Hawk's Prairie Development Company and/or assigns; and

WHEREAS, the undersigned are desirous that Norman C. Iverson and Arthur J. Redford and Dallas J. Redford resolve their dispute independent of the closing; and

G:\LAW\TYPCOM\MAGNET\PARTNERS.IVR

-1-

Appendix B



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MAR 28 '96 15:20 BONNEVILLE VIERT

P.3

WHEREAS, the undersigned are willing to have the escrow agent distribute three and one-half percent (3.5%) of their distributive share of the closing proceeds to Norman C. Iverson pursuant to the Management Contract; now, therefore;

THE UNDERSIGNED parties, individually and as joint venture partners of Kiri Joint Venture, agree as follows:

The undersigned do hereby vote their proportionate partnership interests in the Kiri Joint Venture to engage the firm of Bonneville, Viert, Morton and McGoldrick, P.S., to represent the partnership, if necessary, to expedite the closing of the sale of the joint venture property, sue Arthur J. Redford and Dallas J. Redford, if necessary, for declaratory judgment, deeming that the majority of the partners have the authority to enter into the Management Agreement and pay the sums necessary to complete management and to expedite the closing of the Purchase and Sale Agreement by and between Kiri Joint Venture and Hawk's Prairie Development Company and/or Assigns pursuant to its terms, and to recover the costs for the undertaking from Arthur J. Redford and Dallas J. Redford and to ratify the assignments that have taken place between the joint venturers and the individuals or entities set forth above.

Further, Norman C. Iverson agrees that Bonneville, Viert, Morton and McGoldrick, P.S., shall be compensated for their services from a portion of the management fee or through Norman C. Iverson, and the undersigned agree that the representation by Bonneville, Viert, Morton and McGoldrick, P.S., of the Kiri Joint Venture and Norman C. Iverson does not constitute a conflict of interest.

DATED this _____ day of _____, 1996.

IVERSON REAL ESTATE LLC

NOR-RAE TRUST

By Norman L. Iverson

By Norman C. Iverson, Trustee

Jeffrey B. Iverson
JEFFREY B. IVERSON

Penny C. Duke
PENNY C. DUKE

Norman L. Iverson
NORMAN L. IVERSON

Marie K. Iverson
MARIE K. IVERSON

Norman C. Iverson
NORMAN C. IVERSON

Robert J. Knutsen
ROBERT J. KNUTSEN.

IVERSON TRUST

By Norman L. Iverson Trustee
NORMAN L. IVERSON, Trustee

JOINT VENTURE AGREEMENT

AGREEMENT entered into this 20th day of June, 1977, by and between NORMAN L. IVERSON and MARIE K. IVERSON, husband and wife ("Iverson"), NORMAN L. IVERSON, Trustee pursuant to Iverson Trust Agreement dated June 19, 1970 ("Iverson Trust"), ROBERT J. KNUTSEN, a single man ("Knutsen") and ARTHUR J. REDFORD and DALLAS J. REDFORD, husband and wife ("Redford").

A. Iverson and Iverson Trust have contracted to purchase certain real property situated in Thurston County, Washington pursuant to a certain Real Estate Contract dated December 13, 1973, the "seller" of which is Thurston County Poggie Club; a copy of said Real Estate Contract is attached hereto as Exhibit "A" which accurately describes said real property;

B. Iverson and Iverson Trust are fee owners of a portion of said real property pursuant to a certain "Statutory Warranty Deed" dated December 13, 1973, a copy of which is attached hereto as Exhibit "B".

C. The parties, as joint venturers, desire to assume the rights and obligations of Iverson and Iverson Trust pursuant to said Real Estate Contract, to purchase and own said real property, and to construct improvements upon said real property and to manage and lease such real property and improvements.

AGREEMENT

In consideration of the premises and the mutual promises herein contained, the parties agree as follows:

-1-

Appendix C



venture, subject to the terms of this agreement. Provided, that the interests of the joint venture in said Real Estate Contract and said real property shall be held in the name of Norman L. Iverson in his individual and/or Trustee capacities for the convenience of the parties.

8. MANAGEMENT OF BUSINESS AND ASSETS. The parties shall use their best efforts in the management and leasing of said real property and buildings and other improvements and in conducting any other business of the joint venture. All decisions relating to the conduct, management and operation of the business of the joint venture, including but not limited to, choosing contractors and entering contracts for the construction of any improvements and buildings on said real property and leasing said real property and improvements, shall be made by a vote of the parties according to their interests in the joint venture as specified in paragraph 4 hereof, which vote shall be taken after the parties have been afforded the opportunity to meet and fully discuss such matters.

9. DEPRECIATION AND EXPENSES. The joint venture's federal income tax depreciation deductions respecting any buildings or other structures or improvements constructed upon said real property shall be allocated to the parties in accordance with the general profit and loss ratio provided in paragraph 4 hereof. Federal income tax deductions and benefits allowable by virtue of any investments and expenses of the joint venture, including retail sales tax, interest, loan fees or discounts paid by the joint venture upon construction of any structures or improvements, shall be allocated to the parties in accordance with the general profit and loss ratio provided in paragraph 4 hereof. The capital

A notice shall be deemed to be received three days after being so mailed, if mailed within the State of Washington, and six days after being so mailed if mailed elsewhere in the United States.

18. MISCELLANEOUS. The parties agree that they will execute any instruments and perform any acts which are or may become reasonable and necessary to effectuate and carry on the joint venture and its business pursuant to the terms of this agreement. This agreement shall bind and inure to the benefit of the parties, their respective heirs, representatives, assigns, trust beneficiaries and successors in interest. This agreement incorporates the entire understanding of the parties with respect to the establishment and operation of the joint venture. This agreement may be amended only by written agreement signed by all parties or their authorized representatives. Unless another meaning and intent is apparent from the context, masculine, feminine and neuter words shall be used interchangeably, as shall the words "party" and "joint venturer" and the plurals thereof.

IN WITNESS WHEREOF, the parties have executed this Joint Venture Agreement on the day and year first above written.

"IVERSON"

Norman L. Iverson
Norman L. Iverson

Marie K. Iverson
Marie K. Iverson

"REDFORD"

Arthur J. Redford
Arthur J. Redford

Dallas J. Redford
Dallas J. Redford

"IVERSON TRUST"

Norman L. Iverson, Trustee
Norman L. Iverson, Trustee

"KNUTSEN"

Robert J. Knutsen
Robert J. Knutsen

**ADDENDUM/AMENDMENT
TO
PURCHASE AND SALE AGREEMENT**

The following is part of the Purchase and Sale Agreement dated February 6, 1996 between Hawks Prairie Development Company and/or Assigns, a Washington Corporation, ("Buyer"), and Kiri Joint Venture, federal tax #91-1004635 ("Seller").

It is agreed between the Seller and Buyer as follows:

The undersigned acknowledge that Kiri Joint Venture has entered into an agreement obligating it to pay a three and one-half percent (3.5%) management fee to Norman C. Iverson for services rendered with respect to the property at closing. The fee would be paid twenty percent (20%) out of the closing proceeds distributed out of the closing escrow in cash and the balance evidenced by a promissory note payable over three (3) years reducing the purchase note amount by reducing the interest only payments required under Paragraph 2, Method of Payment, to satisfy the obligation to Norman C. Iverson.

All other terms and conditions of said agreement remain unchanged.

SELLERS: Kiri Joint Venture

Iverson Real Estate LLC

Norris Trust

By: *Norman C. Iverson*
Norman C. Iverson

By: *Norman C. Iverson Trustee*
Norman C. Iverson, Trustee

By: *Robert Kransen*
Robert Kransen

By: *Jeffrey H. Iverson Jeffrey A. Iverson*
Jeffrey H. Iverson

By: _____
Art Redford

By: *Fenny C. Duke*
Fenny C. Duke

**BUYER: Hawks Prairie Development Company
and/or Assigns**

Joseph C. Finley
Joseph C. Finley, President

Agenda/Title, Justice-1996-144

Appendix D



ADDENDUM/AMENDMENT
TO
PURCHASE AND SALE AGREEMENT

ALL OF THE UNDERSIGNED joint venture partners of Kiri Joint Venture have agreed that the Addendum/Amendment to a Purchase and Sale Agreement by and between Hawk's Prairie Development Company and/or Assigns, a Washington corporation ("Buyer"), and Kiri Joint Venture, federal tax identification number 91-1004635 ("Seller"), dated February 6, 1996, to pay a management fee to Norman C. Iverson signed by Seller is null and void and the undersigned wish to proceed to closing with the understanding that the sale proceeds will be distributed to the joint venture partners on the basis of their respective percentages in accordance with the instructions given to the escrow agent by each joint venture partner.

IT IS HEREBY AGREED between the undersigned as follows:

The undersigned agree to proceed to closing on the Purchase and Sale Agreement referred to above with the understanding that the sale proceeds will be distributed to the joint venture partners in proportion to their percentage interest in the joint venture, less expenses attributable to the joint venture. The assignment by Arthur J. Redford and Dallas J. Redford of their joint venture interest has been assigned to the 1996 Redford Management Limited Partnership and the other joint venture partners have approved such assignment. The interest of Iverson Trust and Norman L. Iverson and Marie K. Iverson has been assigned to Iverson Real Estate LLC, Nor-Rae Trust, Jeffrey B. Iverson and Penny C. Duke which has been approved by the joint venture partners. The interest of Robert Knutsen has been assigned to _____ for collateral purposes and Robert Knutsen has retained the authority to vote his joint venture interest but the assignment by Robert Knutsen is approved by the joint venture partners. ~~The joint venture partners other than Arthur J. Redford and Dallas J. Redford or their assigns have agreed to have the escrow agent distribute a portion of their joint venture interest to Norman C. Iverson to fulfill their obligations under a management agreement and the interest of the Redfords will be distribute by the escrow agent pursuant to their instructions.~~ The Addendum/Amendment executed by the Sellers referred to above is null and void.

*in excess of approved by Norman C. Iverson by
Council [Signature]*

[Handwritten initials and signatures]
JBT
ND
H.L.G.

Appendix E

7.8th PCO OK [Signature] fac

~~Ant Redford and Norman C. Iverson agree that the sale contemplated by the Purchase and Sale Agreement can proceed to closing subject to this Agreement.~~

SELLER: KIRI JOINT VENTURE

IVERSON REAL ESTATE LLC

NOR-RAE TRUST

By [Signature]
Norman L. Iverson

By [Signature]
Norman C. Iverson, Trustee

By [Signature]
Robert Knutsen

By [Signature]
Jeffrey B. Iverson

By [Signature]
Penny C. Duke

1996 REDFORD MANAGEMENT LIMITED PARTNERSHIP

By [Signature]
Dallas J. Redford

By [Signature]
Arthur J. Redford
"Co-Trustee of General Partners Trust"

BUYER: HAWK PRAIRIE DEVELOPMENT COMPANY AND/OR ASSIGNS

By _____
Joseph C. Finley, President

Appendix E

RCW 4.16.040. Actions limited to six years

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

HISTORY: 2007 c 124 § 1; 1989 c 38 § 1; 1980 c 105 § 2; 1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.

NOTES: APPLICATION -- 2007 C 124: "This act applies to all causes of action on accounts receivable, whether commenced before or after July 22, 2007." [2007 c 124 § 2.]

RCW 4.16.080. Actions limited to three years

The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;
- (4) An action for relief upon the ground of fraud, the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;
- (5) An action against a sheriff, coroner, or constable upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution; but this subdivision shall not apply to action for an escape;
- (6) An action against an officer charged with misappropriation or a failure to properly account for public funds intrusted to his custody; an action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: PROVIDED, HOWEVER, The cause of action for such misappropriation, penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitations, or the bar thereof, even though complete, shall not be deemed to accrue or to have accrued until discovery by the aggrieved party of the act or acts from which such liability has arisen or shall arise, and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statute of limitation, or the bar thereof, even though complete, shall exist and be enforceable for three years after discovery by aggrieved party of the act or acts from which such liability has arisen or shall arise.

HISTORY: 1989 c 38 § 2; 1937 c 127 § 1; 1923 c 28 § 1; Code 1881 § 28; 1869 p 8 § 28; 1854 p 363 § 4; RRS § 159.

NOTES: REVISER'S NOTE: Transitional proviso omitted from subsection (6). The proviso reads: "PROVIDED, FURTHER, That no action heretofore barred under the provisions of this paragraph shall be commenced after ninety days from the time this act becomes effective;"

Revised Uniform Partnership Act

RCW 25.05.050. Partnership as entity

(1) A partnership is an entity distinct from its partners.

(2) A limited liability partnership continues to be the same entity that existed before the filing of an application under RCW 25.05.500(2).

HISTORY: 2000 c 169 § 10; 1998 c 103 § 201.

RCW 25.05.100. Partner agent of partnership

Subject to the effect of a statement of partnership authority under RCW 25.05.110:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

HISTORY: 1998 c 103 § 301.

RCW 25.05.150. Partner's rights and duties

(1) Each partner is deemed to have an account that is:

(a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under RCW 25.05.100.

HISTORY: 1998 c 103 § 401.

RCW 25.05.901. Dates of applicability

(1) Before January 1, 1999, this chapter governs only a partnership formed:

(a) After June 11, 1998, unless that partnership is continuing the business of a dissolved partnership under *RCW 25.04.410; and

(b) Before June 11, 1998, that elects, as provided by subsection (3) of this section, to be governed by this chapter.

(2) Effective January 1, 1999, this chapter governs all partnerships.

(3) Before January 1, 1999, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this chapter, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

HISTORY: 1998 c 103 § 1304.

NOTES: *REVISER'S NOTE: RCW 25.04.410 was repealed by 1998 c 103 § 1308, effective January 1, 1999.

RCW 25.15.150. Management

(1) Unless the certificate of formation vests management of the limited liability company in a manager or managers: (a) Management of the business or affairs of the limited liability company shall be vested in the members; and (b) each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company unless the member so acting has in fact no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(2) If the certificate of formation vests management of the limited liability company in one or more managers, then such persons shall have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:

(a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by all members at the time of such action;

(b) Need not be members of the limited liability company or natural persons; and

(c) Unless they have been earlier removed or have earlier resigned, shall hold office until their successors shall have been elected and qualified.

(3) If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company.

HISTORY: 1996 c 231 § 8; 1994 c 211 § 401.

NOTES: APPLICATION -- 1996 C 231 § 8: "Section 8, chapter 231, Laws of 1996 does not apply to a limited liability company formed prior to June 6, 1996, unless the certificate of formation of the limited liability company is amended after June 6, 1996, to provide that the limited liability company has perpetual duration." [1996 c 231 § 13.]

Uniform Partnership Act (1997)

RCW 25.04.060 (1997). Partnership defined

(1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) Any association formed under any other statute of this state, or a statute adopted by any authority, other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to the adoption of this chapter.

(3) This chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

HISTORY: 1955 c 15 § 25.04.060. Prior: 1945 c 137 § 6; Rem. Supp. 1945 § 9975-45.

RCW 25.04.090 (1997). Partner agent of partnership as to partnership business

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

HISTORY: 1955 c 15 § 25.04.090. Prior: 1945 c 137 § 9; Rem. Supp. 1945 § 9975-48.

RCW 25.04.180 (1997) Rules determining rights and duties of partners

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(3) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

HISTORY: 1955 c 15 § 25.04.180. Prior: 1945 c 137 § 18; Rem. Supp. 1945 § 9975-57.

RCW 25.04.240 (1997). Extent of property rights of partner

The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

HISTORY: 1955 c 15 § **25.04.240**. Prior: 1945 c 137 § 24; Rem. Supp. 1945 § 9975-63.