

No. 44823-8-II

DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON

NORTHWEST HUNTER TV, LLC, Appellant

v.

RIVERS WEST APPAREL, INC., Respondent

BRIEF OF RESPONDENT RIVERS WEST APPAREL, INC.

Steven A. Reisler, WSBA #9384
Attorney for Respondent Rivers
West Apparel, Inc.

STEVEN A. REISLER PLLC
5615 64th Avenue NE
Seattle, WA 98105-2000
sar@sarpllc.com
(T) 206/522.7081

RECEIVED
DIVISION II, COURT OF APPEALS
OF THE STATE OF WASHINGTON
JAN 14 2014

TABLE OF CONTENTS

	Page
Table of Authorities	iii
I. Introduction	1
II. Statement of Issues.....	1
III. Statement of the Case	2
A. Facts	2
B. Procedural History of the Case Currently on Appeal	9
IV. Argument and Analysis	10
A. Standard of Review	10
B. Northwest Hunter TV Dissolved Automatically Under Its Own Operating Agreement	11
C. The Judicial Dissolution of Northwest Hunter TV in 2007 in Another Action Was a Contested and Sufficiently Firm Adjudication Correctly Accorded Conclusive Effect	17
1. Northwest Hunter TV was judicially dissolved in 2007.....	17
2. The Doctrine of Issue Preclusion	20
D. Northwest Hunter TV's Cases Concerning Interlocutory Partial Summary Judgments and CR 54(b) Certification Are Not Germane to the Issues in this Case.....	29

E. The Trial Court Correctly Construed the Facts in this Case	34
V. Conclusion	40
Appendix A - Notice of Resignation/Dissolution, CP 75-76	
Appendix B - Partial Summary Judgment, CP 78	
Appendix C - Order Setting Timelimes and Deadline, CP 82	
Appendix D - Bill of Sale, CP 175	
Appendix E - Operating Agreement of Northwest Hunter TV, LLC, Article X "Dissolution and Termination," CP 52-53	
Certificate of Service	

Table of Authorities

CASES

	Page
WASHINGTON CASES	
<u>Supreme Court</u>	
<i>Beritich v. Starlet Corp.</i> , 69 Wn.2d 454, 418 P.2d 762 (1966)	33, 34
<i>Chadwick Farms Owners Association v. FHC LLC</i> , 166 Wn. 2d 178, 207 P.3d 1251 (2009)	11, 16
<i>Columbia Community Bank v. Newman Park, LLC</i> , 177 Wn.2d 566, 304 P.3d 472 (2013)	20
<i>Grill v. Meydenbauer Bay Yacht Club</i> , 57 Wn.2d 800, 359 P.2d 1040 (1961)	30, 31
<i>International Marine Underwriters v. ABCD Marine, LLC</i> , ___ Wn. 2nd ___, Case No. 87231-7 (November 27, 2013)	35
<i>Lybbert v. Grant County</i> , 141 Wn.2d 29.34, 1 P.3d 1124 (2000)	10
<i>Owen v. Burlington N. Santa Fe R.R.</i> , 153 Wn.2d 780, 789, 108 P.3d 1220 (2005)	10
<i>Seven Gables Corp. v. MGM/UA Entertainment Co.</i> , 106 Wn.2d 1, 721 P.2d 1 (1986)	11, 37
<i>Washburn v. Beatt Equipment Co.</i> , 120 Wn.2d 246, 840 P.2d 860 (1992)	31

Court of Appeals

<i>Beckman v. Wilcox</i> , 96 Wn.App. 355, 979 P.2d 890 (Div. 2 1999)	30
<i>Fluor Enterprises, Inc. v. Walter Const., Ltd.</i> , 141 Wn.App. 761, 172 P.3d 368 (Div. 1 2007)	30
<i>Fulton v. DSHS</i> , 169 Wn. App. 137, 147, 279 P.3d 500 (Div. 2 2012)	11
<i>Hanson Industries Inc. v. Kutschkau</i> , 158 Wn. App. 278, (Div. 3 2010), <i>rev. den.</i> 171 Wn.2d 1011 (2011)	38
<i>Ledcor Industries (USA), Inc. v. Mutual of Enumclaw Ins. Co.</i> , 150 Wn.App. 1, 206 P.3d 1255 (Div. 1 2009)	31
<i>Marshall v. Bally's Pacwest, Inc.</i> , 94 Wn. App. 372, 379 (Div. 2 1999)	38
<i>Sherron Associates Loan Fund V (Mars Hotel) LLC v. Saucier</i> , 157 Wn. App. 357, 237 P.3d 338 (Div. 3 2010)	16
<i>Spice v. Pierce County</i> , 149 Wn. App. 461, 204 P. 3d 254 (Div. 2 2009), <i>rev. granted</i> 167 Wn. 2d 1008, 220 P. 3d 783 (2009). .	32, 33
<i>Wachovia SBA Lending v. Kraft</i> , 138 Wn.App. 854,158 P.3d 1271 (Div. 2 2007)	32
<i>West v. Thurston County</i> , 144 Wn.App. 573, 183 P.3d 346, (Div. 2 2008)	32

NON-WASHINGTON STATE CASES

Bryan v. State Farm Mut. Auto. Ins. Co., 205 Md.App. 587,
45 A.3d 936 (Md.App. 2012) 26
FEDERAL CASES

Ossman v. Diana Corp., 825 F. Supp. 870 (D. Minn. 1993) 22, 23

Siemens Medical Systems, Inc. v. Nuclear Cardiology Systems, Inc.,
945 F.Supp. 1421 (D.Colo. 1996) 23, 24, 25

COURT RULES

CR2(a) 7
CR41 29, 30
CR54(b) 30

STATUTES

RCW 25.15 11
RCW 25.15.090 15
RCW 25.15.285 (3) 16

TREATISES

Restatement (Second) of Judgments Sec. 13 (1982) 21, 22, 27
18A C. Wright, A. Miller & E. Cooper,
Federal Practice and Procedure § 4434 (2002) 26

18 C. Wright, A. Miller & E. Cooper, <u>Federal Practice and Procedure</u> § 4425 (1981)	23
---	----

OTHER AUTHORITIES

"The Benefits of Applying Issue Preclusion to Interlocutory Judgments in Cases that Settle," by Seth Nesen, <u>NYU Law Review</u> , June 2001, Volume 76, Number 3	21
<u>Webster's Third New International Dictionary</u> (1986) p. 2518	39

I. Introduction

This lawsuit arises out of an alleged breach of a television sponsorship agreement signed in April 2004 by Rivers West Apparel, Inc. ("Rivers West") and Northwest Hunter TV LLC ("Northwest Hunter TV"). Rivers West is a manufacturer of outdoor and sportswear apparel. Northwest Hunter TV was a Washington limited liability company that made cable television hunting and fishing shows.

The central issues presented in this appeal, however, have less to do with the alleged breach of the Sponsorship Agreement than with the dissolution of Northwest Hunter TV in 2007 and the consequences of that dissolution.

II. Statement of Issues

1. Was Northwest Hunter TV dissolved both as a function of its own operating agreement and by court order in 2007?
2. Did Northwest Hunter TV, as a dissolved company, take an unreasonably long time to wind up its business affairs, including its nearly seven year long prosecution of a purported collection claim against Rivers West?
3. Was Northwest Hunter TV precluded from re-litigating

whether it had been dissolved by court order in 2007 in a previous lawsuit in the same jurisdiction?

4. Did Northwest Hunter TV dissolve when its manager transferred substantially all of its assets to a third party?

5. Are Northwest Hunter TV's claims against Rivers West moot because, as a dissolved limited liability company, it has no legal authority to "conduct business" in order to perform its part of the executory contract for which it has brought suit?

III. Statement of the Case

A. Facts

Before Northwest Hunter TV was created, Rick Young was a member of a similarly named Oregon limited liability company: Northwest Hunter, LLC. CP 63. The other member of the Oregon predecessor company was an individual by the name of Fred Woods. CP 63. Northwest Hunter, LLC dissolved and distributed its assets to its members. CP 63. Sundance Magnetics, Inc., purchased the rights and assets that had been distributed to Fred Woods. In 2004, Sundance Magnetics, Inc. and Rick Young then formed the new Washington limited liability company, Northwest Hunter TV. CP 33. Rick Young became a 35% owner and

Sundance Magnetics, Inc. became a 65% owner of the new Washington company. CP 60. The president of Sundance Magnetics, Inc. was Patrick Boyer who was also the manager of Northwest Hunter TV. CP 34. Mr. Boyer, individually, was not and never has been a member of Northwest Hunter TV. CP 58, 128.

Northwest Hunter TV's Operating Agreement provided for the dissolution and winding up of the company in the event one of its members withdrew. CP 52, Article X. The Operating Agreement also provided that the company would dissolve and wind up its affairs upon the Manager transferring or selling substantially all of the Company's assets. The Operating Agreement furthermore provided that upon dissolution, the company would deliver a Certificate of Dissolution to the Secretary of State and cease all business activity. CP 52, Article X.

In January 2006, Rick Young (who was the primary host and television personality of Northwest Hunter TV's television shows) notified the company that he refused to complete any more video editing or production, refused to participate further in the business of Northwest Hunter TV, and announced his intention to resign from and dissolve the company. CP 64, ¶9.

In April 2006, three months after Rick Young refused to complete any more video editing or production, Rivers West noticed the change in quality in Northwest Hunter TV shows. Rivers West notified Northwest Hunter TV that the quality of its cable television shows had not lived up to expectations. Rivers West invoked the termination clause of the Sponsorship Agreement on the basis of Northwest Hunter TV's material breaches of its Sponsorship Agreement. CP 12-13, 72. Northwest Hunter TV sued Rivers West in Clark County Superior Court on June 13, 2006, Cause No. 06 2 03061 7. CP 1. It is this lawsuit that the trial court dismissed on Rivers West's motion for summary judgment in March 2013 and that is now before the Court of Appeals.

On a parallel but separate track, Rick Young submitted his formal resignation notice to Northwest Hunter TV in May 2007. CP 75-76. In his resignation notice, Rick Young memorialized his statement of withdrawal made the year before and demanded in writing the dissolution of Northwest Hunter TV pursuant to the company's Operating Agreement. Within days of Mr. Young's formal resignation and request to wind up the company, Northwest Hunter TV sued him in Clark County Superior Court, Cause No. 06-2-00168-4. CP 131. Thus, there were two contemporaneous

lawsuits proceeding in Clark County Superior Court: the lawsuit brought by Northwest Hunter TV against Rick Young and the lawsuit brought by Northwest Hunter TV against Rivers West.¹

Mr. Young, responded to the lawsuit brought against him by counter-suing Mr. Boyer, his wife, and multiple companies owned by the Boyers whose assets, Mr. Young alleged, had been co-mingled with the assets of Northwest Hunter TV.² CP 131-132. The eighteen counter-claims brought by Rick Young sounded in tort, breach of contract, conversion, fraud, misrepresentation, breach of fiduciary duties and unjust enrichment, among other claims. CP 143, RP 6.

Rick Young moved for partial summary judgment to judicially dissolve Northwest Hunter TV. On August 17, 2007, after a contested hearing, Clark County Superior Court Judge Lewis in Cause No. 06-2-00168-4 entered partial summary judgment dissolving Northwest Hunter TV and ordering that the company wind up its affairs. CP 78. The order

1 Rivers West did not know about the parallel case brought by Northwest Hunter TV against Rick Young. It was in September 2012, while 'killing time' reviewing older files in the Clerk's Office that counsel for Rivers West stumbled across the "other" lawsuit (Clark County Superior Court Cause No. 06-2-00168-4) which resulted in the dissolution of Northwest Hunter TV. RP 3-4.

2 This allegation resonates with the curious representations made by Northwest Hunter TV in its 2008 Master Business Application discussed later in this section regarding how or whether assets purchased by Mr. Boyer ended up being used by Northwest Hunter TV after it was dissolved.

of dissolution was based on the automatic dissolution of the company provided by the company's Operating Agreement. The order of dissolution specifically provided that "*All business activities inconsistent with such Wind Up shall cease.*" CP 80. The order of dissolution also provided that "*all other claims shall be determined by settlement of the parties or Order of this Court.*" CP 80.

By court order on December 14, 2007, Judge Lewis established a time-line for the winding up of the business of Northwest Hunter TV effectively within 90 days. CP 82. At the bottom of page 3 of his Order Setting Timeline and Deadlines dated and entered December 14, 2007, Judge Lewis anticipated and precluded any side-stepping of the Court's order. Referring to copyright and publicity rights that Northwest Hunter TV and Rick Young still disputed, the Court ordered that "[t]he parties may resolve or attempt to resolve these rights by agreement or Court Order, *but in no case shall the resolution of the rights delay or expand the deadlines and timelines ordered herein.*" CP 84 (italics added). The deadlines and timelines, of course, were the 120 day window for Northwest Hunter TV to wind up the business, liquidate its assets and shut down its operations.

On February 26, 2008, Mr. Boyer (as manager of Northwest Hunter TV) sold substantially all of the "assets" of the company to himself as "an individual." Mr. Boyer documented his sale of the assets from the company to himself in a "Bill of Sale." CP 155-156, Declaration of James Patrick Boyer, p. 4, para. 10 - p. 5, para. 11. According to the Bill of Sale (filed with the court by Pat Boyer's counsel), Mr. Boyer paid \$26,823.00 for all of the assets of Northwest Hunter TV, LLC - including all trade names, licenses and equipment (the essentials of the television production company). CP 162. According to the Bill of Sale, the only property that Mr. Boyer did not acquire from the company were "cash and accounts receivable."

The Clark County Superior Court appointed Mr. Don Thacker to be the General Receiver for Northwest Hunter TV. The Receiver's Initial Report was filed on May, 5, 2008 in Clark County Superior Court Cause No. 06-2-00168-4. CP 178.

A few weeks after the Receiver filed his Initial Report, on May 30, 2008, Pat Boyer and Rick Young entered into a stipulation and settlement agreement which, in compliance with CR2(a), they filed with the Court. CP 106. Some tangible assets were delivered to Rick Young, along with a

sum of cash; the balance of the assets of Northwest Hunter TV apparently were distributed to the individual, Pat Boyer. At the time this transfer occurred, the only remaining member of Northwest Hunter TV was the foreign corporation, *Sundance Magnetics, Inc.* The settlement agreement said nothing about continuing the operation of the business, 'unanimously' or otherwise.

Northwest Hunter TV's own Operating Agreement provided that upon dissolution it would file and deliver a Certificate of Dissolution with the Secretary of State's office. It has not done so. Instead, Northwest Hunter TV continued to operate as though it had never dissolved. CP 133, Declaration of J. Patrick Boyer in Opposition to Defendant's Motion for Summary Judgment, p. 3, l. 4.

In 2008, Northwest Hunter TV filed with the Secretary of State a Master Business Application. CP 127. The Master Business Application identified only one member of the company - the foreign corporation, Sundance Magnetics, Inc. The box checked on the third page of the 2008 Master Business Application, section "e," indicates that Northwest Hunter TV did not buy or acquire any part of an existing business. CP 129.

The box checked in section "f" of Northwest Hunter TV's 2008

Master Business Application states that it did not purchase or lease any fixtures or equipment on which it has not paid sales or use tax. CP 129.

However intriguing Northwest Hunter TV's representations in its 2008 Master Business Application might be, its representations do not even remotely suggest that Rick Young and Sundance Magnetics, Inc. (the only members of this Northwest Hunter TV) unanimously agreed to continue the operations of the company.

B. Procedural History of the Case Currently on Appeal

The progress of Northwest Hunter TV's case against Rivers West (the subject of the instant appeal) was desultory, at best. By the time the case was dismissed on summary judgment, the lawsuit had been "pending" for nearly seven years. On February 29, 2012, the Clerk of the Court filed a motion to dismiss for failure to prosecute under CR 41(B)(2) because "no action of record has been taken on this case in the past twelve months." CP 310. The case was subsequently set for trial, but on September 21, 2012, Northwest Hunter TV moved to continue the trial until a still later date. CP 110-111.

On March 1, 2013, Rivers West moved to dismiss the case in its entirety based on the dissolution of Northwest Hunter TV back when Rick

Young gave his notice of resignation and triggered the automatic dissolution provisions of the company's Operating Agreement. CP 18. The Court concluded that Northwest Hunter TV had dissolved years before and it granted Rivers West's motion to dismiss, CP 284. In a memorandum opinion, the Trial Court wrote that "[b]y any calculation seven years is not a reasonable time for winding up a LLC." CP 270. The Court denied Northwest Hunter TV's motion for reconsideration. CP 289. Northwest Hunter TV appealed. CP 290.

IV. Argument and Analysis

A. Standard of Review.

This Court reviews a summary judgment *de novo*. It performs the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29.34, 1 P.3d 1124 (2000). The facts and all reasonable inferences are viewed in a light most favorable to the nonmoving party. *Id.* Should there be no genuine issue of material fact, then summary judgment will be granted if the moving party is so entitled as a matter of law. *Id.*

A material fact is a fact "that affects the outcome of the litigation." *Owen v. Burlington N. Santa Fe R.R.*, 153 Wn.2d 780, 789, 108 P.3d 1220

(2005). A party cannot rely on speculation, argument or conclusory statements in affidavits to be accepted at face value. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

A superior court's ruling may be affirmed on any grounds that the record adequately supports. *Fulton v. DSHS*, 169 Wn. App. 137, 147, 279 P.3d 500 (Div. 2 2012) (citing to *LaMon V. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027, *cert. den.*, 493 U.S. 814 (1989)).

B. Northwest Hunter TV Dissolved Automatically Under Its Own Operating Agreement.

A limited liability company is an artificial, statutorily created entity that is organized pursuant to RCW 25.15. It is a hybrid of a partnership and a corporation. *Chadwick Farms Owners Association v. FHC LLC*, 166 Wn. 2d 178, 186-87, 207 P.3d 1251 (2009). As a limited liability company, Northwest Hunter TV existed only so long as it respected the terms of its own operating agreement, respected the statutory framework described by the State of Washington and respected the orders of the courts of Washington.

Northwest Hunter TV's Operating Agreement clearly stated that certain events that would trigger dissolution³:

³ CP 52, Article X

Article X(1): "The Company *shall dissolve and wind up its affairs*, upon the first to occur of the following events...

c. The... *resignation, expulsion... of a member, or any other occurrence that terminates a Member's membership in the Company*;

e. The *Manager transfers or sells substantially all of the Company's assets...*

(italics added)

Both Articles X(1) (c) and (e) of Northwest Hunter TV's Operating Agreement occurred - a member resigned and the Manager transferred or sold substantially all of the company's assets.

Article X(1)(e) was effective in February 2008 when Pat Boyer, acting as the company's manager, effectively sold to himself as an individual substantially all of the company's assets.

Mr. Boyer acknowledged under oath in a court pleading what he had done and attached his Bill of Sale that memorialized the sale to himself of substantially all of the company's assets.

According to the key components of Mr. Boyer's February 27, 2008 sworn declaration submitted to Judge Lewis:

[...] I have acted in my capacity as Manager to *wind up the affairs of Northwest Hunter TV and to market and sell the business assets.*

***** *I agreed to purchase the business assets of NW Hunter TV, LLC prior to January 27, 2008, and memorialized that agreement with a handwritten note which I made on January 27, 2008..."*

***** I have ***concluded the sale of the assets by paying on February 19, 2008*** to the client trust account of Northwest Hunter TV's counsel the amount of the appraisal set forth in Gilbert Valuations. ***I also signed a Bill of Sale, a true copy of which is attached hereto as Exhibit 4.***

CP 153 ¶2, 155 ¶10, 156 ¶11 (italics and bold added)

Northwest Hunter TV's Operating Agreement furthermore provided:

Article X, Section 3: *Upon its dissolution, the Company shall cease carrying on the Company business. However, the Company's dissolution does not terminate the Company. Instead, upon the Company's dissolution, the Company continues until it completes winding up its affairs and the State of Washington issues the Certificate of Dissolution.*

CP 52-53 (italics added)

The Operating Agreement also provided that:

5. WINDING UP AND CERTIFICATE OF DISSOLUTION: *The winding up of the Company shall be completed when: (a) the Company pays and discharges all of its debts, liabilities, and obligations, or it makes adequate provisions therefore, and (b) the Company distributes its remaining assets to the Members.* Upon the completion of the Company's winding up, *a certificate of dissolution shall be delivered to the State of Washington for Filing.* The certificate of dissolution shall set forth the information required by the Act.
CP 53 (italics added)

As defined by the Operating Agreement, "winding up" was completed: Northwest Hunter TV's only known remaining obligation was to Rivers West on its counter-claim, which was dismissed along with the dismissal of Northwest Hunter TV's claims against Rivers West.⁴ In any event, Judge Lewis in Clark County Superior Court Cause No. 06-2-00168-4, ordered Northwest Hunter TV to finish winding up its affairs in 2008. CP 82. It is clear that no assets - including whatever right it had to pursue the instant lawsuit - stayed with the dissolved limited liability company, Northwest Hunter TV. Except for the money and tangible items provided to Rick Young, everything else apparently was purchased by *the individual*, Pat Boyer (who was not the plaintiff in the lawsuit brought by

⁴ Northwest Hunter TV had stated in open court in September 2012 that it did not have any money to pay terms to Rivers West which means it also did not have any money to pay a judgment on Rivers West's counter-claim. CP 110-111, Declaration of Steven A. Reisler, p. 1, l. 25- p.2, l. 5; CP 148, Rivers West Rebuttal Memorandum, in Support of SJ Motion, p. 13, ll. 1-5.

Northwest Hunter TV against Rivers West).⁵

If Northwest Hunter TV refuses to file the Certificate of Dissolution, as required by its own Operating Agreement, then RCW 25.15.090 authorizes the Court to direct Northwest Hunter TV to execute the certificate of dissolution and file it with the Secretary of State.

Northwest Hunter TV dissolved when Rick Young formally withdrew from the company in 2007. The mandate of Article X of the company's operating agreement is independent of any judicial action.

Pat Boyer, the manager of Northwest Hunter TV, was aware that the withdrawal of Rick Young would dissolve the company. In an October 25, 2006 declaration he filed with the Court, Mr. Boyer stated:

On or about January 10, 2006, I was informed by Defendant [Rick Young] that he no longer intended on performing certain video editing, video production, hosting, and other services which he had previously agreed to perform...[Rick Young] further *informed me of his intention to resign and effectuate a dissolution of Northwest Hunter TV*, should Northwest Hunter TV fail to agree to certain demands. (Italics added) CP 64.

It is clear that Northwest Hunter TV dissolved by operation of its own Operating Agreement. In normal circumstances, a dissolved limited

⁵ CR 17 provides that every action shall be prosecuted in the name of the real party in interest, whether Pat Boyer or Sundance Magnetics, Inc.

liability company can still sue and be sued while it is winding up its affairs. *See, generally, Chadwick Farms Owners Association v. FHC LLC*, 166 Wn. 2d 178, 207 P.3d 1251 (2009). Northwest Hunter TV's Operating Agreement provides the same. In this case, however, the Court gave Northwest Hunter TV a specific and limited time frame by which it had to wind up its affairs: the spring of 2008 (See Section C 1, *infra*).

Nevertheless, the right to sue and be sued does not mean that a dissolved company may continue *doing business* in the ordinary course of affairs. The company's Operating Agreement states in so many words: "*Upon its dissolution, the Company shall cease carrying on the Company business.*" CP 52, Article X(3). In fact, the ordinary process for a dissolved limited liability company is for its assets to be distributed to its members (like a common law partnership), if the assets are not otherwise sold to a third party. *See Sherron Associates Loan Fund V (Mars Hotel) LLC v. Saucier*, 157 Wn. App. 357, 237 P.3d 338 (Div. 3 2010).

Because Northwest Hunter TV dissolved, it still cannot "conduct business." RCW 25.15.285 (3), a dissolved limited liability company may not "carry on any business except as necessary to wind up and liquidate..." The basis for Northwest Hunter TV's lawsuit against Rivers West is an

executory contract that requires Northwest Hunter TV to perform, *ie*, to produce television shows that would highlight Rivers West products. Because Northwest Hunter TV *cannot carry on any business* - that is, actually *perform* in the future its part of the executory contract for which it demands money from Rivers West, it has no basis to demand payment by Rivers West for what Northwest Hunter TV is not legally authorized to perform.

C. The Judicial Dissolution of Northwest Hunter TV in 2007 in Another Action Was a Contested and Sufficiently Firm Adjudication Correctly Accorded Conclusive Effect.

1. Northwest Hunter TV was judicially dissolved in 2007.

Apart from the dissolution of Northwest Hunter TV mandated by its own Operating Agreement, the company was also judicially dissolved by court order in 2007. CP 78.

Judge Lewis's August 17, 2007 order on partial summary judgment confirmed the automatic dissolution provisions of Northwest Hunter TV's Operating Agreement. It states in relevant part:

3.2 Dissolution and Wind Up. *The method of Dissolution was set out in the Operating Agreement. The events required for Dissolution have occurred. Notice of Defendant's [Rick Young's] Resignation has been given per the Operating Agreement. Dissolution has occurred. Dissolution as set forth in the Operating Agreement requires Wind Up of the Company.*

(Italics added).

Judge Lewis's August 17, 2007 order went on to state:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's [Rick Young's] Motion for Partial Summary Judgment is granted and *Northwest Hunter TV, LLC, dissolution is confirmed by this Judgment and Wind Up shall immediately be conducted pursuant to its Operating Agreement and the law. All business activities inconsistent with such Wind Up shall cease.*

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Wind Up shall be conducted by: [Other] Pat Boyer as President of Sundance Magnetics, Inc.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that all other claims shall be determined by settlement of the parties or Order of this Court.

CP 79 (italics and underlining added)

In the court's subsequent Order Setting Timeline and Deadlines, Judge Lewis directed that "Plaintiff [Northwest Hunter TV] shall sell all the assets of the Plaintiff as set forth herein no later than the deadlines set forth herein." If Northwest Hunter TV's assets were not sold off within 90 days then they "shall be publicly auctioned off completely not later

than one hundred twenty (120) days from November 28, 2007."⁶
(emphasis added). CP 84.

Judge Lewis, at the bottom of page 3 of his Order Setting Timeline and Deadlines dated and entered December 14, 2007 in Clark County Superior Court No. 06-2-00168-4, anticipated and precluded any equivocation about of Court's order and timeline: "The parties may resolve or attempt to resolve these rights by agreement or Court Order, *but in no case shall the resolution of the rights delay or expand the deadlines and timelines ordered herein.*" CP 84 (italics added). The deadlines and timelines were the 120 day window for Northwest Hunter TV to complete its winding up process, liquidate its assets and shut down its operations.

This language is consistent with the Court's Partial Summary Judgment Order of August 17, 2007 in which Judge Lewis confirmed the dissolution of Northwest Hunter TV. In that partial summary judgment order, Judge Lewis ordered that all of Northwest Hunter TV's business

⁶ The whole reason why the Court appointed a Receiver in the 2008 litigation was to value Northwest Hunter TV so that it could be liquidated and dissolved. Among the assets that Northwest Hunter TV was supposed to have sold or auctioned off in 2008 was, presumably, the claim against Rivers West which was identified in the Receiver's report.

activities inconsistent with winding up shall cease, and that "*all other claims* shall be determined by settlement of the parties or Order of this Court." CP 80 (italics added).

2. The Doctrine of Issue Preclusion.

The doctrine of issue preclusion arises in equity. It may be considered a form of estoppel.

The goal of equity is to do substantial justice. Equity exists to protect the interests of deserving parties from the "harshness of strict legal rules." Washington courts embrace a long and robust tradition of applying the doctrine of equity.

Columbia Community Bank v. Newman Park, LLC, 177 Wn.2d 566, ¶ 1, 304 P.3d 472 (2013), citing *Hamm v. State Farm Mut. Auto. Ins. Co.*, 151 Wash.2d 303, 326, 88 P.3d 395 (2004) (Sweeney, J., dissenting)

It is a fact that the August 2007 motion for partial summary judgment confirming the dissolution of Northwest Hunter TV was a contested hearing. The language of the order says so in so many words: there was a court hearing (paragraph 2.1 of the order); counsel for both parties appeared (paragraph 2.2); and the Court considered the "evidence and arguments of counsel." (Section III - "Findings" of the order). CP 79.

Within the factual context of the instant case, it is immaterial whether the order of dissolution was partial or interlocutory or whether the parties, eight months later, settled the remainder of the claims between them.⁷

The Restatement (Second) of Judgments Sec. 13 (1982) explains that it is not whether a case is tried to conclusion, settled or dismissed that renders an interlocutory order "final," but, rather, that a final judgment "includes *any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect.*" (italics added). Comment "g" to Sec. 13 of the Restatement describes the factors that are relevant to the determination of "firmness": "[P]reclusion should be refused if the decision was avowedly tentative. On the other hand, that the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal, are factors supporting the conclusion that the decision is final for purpose of preclusion."⁸

7 As the Court's August 17, 2007 partial summary judgment stated, "*all other claims shall be determined by settlement of the parties or Order of this Court.*" (italics and underlining added). CP 80, ll. 18-19. Settling all the other claims is exactly what the parties later did.

8 Rivers West is not aware that this precise issue has been decided in the State of Washington. See, generally, "The Benefits of Applying Issue Preclusion to Interlocutory Judgments in Cases that Settle," by Seth Nesin, NYU Law Review, June

All of the criteria for finality were present: Judge Lewis' orders were not tentative⁹, Northwest Hunter TV had a full opportunity to be heard on the issue of its own dissolution, the Court's orders recited factual findings and referred directly to Northwest Hunter TV's own operating agreement, and the Court's orders were *subject to appeal regardless whether Northwest Hunter TV did or did not appeal them*.¹⁰ Thus, under the guidance of the Restatement (Second) of Judgments, the subsequent "settlement" of the parties did not vitiate the order to dissolve Northwest Hunter TV.

The Trial Court in the instant case cited the correct law as it applies to this particular case. *Ossman v. Diana Corp.*, 825 F. Supp. 870 (D. Minn. 1993) cited by the Trial Court in its March 6, 2013 memorandum opinion (CP 244-248) includes the following analysis that is directly pertinent to the instant case:

2001, Volume 76, Number 3.

9 There were actually three such orders from the earlier lawsuit brought to the trial judge's attention for the 2013 motion for summary judgment. CP 272, Rivers West Memorandum Opposing Motion for Reconsideration, p. 2, fn. 2.

10 It would be rather disingenuous were Northwest Hunter TV to argue that it did not have the opportunity to appeal the orders of dissolution because, rather than appeal, the company chose to "settle" the case.

Generally, the court does not consider the propriety of another court's ruling in determining whether it should give preclusive effect to the prior court's order. *See e.g., Bates v. Union Oil Co. of California*, 944 F.2d 647, 650 (9th Cir. 1991) ("[E]ven though a case may have been 'decided incorrectly, this is an insufficient basis to defeat the application of collateral estoppel.' ... Assuming ... [that the prior order] is not free from legal error, the way to correct that error was by appeal...") (citations omitted), *cert. denied*, 503 U.S. 1005, 112 S.Ct. 1761, 118 L.Ed.2d 424 (1992); *Disabled Am. Veterans v. Commissioner of Internal Revenue*, 942 F.2d 309, 316 (6th Cir. 1991) ("It requires more than mere belief that a case was wrongly decided to avoid the application of the collateral estoppel doctrine.... [The defeated party cannot avoid the application of collateral estoppel] 'merely because the defeated party wishes to reargue the law.' ") (quoting 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4425 (1981)).

825 F. Supp. at 876

The federal court in *Ossman* further noted that: "The defendants' tactical decision to settle the case rather than seeking the entry of judgment and an appeal does not warrant the preclusion of collateral estoppel." *Id.*

In *Siemens Medical Systems, Inc. v. Nuclear Cardiology Systems, Inc.*, 945 F.Supp. 1421 (D.Colo. 1996), the court rejected the contention that the parties' settlement had erased a partial summary judgment order issued by another judge in an earlier case:

If a partial summary judgment is never to have preclusive effect, a party involved in a series of suits against different litigants will have the option to avoid preclusive effects in future suits simply by settling the current suit whenever an unfavorable summary judgment order is issued. This would be directly contrary to the goal of judicial economy that collateral estoppel is designed to promote. *Parklane*, 439 U.S. at 326, 99 S.Ct. at 649. So long as it would not be inequitable to do so, it makes inimitable sense to preserve and use whatever firm judicial decisions have been made previously on a particular issue. To accomplish that, however, *the power to determine the preclusive effect of judgments must not be left in the hands of parties who are interested in avoiding such effects.*

Id. at 1435 (italics added)

The court in *Siemens* furthermore observed that:

Several courts have decided that settlement does not avoid the application of issue preclusion where the issue has been fully litigated. *See, e.g., Bates v. Union Oil*, 944 F.2d 647, 650 (9th Cir. 1991), *cert. denied*, 503 U.S. 1005, 112 S.Ct. 1761, 118 L.Ed.2d 424 (1992); *Hartley v. Mentor Corp.*, 869 F.2d 1469, 1472 (Fed.Cir. 1989) (stating that the "voluntary relinquishment [by settlement] of one's right to appeal, where one stands as the overall loser," allows for the preclusive use of issues that have not been appealed). I agree.

Id. at 1436

The federal court in *Siemens* further noted that:

... [W]hatever disadvantage NCS incurred with regard to its opportunity to litigate was self-imposed by voluntary settlement. Therefore, I fail to see how the settlement and dismissal of the action has any independent effect on the question of issue preclusion.

The Supreme Court has come to a similar conclusion regarding vacatur. Ordinarily, when a case on appeal becomes moot through no fault of the party who lost below, that party has the right to have the lower court vacate its judgment. *United States v. Munsingwear Inc.*, 340 U.S. 36, 40, 71 S.Ct. 104, 107, 95 L.Ed. 36 (1950).

Id.

The *Siemens* case also discussed the public policy that supports the judicious application of issue preclusion:

Issue preclusion, like vacatur, is an equitable doctrine. *See Parklane*, 439 U.S. at 331, 99 S.Ct. at 651-52. Thus, I must consider the public interest in applying issue preclusion here. As discussed, where it is not unfair to the parties, the public interest is best served by preserving sufficiently firm judgments. Here, NCS had fair notice that the issue of its breach of its contract with CVA would be critical in this case. Further, NCS should have known that the partial summary judgment entered against it would have been appealable once it became final. Instead, NCS voluntarily relinquished its right to appeal that ruling by settling the case. The public interest would not be served by allowing parties to avoid the preclusive effect of adverse judgments so expediently.

Arguably, my decision may discourage settlement in some cases. To the extent this is true, however, preventing settlement may actually conserve judicial resources. The only parties that will be discouraged from settling will be those who fear future, related liability based on negative partial summary judgment orders. If such parties are encouraged by issue preclusion not to settle the first action and to appeal instead, litigants and the court in a subsequent action will be saved the time and expense to relitigate and second guess an already-decided issue. In addition, it may not result in additional appeals because the subsequent action is just as likely to be appealed as the first.

Id. at 1437

Bryan v. State Farm Mut. Auto. Ins. Co., 205 Md.App. 587, 45

A.3d 936 (Md.App. 2012) is a recent Maryland case that also applied the doctrine of issue preclusion. In a thoughtful and detailed analysis, the Court explained the application of the doctrine.

In 18A C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4434, at 110 (2002), the authors summarize that "[r]ecent decisions have relaxed traditional views of the finality requirement by applying issue preclusion to matters resolved by preliminary rulings or to determinations of liability that have not yet been completed by an award of damages or other relief." (Footnote omitted). They describe as "the leading modern case" *Lummas Co. v. Commonwealth Oil Refining Co.*, 297 F.2d 80 (2d Cir.1961), *cert. denied*, 368 U.S. 986, 82 S.Ct. 601, 7 L.Ed.2d 524 (1962).

In that case, the parties were apparently in a race to the courthouse over the arbitrability of their contract dispute. In the initial case, the First Circuit, on an interlocutory appeal from an injunction, found that there was no substantial issue of misrepresentation in the formation of the contract. In the trailing case, the Second Circuit held that the issue of a misrepresentation that might vitiate the contract was conclusively decided by the First Circuit, even though there was no final judgment in the earlier case. Judge Friendly, writing for the court, said:

" Whether a judgment, not ' final' in the sense of 28 U.S.C. § 1291 [for purposes of appeal], ought nevertheless be considered ' final' in the sense of precluding further litigation of the same issue, turns upon such factors as the nature of the decision (i.e., that it was not avowedly tentative), the adequacy of the hearing, and the opportunity for review. 'Finality' in the context here relevant may mean little more than that the litigation of a particular issue has reached such a stage that a court sees no really good reason for permitting it to be litigated again." 297 F.2d at 89 (footnote omitted).

The American Law Institute adopted Judge Friendly's position in Restatement (Second) of Judgments § 13:

" Requirement of finality— The rules of res judicata are applicable only when a final judgment is rendered. However, for purposes of issue preclusion (as distinguished from merger and bar), ' final judgment' includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect."

The doctrine of issue preclusion was appropriate in the instant case and the Trial Court correctly applied it in determining that Northwest Hunter TV was dissolved. The residual question - whether seven years is simply too long for a dissolved limited liability company to wind up its affairs - is answered by Judge Lewis's various orders in the parallel lawsuit brought by Northwest Hunter TV against Rick Young. In August 2007, Judge Lewis ordered (referring to the dissolution of Northwest Hunter TV) that "*all business activities inconsistent with such Wind Up shall cease.*" In his December 14, 2007 Order Setting Timeline and Deadlines, Judge Lewis decreed that all of Northwest Hunter TV's assets had to be sold or auctioned off by not later than the spring of 2008. CP 80. Judge Lewis was adamant about settling other residual contested rights by agreement or by order, "*but in no case shall the resolution of the rights delay or expand the deadlines and timelines ordered herein.*" (italics added). CP 84.

The Trial Court and Northwest Hunter TV agreed that how long a dissolved limited liability company may take to wind up its affairs is determined by the measure of reasonableness. RP 44. The Trial Court in the instant case concluded in its memorandum opinion:

In view of these authorities the present issue is abundantly clear: the prior order entered by Judge Lewis was a sufficiently final determination that the LLC was dissolved. The subsequent voluntary dismissal was of no effect on this final determination. Thus NWH [Northwest Hunter TV] is precluded from asserting that the settlement/dismissal rendered the prior court's decision a nullity. Further any claim that as part of the Winding Up the LLC may proceed with collection activities is condition [sic.] on this being undertaken within a reasonable time. By any calculation seven years is not a reasonable time for winding up a LLC.

CP 248

The Trial Judge correctly determined that Northwest Hunter TV was dissolved and that it had violated the letter and spirit of Judge Lewis's orders and Washington law. For nearly seven years, Northwest Hunter TV has acted as though it had not dissolved while it forestalled winding up in the languid 'pursuit' of a collection action against Rivers West.

D. Northwest Hunter TV's Cases Concerning Interlocutory Partial Summary Judgments and CR 54(b) Certification Are Not Germane to the Issues in this Case.

Northwest Hunter TV has cited several cases concerning interlocutory orders on partial summary judgment, CR41 and CR54(b) certification. The cases cited by Northwest Hunter TV are not "bad law" - they are simply not suited to the present circumstances. Generally

speaking, a partial summary judgment order is interlocutory and subject to review and change by the original judge or a subsequent judge *while the case is still pending*. Also speaking generally, parties may voluntarily dismiss their lawsuits within the ambit of CR41. These general principles, however, are not particularly germane to the instant case.

Thus, *Beckman v. Wilcox*, 96 Wn.App. 355, 979 P.2d 890 (Div. 2 1999) cited by Northwest Hunter TV, concerns the award of attorneys fees after a CR41 voluntary dismissal. The case has no application to this case on appeal.

Northwest Hunter TV also cites to no avail *Fluor Enterprises, Inc. v. Walter Const., Ltd.*, 141 Wn.App. 761, 172 P.3d 368 (Div. 1 2007) and *Grill v. Meydenbauer Bay Yacht Club*, 57 Wn.2d 800, 359 P.2d 1040 (1961). In *Flour*, the trial court *did not enter CR 54(b) language* regarding finality and, as a result, the judgment had no binding effect *for the purpose of execution* until a final judgment was entered. *Id.* at 768. In *Grill*, the Supreme Court sought to discourage piecemeal appeals. *Id.* at 805. In *Grill*, the Supreme Court declined to hear an appeal of the case until after the main issues had been ruled on by the trial court, after which the parties could appeal everything, including interlocutory orders. *Id.* at

805-806. If *Grill* were applied to the instant case, then Northwest Hunter TV could have tried all the issues in its case against Rick Young and then appealed all of Judge Lewis's rulings together. When the dictum of *Grill* is put in context, it does not support Northwest Hunter TV's, argument that through a voluntary non-suit parties could undo a contested judicial order of partial summary judgment that confirmed the automatic dissolution of a company under its own Operating Agreement.

Neither *Ledcor Industries (USA), Inc. v. Mutual of Enumclaw Ins. Co.*, 150 Wn.App. 1, 206 P.3d 1255 (Div. 1 2009) nor *Washburn v. Beatt Equipment Co.*, 120 Wn.2d 246, 840 P.2d 860 (1992) cited by Northwest Hunter TV support its argument. Both cases relate to a trial judge's authority to revise a previous interlocutory partial order on summary judgment entered by the same or different judge in a pending case, notwithstanding the inclusion of the *pro forma* finality language of CR 54(b). Thus, under *Washburn*, Judge Lewis (or even another judge while the case was still pending) could have revisited his three orders relating to the dissolution of Northwest Hunter TV, if Northwest Hunter TV had ever filed a motion for him to do so. There is no evidence in the record, however, that this happened.

Northwest Hunter TV's reliance on *Wachovia SBA Lending v. Kraft*, 138 Wn.App. 854,158 P.3d 1271 (Div. 2 2007) is interesting, but not helpful in the present circumstances. *Wachovia* concerned the award of attorney's fees in the context of a particular statute which depended on the entry of a literal "final order." The Court of Appeals affirmed the trial court holding that "a CR 41 voluntary dismissal without prejudice is not a 'final judgment' within the meaning of RCW 4.84.330's 'prevailing party' language." *Id.* at 862. This holding is not relevant to the instant case on appeal.

West v. Thurston County, 144 Wn.App. 573, 183 P.3d 346, (Div. 2 2008), cited by Northwest Hunter TV, concerns whether a litigant was required to appeal in mid-litigation an interlocutory order that did not include the trial court's express direction that there was no reason for delaying an appeal. The Court of Appeals held that the appeal of the partial summary judgment order filed only after the entry of final judgment was proper. *Id.* at ¶ 6. Again, the issue of law addressed in *West* is interesting, but not particularly relevant to the matter presently on appeal.

Northwest Hunter TV cites *Spice v. Pierce County*, 149 Wn. App.

461, 204 P. 3d 254 (Div. 2 2009). *Spice* was a LUPA action in which the plaintiff filed a land use petition in Superior Court, then unilaterally withdrew the petition. After the Superior Court dismissed the case with prejudice, the party who had withdrawn the petition moved to have the Court reconsider its dismissal with prejudice. The Superior Court refused to reconsider and the LUPA petitioner appealed. In that peculiar circumstance, the petitioner's voluntary dismissal of its own LUPA petition left the Court of Appeals with no power to order reconsideration. *Id.* at 468.¹¹ The application of this LUPA case to the instant case is tenuous, at best.

In contrast to the cases cited by Northwest Hunter TV, the Trial Court, in its "Opinion Granting Defendant's Motion for Summary Judgment," cited to *Beritich v. Starlet Corp.*, 69 Wn.2d 454, 418 P.2d 762 (1966). CP 295. In *Beritich*, Supreme Court ruled that a party was not entitled to a non-suit as a matter of right because, in part, "[t]he summary judgment procedure, at least from the defendant's viewpoint, would become a virtual nullity if a plaintiff can '*exit stage left*' upon hearing an

¹¹ The Washington Supreme Court granted review of the Appellate Court decision in *Spice*, 167 Wn. 2d 1008, 220 P. 3d 783 (2009). Neither the reason for granting review nor the final disposition of the case by the Supreme Court are clear.

adverse oral decision of the trial judge on the summary judgment motion." *Id.* at 458 [italics added]. Though certainly not a perfect fit, *Beritich* is analogous to Northwest Hunter TV seeking to "exit stage left" by voluntary non-suit after Judge Lewis in 2007 had confirmed the dissolution of the company.

E. The Trial Court Correctly Construed the Facts in this Case.

Northwest Hunter TV contends that the original members of the company intended that it would continue to operate and conduct business after it had dissolved. Appellant's Brief, p. 11, paragraph 10. There is nothing in the record to support that contention. There is no evidence of Rick Young's intentions except for his adamant determination clearly expressed in his letter of resignation, his counter-claims against the company and his motion to the court in August 2007 to dissolve the company pursuant to its Operating Agreement. There is also no evidence of the remaining member, Sundance Magnetics, Inc.'s intentions whatsoever, either in the form of a corporate resolution or corporate meeting minutes. The present-day intentions of the individual, Pat Boyer, who was not a member of Northwest Hunter TV, are wholly irrelevant. In the context of contract interpretation, the Washington Supreme Court

recently cautioned in *International Marine Underwriters v. ABCD Marine, LLC*, ___ Wn. 2d ___, Case No. 87231-7 (decided November 27, 2013), "The court, however, must distinguish the parties' intent at the time of formation from the interpretations the parties are advocating at the time of the litigation." (citations omitted).

Northwest Hunter TV contends that the members of Northwest Hunter TV "changed their minds as to how to proceed." Appellant's Brief, p. 16. That might be the wishful thinking of Mr. Boyer, but there is absolutely nothing in the record that the "members" (plural) changed their minds about the company dissolving. Certainly, there is no evidence that either of the company's two members, Rick Young and Sundance Magnetics, Inc., intended to change their minds about anything except how to divvy up the assets in liquidation. Their settlement agreement is consistent with the method for distributing the company's assets upon liquidation as provided by Northwest Hunter TV's Operating Agreement, Article X(4). CP 53.

Northwest Hunter TV hypothesizes that Rick Young elected to proceed with a buyout of his interest rather than proceeding with the dissolution of the company. Appellant's Brief, pp. 15, 16, 21, 20, 21.

There is no evidence for this hypothesis, other than the self-serving declaration of Mr. Boyer, CP 131, which contradicts his own testimony submitted to Judge Lewis in the "other lawsuit," CP 152. The word "buyout" appears nowhere in the 2008 settlement agreement between Rick Young and Northwest Hunter TV. CP 108. Moreover, the parties' settlement is consistent with what Judge Lewis ordered in his August 17, 2007 partial summary judgment order dissolving the company: all other claims were to be determined by settlement of the parties or by Order of the Court. The distribution of assets according to the settlement agreement that occurred on May 30, 2008 is four square with the distribution of a limited liability company's assets upon dissolution. RP 29-30.

The reality is that Northwest Hunter TV was a dissolved company as of the date Rick Young served his letter of resignation in May 2007 and its dissolution was made doubly clear on August 17, 2007 when Judge Lewis confirmed the company's dissolution in his partial summary judgment order. All that remained was the distribution of its assets and the winding up of its affairs. Its business operations should have terminated in 2007, regardless whether Mr. Boyer continued to operate Northwest

Hunter TV in derogation of the Superior Court's orders.¹²

Northwest Hunter TV contends that the Trial Court misunderstood its role on summary judgment by not construing all possible inferences in a light most favorable Northwest Hunter TV. On the contrary, the Trial Court clearly set forth in its memorandum opinion what actually happened and it applied the law and principles of equity to the facts. Northwest Hunter TV has engaged in pure speculation and argumentative assertions. "The nonmoving party may not, however, rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

Northwest Hunter TV suggests that it pressed the 'undo' button for the company's dissolution by continuing to operate up to the present time. This solipsistic argument implies that because Northwest Hunter TV has not done what the Court ordered it to do, therefore the Court did not order it.

In a similar vein, Mr. Boyer asserted in a sworn declaration in 2013

¹² As the Trial Court pointed out, Northwest Hunter TV, by continuing to conduct business even after it was dissolved has been behaving "kind of like a zombie." RP 53, l. 3.

that his purchase of substantially all of Northwest Hunter TV's assets never really happened, CP 133, ¶10, even though five years earlier he testified that the sale had occurred. CP 152, 155-56.

As Mr. Boyer testified in 2008,¹³ he paid hard cash and personally acquired all of Northwest Hunter TV's licenses, trademarks and equipment. When Mr. Boyer filed his 2008 declaration under oath it was patent that a) Northwest Hunter TV had already commenced the winding up process in 2008 *because it had dissolved*, and b) Mr. Boyer was acting in compliance with the Court order and its own operating agreement, both of which mandated dissolution. CP 152.

Pat Boyer cannot create an issue of fact by contradicting himself whether he bought substantially all of the company's assets¹⁴ and he cannot, by merely saying it did not happen, resurrect a limited liability company that dissolved in 2007.

Northwest Hunter TV dissolved by order of the court in 2007. But the judicial order of dissolution simply *confirmed* the dissolution of the

¹³ One would assume his memory was better when closer in time to the facts than five years later when he filed a contradictory declaration for the purposes of trying to stave off Rivers West's summary judgment motion.

¹⁴ *Hanson Industries Inc. v. Kutschkau*, 158 Wn. App. 278, (Div. 3 2010), *rev. den.* 171 Wn.2d 1011 (2011). *See also, Marshall v. Bally's Pacwest, Inc.*, 94 Wn. App. 372, 379 (Div. 2 1999).

company under its own Operating Agreement. RP 31-34, CP 52. It was just another nail in the coffin; not the first nor only one. The automatic dissolution under the company's Operating Agreement, Article X(c), as triggered by Rick Young's resignation, does not depend on whether there was a judicial dissolution. Likewise, the automatic dissolution of the company triggered under the company's Operating Agreement, Article X (e), when its manager sold or transferred substantially all of its assets to the individual Pat Boyer does not depend on an order of judicial dissolution. Even if, one year later, the Rick Young sold to someone else his share of the assets in Northwest Hunter TV, the company still had dissolved and was required to wind up its affairs "upon the first to occur of the following events:" his resignation in May 2007, the court's order of judicial dissolution in August 2007, or Pat Boyer's purchase of substantially all of the company's assets in February 2008. See Operating Agreement, Article X. CP 52. "Upon the first to occur," in this context, must mean at the time the specified event happened.¹⁵

A limited liability company is an artificial creature of the state. Northwest Hunter TV was dissolved, is dissolved and remains dissolved.

¹⁵ Webster's Third New International Dictionary (1986) p. 2518, *Upon*: preposition, (10a) "immediately following on."

If it continues to operate, it does so outside the perimeter of the law.

VI. Conclusion

Northwest Hunter TV dissolved three ways. It dissolved as a function of its own Operating Agreement in 2007 when Rick Young submitted his formal notice of resignation and requested the winding up of the company. Its dissolution was confirmed by Judge Lewis's contested partial summary judgment order on August 14, 2007 at which Northwest Hunter TV had the opportunity to argue against dissolution. The company's dissolution was explicit in 2008, again as a function of Northwest Hunter TV's own Operating Agreement, when the manager sold off substantially all of the company's assets.

Northwest Hunter TV is precluded from re-litigating the issue of its own dissolution.

Since 2007, Northwest Hunter TV was not authorized to conduct business. It was ordered to wind up its affairs and to have them completely wound up, sold or auctioned off, by the spring of 2008.

The "winding up" lawsuit brought by Northwest Hunter TV against Rivers West has now been going on for seven years. This is far beyond the time ordered by Judge Lewis in 2007 by which Northwest Hunter TV

would have fully wound up its affairs. As the Trial Court concluded in its Opinion Granting Defendant's Motion for Summary Judgment: "By any calculation seven years is not a reasonable time for winding up a LLC." CP 248.

This Court should affirm the Trial Court's order on summary judgment.

Respectfully submitted this 1 day of December 2013

A handwritten signature in black ink, appearing to read 'Steven A. Reisler', written over a horizontal line.

Steven A. Reisler, WSBA #9384
Attorney for Respondent
Rivers West Apparel, Inc.

Appendix A

May 4, 2007

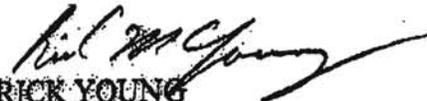
LETTER/NOTICE OF RESIGNATION

Northwest Hunter TV, LLC
6205 NE 63rd Street
Vancouver, WA 98661

Sundance Magnetics, Inc.
Northwest Hunter TV, LLC
6205 NE 63rd Street
Vancouver, WA 98661

By this letter/notice I, Rick Young, hereby give notice of my resignation/withdrawal as member of Northwest Hunter TV, LLC. I was expelled from the Company in January 2006. This Resignation/Withdrawal under the Operating Agreement Article 10 requires that Northwest Hunter TV, LLC, be hereby dissolved and terminated. Winding up should commence forthwith pursuant to the Operating Agreement and law. Thank you.

Sincerely,


RICK YOUNG
11101 SE 362nd
Boring OR 97009

0-000000075

Notice for Dissolution and Termination
Northwest Hunter TV, LLC, a Washington Limited Liability Company

TO: Northwest Hunter TV, LLC, a Washington limited liability company located at 6205 NE 63rd Street, Vancouver, WA 98661 (herein "Company")

TO: Sandance Magnetics, Inc. Manager; Northwest Hunter TV, LLC, a Washington limited liability company located at 6205 NE 63rd Street, Vancouver, WA 98661 (herein "Company")

FROM: Rick Young, member

This Notice is given pursuant to Article X 1.c. of the Operating Agreement of Northwest Hunter TV, LLC. Rick Young hereby demands the Company and its manager dissolve the Company and wind up its affairs. Due to Rick Young's resignation, withdrawal, retirement from company, and/or expulsion, the Company's dissolution, termination, and wind up is mandated per Article 10 of the Company's Operating Agreement. The Letter of the Resignation/Withdrawal of Rick Young, member is delivered contemporaneously herewith. The Trophy Connection, LLC, is a fully owned subsidiary of Northwest Hunter TV, LLC and therefore is subject, along with Company, to the terms of Article 10 of the Company's Operating Agreement.

Date 5-4-07



Rick M. Young
Member
Northwest Hunter TV, LLC

Appendix B

3

SCANNED

FILED

AUG 17 2007

Cherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

NORTHWEST HUNTER TV,)
LLC, a Washington limited liability)
company,)

NO. 06-2-00168-4

Plaintiff,)

PARTIAL SUMMARY JUDGMENT

vs.)

RICK M. YOUNG)

Defendant.)

and)

RICK M. YOUNG,)

Third Party Plaintiff,)

vs.)

JAMES PATRICK BOYER and)
CATHERINE ANN BOYER,)
husband and wife, individually and)
as a marital community and dba the)
following named entities; Sundance)
Magnetics, Inc, a Nevada Corp.;)
The Trophy Connection, LLC, a)
Washington Limited Liability Co.,)
Allstar Magnetics, Inc., a Delaware)
Corporation; Allstar Asphalt)
Maintenance, Inc., a Delaware)

PETER J. MOZENA
ATTORNEY AT LAW
2901 MAIN STREET
VANCOUVER WA 98663
(360) 695-1677
FAX (503) 493-9393
pjm@mozenalaw.com

120

1 Corporation, NW Trading, Inc.,)
a Delaware Corporation)
2 Allstar Magnetics, LLC,)
a Delaware Company)
3 Sundance Distributions,)
4 Inc., an unknown corporation.)
5 Third Party Defendants.)

6 I. JUDGMENT SUMMARY

7 1.1 No monetary relief has been requested.

8 II. HEARING

9 2.1 Date. A hearing on Defendant's Motion for Partial Summary Judgment was held
10 on August 17, 2007.

11 2.2 Appearances. Plaintiff/Respondent to Motion appeared by counsel, Robert Kerr,
12 and defendant/movant appeared by counsel, Peter J. Mozena.

13 2.3 Summary Judgment. The purpose of the hearing was to consider Defendant's
14 Motion for Partial Summary Judgment.

15 2.4 Evidence. Declaration of parties and John Hoiland and attachments thereto,
16 including but not limited to the Certificate of Formation, Operating Agreement,
17 Notice, and Letter of Resignation.
18

19 III. FINDINGS

20 The Court having considered the evidence and arguments of counsel, finds:

21 3.1 No Issue. There is no genuine issue as to any material fact in the issues raised by
22 the Partial Motion for Summary Judgment in this cause.

23 3.2 Dissolution and Wind Up. The method of Dissolution was set out in the
24 Operating Agreement. The events required for Dissolution have occurred. Notice
25

26 PETER J. MOZENA
ATTORNEY AT LAW
2901 MAIN STREET
VANCOUVER WA 98663
(360) 695-1677
FAX (360) 493-9393
pjm@mozenalaw.com

1 of Defendant's Resignation has been given per the Operating Agreement.
2 Dissolution has occurred. Dissolution as set forth in the Operating Agreement
3 requires Wind Up of the Company.

4 3.3 Judgment. Defendant is entitled to a Partial Summary Judgment as a matter of
5 law.

6 IV. PARTIAL SUMMARY JUDGMENT

7 On the basis of the foregoing findings and the decision of this Court,

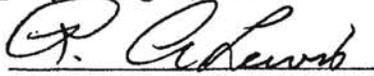
8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion for
9 Partial Summary Judgment is granted and Northwest Hunter TV, LLC, dissolution is confirmed
10 by this Judgment and Wind Up shall immediately be conducted pursuant to its Operating
11 Agreement and the law. All business activities inconsistent with such Wind Up shall cease.
12

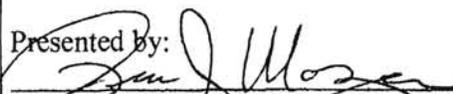
13 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Wind
14 Up shall be conducted by:

15 _____ John Hoiland
16 _____ Sundance Magnetics, Inc.
17 _____ Rick Young
18 X _____ Other: Pat Boyer as President of Sundance
19 _____ To be determined by later hearing. Magnetics, Inc

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that all other
21 claims shall be determined by settlement of the parties or Order of this Court.

22 DONE IN OPEN COURT this 17th day of August, 2007.

23 
24 _____
25 SUPERIOR COURT JUDGE

26 Presented by: 
27 _____
28 PETER J. MOZENA, WSB #7384
29 Attorney for Defendant Rick Young

PETER J. MOZENA
ATTORNEY AT LAW
2901 MAIN STREET
VANCOUVER WA 98663
(360) 695-1677
FAX (503) 493-9393
pjmo@mozenalaw.com

Appendix C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED

DEC 14 2007

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN THE COUNTY OF CLARK

NORTHWEST HUNTER TV,
LLC, a Washington limited liability)

NO. 06-2-00168-4

Plaintiff,)

vs.)

ORDER SETTING TIMELINE
AND DEADLINES

RICK M. YOUNG)

Defendant.)

and)

RICK M. YOUNG,)

Third Party Plaintiff,)

vs.)

JAMES PATRICK BOYER and)
CATHERINE ANN BOYER,)
husband and wife, individually and)
as a marital community and dba the)
following named entities; Sundance)
Magnetics, Inc, a Nevada Corp.;)
The Trophy Connection, LLC, a)
Washington Limited Liability Co..)

ORDER SETTING A TIMELINE AND DEADLINES

Page 1

PETER J. MOZENA
ATTORNEY AT LAW
2801 MAIN STREET
VANCOUVER WA 98663
(360) 695-1677
FAX (360) 493-0393
pjmozena@mozenalaw.com

141
hm

0-00000008:

1 Allstar Magnetics, Inc., a Delaware)
 Corporation; Allstar Asphalt)
 2 Maintenance, Inc., a Delaware)
 Corporation, NW Trading, Inc.,)
 3 a Delaware Corporation)
 Allstar Magnetics, LLC.)
 4 a Delaware Company)
 Sundance Distributions,)
 5 Inc., an unknown corporation.)
 6)
 Third Party Defendants.)
 7)

8 THIS MATTER having come before the Court on Motion of the Defendant, Rick Young,
 9 for an Order Appointing a General Receiver per RCW 25.15.295 and RCW 7.60, that the Court
 10 enter an Order setting a timeline and deadlines for Wind Up of the business and for an Order
 11 regarding Contempt pursuant to the Partial Summary Judgment dated August 17, 2007,
 12 Plaintiff's Motion for Approval of the Manager's Actions in Winding Up Plaintiff's Business,
 13 and the parties having reached an agreement as to a timeline with deadlines for Wind Up of the
 14 business shown by their signatures below, Plaintiff having entered into a Listing Agreement
 15 dated November 16, 2007, and the Court having reviewed the records and files herein, and the
 16 Motion and Declarations,

17 IT IS HEREBY ORDERED that Plaintiff shall sell all the assets of the Plaintiff as set
 18 forth herein no later than the deadlines set forth herein. Any sale primarily as a unit shall be
 19 completed within sixty (60) days from November 28, 2007, and closed within thirty (30) days
 20 thereafter. If the assets of the business sell as a unit within sixty (60) days from November 28,
 21 2007, Plaintiff shall have thirty (30) days thereafter to close the transaction (closing may be
 22 extended by Agreement of Patrick Boyer and Rick Young).

23 IT IS HEREBY ORDERED that if such sale as described above is not completed within
 24 the said sixty (60) days and closed within thirty (30) days thereafter (closing may be extended by
 25
 26

PETER J MOZENA
 ATTORNEY AT LAW
 2901 MAIN STREET
 VANCOUVER WA 98663
 (360) 694-1877
 FAX (509) 492-9343
 pjm@mozena-law.com

ORDER SETTING A TIMELINE AND DEADLINES
 Page 2

1 Agreement of Patrick Boyer and Rick Young). then all the assets of the Plaintiff shall be publicly
2 auctioned off completely not later than one hundred twenty (120) days from November 28, 2007.

3 IT IS HEREBY ORDERED that any funds after deduction only for the business broker,
4 appraisal fee, and any escrow fees received from the sale of any of the assets of Plaintiff shall be
5 paid to the attorney for Plaintiff's Trust Account to be distributed only upon agreement of
6 attorneys for the Plaintiff and Defendant or further Order of this Court.

7 IT IS HEREBY ORDERED that Plaintiff shall supply to Defendant copies of any and all
8 offers and agreements regarding the Wind Up or sale of assets and any closing instructions.
9 Such agreements and closing instructions shall include a requirement that any funds be paid to
10 the attorney for Plaintiff's Trust Account to be distributed only upon agreement of attorneys for
11 the Plaintiff and Defendant or further Order of this Court.

12 IT IS HEREBY ORDERED that if the sixty (60) days passes without sale of the assets as
13 a whole, then the Plaintiff shall supply to Defendant the agreement and all paperwork regarding
14 sale by auction, which also shall include instructions to pay such funds to the attorney for
15 Plaintiff's Trust Account to be distributed only upon agreement of attorneys for the Plaintiff and
16 Defendant or further Order of this Court.

17 IT IS HEREBY ORDERED that any sale shall be subject to any copyright interests and
18 any publicity rights, if any, of Rick Young and Pat Boyer, as to each, as such rights may exist in
19 any of the assets of Plaintiff. The parties may resolve or attempt to resolve these rights by
20 agreement or Court Order, but in no case shall the resolution of the rights delay or expand the
21 deadlines and timelines ordered herein.

22
23
24
25
26

///

ORDER SETTING A TIMELINE AND DEADLINES
Page 3

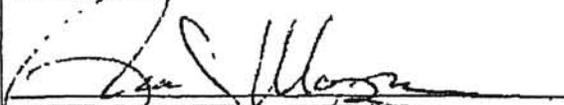
PETER J. MOZENA
ATTORNEY AT LAW
2901 MAIN STREET
VANCOUVER WA 98662
(360) 695-1677
FAX (360) 493-9393
pjm@mozenalaw.com

1 IT IS HEREBY ORDERED that all other matters regarding Defendant's Motion for
2 Appointment of a Receiver and regarding Defendant's Motion for Contempt and Plaintiff's
3 Motion for Approval of the Manager's Actions in Winding Up Plaintiff's Business are reserved.

4 DATED this 14th day of December, 2007.

5
6 
SUPERIOR COURT JUDGE

7 Presented-by:

8 
9 PETER J. MOZENA, WSB #7384
10 Attorney for Defendant, Rick Young

11 Receipt of true copy acknowledged, service accepted,
12 form approved, and consent to entry granted without
further notice this 13th day of December, 2007.

13 
14 ROBERT A. KERR, WSB #29341
Attorney for Plaintiff/Third Party Defendants

PETER J. MOZENA
ATTORNEY AT LAW
2901 MAIN STREET
VANCOUVER WA 98143
(604) 695-1677
FAX (604) 492-9393
pjmozena@mozena.wa.com

Appendix D

BILL OF SALE

Northwest Hunter TV, LLC a Washington limited liability company ("Seller"), for and in consideration of payment in the amount of \$26,823.00, the receipt and sufficiency of which is hereby acknowledged, has bargained, sold, transferred, conveyed, assigned, set over and delivered unto J. Patrick Boyer ("Buyer"), his successors and assigns, all of the interest of Seller in the assets described in the Appraisal Report dated February 1, 2008 by Gilbert Valuations LLC, including all trade names, rights, intellectual property and licenses, but with the exception of cash and accounts receivable (altogether the "Assets"). The Assets are sold subject to those certain copyright claims as set forth in the Order Setting Deadline and Establishing Timelines dated December 14, 2007, by the Clark County Superior Court. Buyer will not assume any of Seller's liabilities and obligations of any kind to any person or entity, whether known or unknown.

Buyer takes the Assets "As Is," in their current condition with all defects apparent and non-apparent. BUYER ACKNOWLEDGES AND AGREES THAT SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES RELATING TO THE ASSETS AND UNDERSTANDS AND AGREES THAT HE IS TAKING THE ASSETS WITH NO REPRESENTATIONS OR WARRANTIES CONCERNING THEIR CONDITION, FITNESS, FITNESS FOR A PARTICULAR PURPOSE, OWNERSHIP, TITLE OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER.

Buyer and Seller acknowledge and agree that this Bill of Sale is incident to that certain agreement by Buyer dated January 27, 2008 to purchase Seller's assets, and in accordance with the Order Setting Deadline and Establishing Timelines dated December 14, 2007.

After the date hereof, Seller will execute and deliver from time to time at the request of Buyer all such further instruments as, in the reasonable opinion of Buyer's counsel, may be required in order to vest in Buyer full and complete title to and the right to use the Assets.

TO HAVE AND TO HOLD the said Assets above described, unto Buyer to its own proper use and benefit forever.

IN WITNESS WHEREOF, the Seller and Buyer have executed this Bill of Sale on this 26th day of February, 2008.

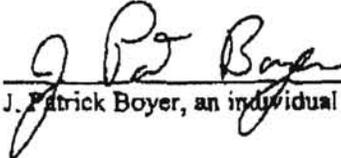
SELLER:

BUYER:

Northwest Hunter TV, LLC.

By:


J. Patrick Boyer, Manager


J. Patrick Boyer, an individual

P0131744.DOC:1

EXHIBIT 4
10-00000008

Appendix E

ARTICLE X
DISSOLUTION AND TERMINATION

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

- a. The expiration of the Term, unless the Members continue the Company's business with the unanimous consent of the Members;
- b. The unanimous written consent of all of the Members;
- c. The death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member, or any other occurrence that terminates a Member's membership in the Company;
- d. The entry of an order by a court of competent jurisdiction adjudicating a Member incompetent to manage his or her personal estate;
- e. The Manager transfers or sells substantially all of the Company's assets;
- f. The Company ceases its business operations;
- g. For a Member acting as such by virtue of being a trustee of a trust, the trust's termination (but not merely the substitution of a new trustee);
- h. For a Member that is a separate Organization other than a corporation, the dissolution and commencement of winding up of the separate Organization;
- i. For a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- j. For an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

2. **DEATH OR INCOMPETENCE OF MEMBER AND RIGHTS OF PERSONAL REPRESENTATIVE:** On a Member's death or incompetence, if the remaining Members continue the business pursuant to Section 1, the deceased or incompetent Member's personal representative, executor, or administrator shall possess all of that Member's rights for the purpose of managing or settling his estate. Such rights shall include, without limitation, such power as the decedent or incompetent possessed to assign his interest in the Company and to join with such assignees in following the procedures contained in this Agreement so that the assignee may become a Member.

3. **EFFECT OF DISSOLUTION:** Upon its dissolution, the Company shall cease

carrying on the Company business. However, the Company's dissolution does not terminate the Company. Instead, upon the Company's dissolution, the Company continues until it completes winding up its affairs and the state of Washington issues the Certificate of Dissolution.

4. **DISTRIBUTION OF ASSETS ON DISSOLUTION:** Upon the winding up of the Company, the Company shall distribute Company Property as follows:

a. To creditors, excluding Members who are creditors, to the extent permitted by law, to satisfy Company Liabilities;

b. To Members who are creditors, to the extent permitted by law, to satisfy Company Liabilities;

c. To establish any reserves the Manager may reasonably deem necessary to meet any of the Company's contingent or unforeseen liabilities or obligations arising out of, or in connection with, the Company's business. The Manager shall pay over said reserves to any financial institution, as escrow agent, with trust authority in the county in which the Company has maintained its principal accounting records. Such financial institution shall hold such reserves for the purpose of disbursing them to pay any of the aforementioned contingencies or liabilities. The Manager shall determine the time that such financial institution shall hold said reserves. At the expiration of such time, the financial institution shall distribute the balance remaining in the manner provided in this Section 4 and in the order named above;

d. To Members according to positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year, in which the liquidation occurs. The Company shall pay liquidation proceeds within sixty days of the end of the Company's taxable year or, if later, within ninety days after the date of liquidation. Such distributions shall be in cash or Property (which the Company need not distribute proportionately) or partly in both, as determined by the Manager.

5. **WINDING UP AND CERTIFICATE OF DISSOLUTION:** The winding up of the Company shall be completed when: (a) the Company pays and discharges all of its debts, liabilities, and obligations, or it makes adequate provisions therefor, and (b) the Company distributes its remaining assets to the Members. Upon the completion of the Company's winding up, a certificate of dissolution shall be delivered to the state of Washington for filing. The certificate of dissolution shall set forth the information required by the Act.

ARTICLE XI AMENDMENT OF AGREEMENT

1. **MEMBERS AND MANAGER MAY MODIFY COMPANY AGREEMENT:** The Members and Manager may modify this Agreement as provided in this Article XI, as amended. However, they may only amend or modify this Agreement from time to time by a written instrument that the Manager adopt and that the Members unanimously execute.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I deposited in the United States Postal Service a properly stamped and addressed envelope containing the following document(s):

BRIEF OF RESPONDENT RIVERS WEST APPAREL, INC.

to the following attorney of record for Northwest Hunter TV, LLC, with an original plus one copy filed with the Court Clerk:

Larry E. Hazen, WSBA #31046
PO Box 208
601 Main Street, Ste. 309
Vancouver, WA 98666
T: 360.931.4348
Email: larryehazen@aol.com
Attorney for Northwest Hunter TV, LLC

2013 DEC -8 11:15
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

DATED this 2 day of December 2013

Steven A. Reisler PLLC
By: /s/ Steven A. Reisler

Steven A. Reisler WSBA #
9384

Steven A. Reisler PLLC
5615 64th Avenue NE
Seattle, WA 98105
T: 206.522.7081

Email: sar@sarpllc.com
Attorney for Respondent
Rivers West Apparel, Inc.