COURT OF APPEALS
DECISION
DATED AND FILED

July 27, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

No. 99-1153

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

EDWARD A. HANNAN, W. WAYNE SIESENNOP AND W. PATRICK SULLIVAN,

PLAINTIFFS-APPELLANTS,

V.

THOMAS W. GODFREY, HUGH R. BRAUN, JAMES SAMUELSEN, WILLIAM H. FRAZIER, RICHARD D. RIEBEL AND GODFREY, BRAUN & HAYES, A GENERAL PARTNERSHIP,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PATRICIA D. MCMAHON, Judge. *Reversed and cause remanded.*

Before Dykman, P.J., Eich and Vergeront, JJ.

¶1 VERGERONT, J. Three former partners in a law firm appeal the trial court's order declaring rights and amounts due under the Partnership Agreement and the resulting judgment dismissing their complaint and amended complaint. They contend that the trial court erred in: (1) substituting its interpretation of the Partnership Agreement for that of the special master; (2) interpreting the Partnership Agreement; (3) failing to enter judgment for a specific sum of money; (4) permitting the remaining partners in the firm to use certain assets to pay for their defense in this action; and (5) dismissing the amended complaint rather than permitting them to proceed with discovery on their tort claims.

¶2 We conclude that, because the special master did not conduct an evidentiary hearing, the trial court was not bound by the special master's factual findings, and we also conclude the trial court was not bound by the special master's conclusions of law. However, we conclude the trial court erred in determining that the meaning of "capital accounts" in paragraph 14B of the Partnership Agreement was plain and that therefore no factual issues needed to be resolved in order to determine the parties' intent. Accordingly, we remand for proceedings consistent with this opinion, finding it unnecessary to address the other issues raised on this appeal.

BACKGROUND

¶3 The three plaintiffs—Edward Hannan, W. Wayne Siesennop and W. Patrick Sullivan—and five individual defendants—Thomas Godfrey, Hugh Braun, James Samuelsen, William Frazier and Richard Riebel—were partners for a number of years in the Milwaukee law firm of Godfrey, Braun & Hayes. The plaintiffs left the partnership on April 30, 1997. Unable to resolve their dispute

with the remaining partners over the monies due them before they departed, the plaintiffs filed a complaint on April 29, 1997. The complaint requested, among other relief, that the court appoint a receiver to wind up the affairs of the partnership pursuant to WIS. STAT. ch. 178 and declare the January 23, 1992 Restated Partnership Agreement (Partnership Agreement) void, invalid or unenforceable. A stipulated standstill order was entered, which provided that "On April 30, 1997 the Partnership will pay the Plaintiff Partners their cumulative capital accounts of $18,138, as listed on the FYE November 30, 1996 Federal income tax return."

¶4 The defendants moved for summary judgment declaring that the Partnership Agreement was valid and governed the plaintiffs' withdrawal from the partnership and asked the court to dismiss the complaint. The court rendered an oral ruling on the motion, concluding the Partnership Agreement was not void and that it plainly provided for continuation of the partnership, not a dissolution, upon the withdrawal of a partner, with paragraph 14B governing the withdrawal of partners from the partnership.[1] The trial court declined to dismiss the lawsuit and permitted the plaintiffs to amend their complaint over the defendants' objection.

¶5 The amended complaint alleged that the remaining partners had converted assets of the plaintiffs, breached the Partnership Agreement and breached their duties under the Partnership Agreement and their fiduciary duty to the plaintiffs by failing to pay them their share of partnership profits; using partnership assets, a substantial portion of which belong to the plaintiffs to defend against plaintiffs' claims; improperly deducting certain expenses as overhead from

[1] The plaintiffs do not challenge this ruling.

the money received for work done by plaintiffs on or before April 30; and refusing to allow distribution, due to the pending lawsuit, of the proceeds of a settlement relating to thefts by a former partner, David Jennings, from a client. The amended complaint also alleged a breach of fiduciary duty to the partnership and the plaintiffs by Godfrey for distributing $10,000 in partnership funds to Jennings in spite of knowing about his thefts, and for Godfrey's refusal to investigate an alleged conflict of interest concerning Riebel and to make full and timely disclosure of the results of the investigation.

¶6 The written order granting the defendants' motion for summary judgment also provided: "The Court will appoint a Special Master for the purpose of interpreting Paragraph 14.B. of the 1992 Partnership Agreement. Counsel for the parties shall agree on a person for that position if possible." Paragraph 14B of the Partnership Agreement provides:

> **Withdrawal**. A Partner shall give at least three (3) months notice of withdrawal from the Partnership, unless otherwise agreed. In case of such withdrawal and/or dissolution, the clients and files personal to each Partner shall be given to such Partner and in case of a dispute, doubt or where the client is not personal to a Partner, the client shall make the decision, which shall be final in every case. In case of a dispute unresolved by the client, an arbitrator shall be chosen by the client or the file shall be returned to the client with appropriate billing, if any, by the Partnership. The books shall be balanced and his Partnership assets, after payment of expenses, shall be paid to such withdrawing Partner, or Partners, in accordance with his or their capital and income accounts. For Partnership clients, such withdrawing Partner shall, after provision for normal firm overhead, be paid for work in process as receipts are received by the Partnership. Concerning work deemed personal to the withdrawing Partner, the withdrawing Partner shall retain all his unbilled charges after reimbursing the Partnership for costs advanced. On collection of such accounts, he shall reimburse the Partnership for overhead on an equitable and reasonable basis.

¶7 The special master selected by the parties considered the financial and other information presented by the parties, interpreted various terms in paragraph 14B, applied those terms as interpreted to the information presented, and determined that under paragraph 14B the plaintiffs were due $274,589.32 plus three-eighth's of the appraised value of the fixed capital assets (library, office equipment, furniture, computer equipment, leasehold improvements and sign). The special master arrived at the $274,589.32 by deducting the $18,138 already paid plaintiffs from a sum made up of three components: (1) $77,046.69, representing three-eighth's of the partnership net liquid assets; (2) $77,711.41, representing fees received by the partnership through January 1998 for work done by the plaintiffs through April 30, 1997, and not yet paid plaintiffs, less 1% for collection costs such as postage and recordkeeping; and (3) $137,969.22, representing the plaintiffs' share of the net partnership income from December 1, 1996 to April 30, 1997, after deducting the draws they had received for that time period.[2]

¶8 The special master also determined that, as to the "work deemed personal to the withdrawing partners," the plaintiffs must reimburse the partnership for costs of collection, computed at 1% of the fees collected, and the partnership may deduct that amount monthly from its accounting to the plaintiffs.

[2] The special master referred to paragraph 6 of the Partnership Agreement on partnership income distribution, which provides for a distribution of partnership income in November of each year, on a "reasonable and equitable basis after considering all factors," the primary one of which is "personal receipts for work done by each Partner." The special master assigned the plaintiffs collectively 50% of the receipts, determining that that was the percentage of their collective receipts for the fiscal year ending November 30, 1996, and 54% was their percentage for December 1, 1996 to April 30, 1997.

¶9 The plaintiffs moved for acceptance of the special master's report and the defendants objected to certain portions of the report. After hearing the arguments of the parties, the court made these rulings on the interpretation of paragraph 14B that differed from those of the special master: (1) The term "capital account" means the accounts totaling $18,138 that had already been paid the plaintiffs and does not mean a proportionate share of the partnership's capital; and (2) the "normal overhead" to be deducted from the receipts by the partnership for work done by the withdrawing partners is not simply the costs of collection but includes rent, salaries, insurance, etc., and the submissions show this amount is 63.04%. The court agreed with the special master on the overhead that the withdrawing partners were to reimburse the partnership on the files "deemed personal" to them, although it used a different analysis.[3] The court reasoned that the modification of "overhead" by the phrase "on a equitable and reasonable basis" contemplated something different from "normal firm overhead," and stated that it agreed with the special master that "one to two percent would be a reasonable amount. So I think no more than two percent on that."

¶10 With respect to issues that the special master had not addressed, the court ruled that the division of the settlement proceeds pursuant to a prior court order—50% to the plaintiffs and 50% to the defendants—would remain the final division; the defendants could properly use partnership income to pay for attorney

[3] The special master apparently treated "costs" the same as "overhead" with respect to these accounts. However, the plain language of paragraph 14B makes a distinction between costs advanced and overhead: "Concerning work deemed personal to the withdrawing Partner, the withdrawing Partner shall retain all his unbilled charges after reimbursing the Partnership for costs advanced. On collection of such accounts, he shall reimburse the Partnership for overhead on an equitable and reasonable basis." Partnership Agreement, ¶14B. The court explained its understanding was that there was no dispute over costs advanced, but there was a dispute over the meaning of "overhead" in this sentence.

fees and expenses in this action; and the plaintiffs were awarded the furniture they took with them, valued at $11,000, which amount was not to be deducted from any funds due them. The court stated that the matter of certain contingency fee cases would be resolved separately.

¶11 Plaintiffs moved for a reconsideration on the grounds that the court erred in not ordering an appraisal of the fixed capital assets and that, in making findings that modified the report of the special master, the court denied them their right to a jury trial and did not act consistently with WIS. STAT. § 805.06 (1997-98)[4] which governs the appointment and procedures when a referee is appointed. The plaintiffs also sought an order permitting them to resume discovery and a scheduling conference.

¶12 The trial court denied the motion. The court stated that (apart from the contingency fee cases) the relevant facts were undisputed and the interpretation of paragraph 14B was a question of law for the court. The court reviewed its rulings interpreting paragraph 14B and reaffirmed them. The court explained that it had appointed a special master to gather information, records and facts, "and not to interpret 14B because 14B was interpreted by the Court, but to apply it to the facts as gathered rather than this Court gathering all the financial information." The court denied the request to resume discovery and for a scheduling order because, in its view, its rulings had resolved all the issues raised by the amended complaint.

[4] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

DISCUSSION

Special Master

¶13 Relying on WIS. STAT. § 805.06, the plaintiffs contend that the trial court erred in substituting its interpretation of the Partnership Agreement for that of the special master because his findings and conclusions were not clearly erroneous. The defendants contend that the trial court did not authorize the special master to interpret the terms of the Partnership Agreement, and, even if it did, it had the authority under § 805.06 to set aside those conclusions of law that were inconsistent with its earlier ruling that, under the Partnership Agreement, the partnership was not dissolved upon the withdrawal of the plaintiffs.[5]

¶14 The interpretation of a statute presents a question of law, which this court reviews de novo. WISCONSIN STAT. § 805.06 authorizes a court to appoint a referee in certain situations[6] and to define the powers of the referee, including

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[5] The court did not refer to WIS. STAT. § 805.06 in the order appointing a special master, nor address, in either the hearing on objections to the report or the hearing on the motion for reconsideration, if or how that statute applied. However, since both parties appear to agree that the statute applies to the court's appointment of the special master, we will assume, without deciding, that it does.

[6] WISCONSIN STAT. § 805.06(1) and (2) provide:

> Referees. (1) A court in which an action is pending may appoint a referee who shall have such qualifications as the court deems appropriate. The fees to be allowed to a referee shall be fixed by the court and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court, as the court may direct. The referee shall not retain the referee's report as security for compensation; but if the party ordered to pay the fee allowed by the court does not pay it after notice and within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.
>
> (2) A reference shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when

(continued)

limiting the powers to "receive and report evidence only." Section 805.06(3). Unless otherwise directed by the court, the referee may rule on the admissibility of evidence, and the referee has the authority to put witnesses under oath and take evidence from them. *See* ***id.*** Section 805.06(5) provides in part:

> (b) In an action to be tried without a jury the court shall accept the referee's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice. The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instruction.
>
> (c) In an action to be tried by a jury the referee shall not be directed to report the evidence. The referee's findings upon the issues submitted are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.
>
> (d) The effect of a referee's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a referee's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

¶15 In this case, the court appointed a special master after deciding, based on the defendants' motion for summary judgment, that the Partnership Agreement was valid and paragraph 14B governed the plaintiffs' withdrawal. Apparently the appointment of a special master was discussed in chambers, but there is no transcript of that discussion. It is apparent from the court's comments at the hearing at which it granted the motion to amend the complaint and declined

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> the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

to dismiss the lawsuit that, in its view, after its ruling that the partnership was valid, issues remained concerning whether "the proper accounting was done" upon the plaintiffs' withdrawal from the partnership. That comment, and additional comments the court made at subsequent hearings—on a motion to compel discovery, the motion to adopt the special master's report, and the motion for reconsideration—indicate that the court did not intend the special master to make legal rulings interpreting the Partnership Agreement, but instead intended the master to gather and organize the financial information and take any necessary testimony, holding hearings if necessary. However, the written order appointing the special master states that the court is appointing a special master "for the purpose of interpreting Paragraph 14B."

¶16 Because of the apparent inconsistency between the written order and the court's comments both before and after that order was entered, the parties debate the powers the court granted the special master. However, it is unnecessary for us to decide the precise scope of the powers the court granted the special master for the following reasons.

¶17 The general rule is that factual findings of the referee are to be accepted by the trial court unless they are against the clear preponderance of the evidence or are clearly erroneous. *See* ***Kleinstick v. Daleiden***, 71 Wis. 2d 432, 439, 238 N.W.2d 714 (1976) (citing ***Wojahn v. National Union Bank***, 144 Wis. 646, 129 N.W. 1068 (1911); ***Ott v. Boring***, 139 Wis. 403, 121 N.W. 126 (1909)). This rule contemplates that the referee has been appointed to try the case and has done so. *See* ***Ott***, 139 Wis. at 403. The rationale is that the referee, who has heard the testimony and viewed the witnesses, is in a better position than the trial court to resolve factual disputes and weigh evidence. *See* ***Wojahn***, 144 Wis. at 658-59. In such a circumstance, the findings of fact of a referee "have the same dignity"

when reviewed by a trial court, as do the findings of fact made by a trial court, sitting as trier of fact, when reviewed by an appellate court. ***Ott***, 139 Wis. at 405. *Compare* WIS. STAT. § 805.06(5) *with* WIS. STAT. § 805.17(2).

¶18 However, in this case the special master did not hold an evidentiary hearing and take testimony from witnesses, but instead relied upon the documents presented. The rationale for the general rule, therefore, does not apply. If the documents disclosed disputed issues of fact, those disputes cannot be resolved without an evidentiary hearing, which has not occurred. On the other hand, if the facts are undisputed, only questions of law remain. On questions of law, a trial court need not defer to the referee. *See* ***Williams v. Lane***, 851 F.2d 867, 884-85 (7th Cir. 1988), *cert. denied*, 488 U.S. 1047 (applying FED. R. CIV. P. 53, the federal counterpart to WIS. STAT. § 805.06).

¶19 The plaintiffs argue that WIS. STAT. § 805.06(5)(b) applies because the interpretation of an unambiguous provision in a contract "is an issue of law for which no jury trial is warranted." This argument confuses the distinction between a factual and legal issue with the distinction between a trial to the court and a trial to the jury. When only legal issues exist there is no need for a trial—to either a court or a jury; on the other hand, when factual issues exist, a trial may be to a court or to a jury. Section 805.06(5)(b) applies when the "action is to be tried without a jury …," meaning that there are factual issues that are going to be tried by the court. This paragraph does not address questions of law, the resolution of which does not require any trial.

¶20 We conclude that, in this case, the trial court did not need to defer to the special master on any findings of fact or conclusions of law. Therefore, we confine our analysis to the trial court's interpretation of paragraph 14B.

Interpretation of Paragraph 14B

¶21 The aim of all contract interpretation is to ascertain the intent of the parties. *See* ***Dieter v. Chrysler Corp.***, 2000 WI 45, 234 Wis. 2d 670, 678, 610 N.W.2d 832. When the contract language is plain, the intent of the parties is arrived at by applying the plain language of the contract. *See* ***id.*** When the language is ambiguous, extrinsic evidence of the parties' intent may be considered, including the testimony of the contracting parties. *See* ***Patti v. Western Mach. Co.***, 72 Wis. 2d 348, 352-54, 241 N.W.2d 158 (1976). Ambiguity exists in a contract if it is reasonably susceptible to more than one meaning. *See* ***Wausau Underwriters Ins. Co. v. Dane County***, 142 Wis. 2d 315, 322, 417 N.W.2d 914 (Ct. App. 1987). Whether a contract is ambiguous is a question of law, as is the interpretation of contractual language that is unambiguous. *See* ***id.*** When a contract is ambiguous, the question of intent is for the trier of fact. *See* ***Armstrong v. Colletti***, 88 Wis. 2d 148, 153, 276 N.W.2d 364 (Ct. App. 1979). We decide the questions of law involved in contract interpretation de novo, *see* ***Wausau Underwriters***, 142 Wis. 2d at 322, while benefiting from the trial court's analysis.

¶22 The plaintiffs assert that the trial court made several errors in interpreting paragraph 14B, but we address only their argument that the court erred in interpreting "capital accounts," to exclude the fixed capital assets. The plaintiffs consult paragraph 4 for a definition of "capital accounts" which provides:

> **Capital**. The capital of the Partnership shall consist of office equipment, furniture, books, supplies and lease-hold equipment at 700 First Financial Centre, 700 North Water Street, Milwaukee, Wisconsin, and any other office or offices, plus reasonable operating cash as reflected on the books of the Partnership. Each Senior Partner shall have a capital account which shall include present capital and

> future contributions toward capital. Capital accounts shall be adjusted on an annual basis, provided total capital shall be maintained at reasonable operating levels and efforts will be made to keep each Partners' capital in generally equal proportions. Each Partner's interest in Partnership property shall be in accordance with his capital account.

Plaintiffs read this provision to mean that each partner's capital account is to reflect his share of the value of the fixed capital assets itemized in the first sentence plus reasonable operating expenses, plus "future contributions." Plaintiffs contend that the sum of $18,138 paid to them under the standstill agreement is not the total amount in their "capital accounts" as defined in the Partnership Agreement. As we understand the plaintiffs, they are contending that the Partnership Agreement plainly provides that the value of the fixed capital assets are included in the partners' capital accounts and plainly requires that an appraisal be made of those assets to determine their value for this purpose.[7]

¶23 The defendants also contend that the term "capital accounts" is unambiguous, but they ascribe to it a different meaning. They contend that this refers to the amounts next to each partner's name on the 4/30/97 Balance Sheet under the heading "Capital."[8] These "individual capital accounts," avers Godfrey in an affidavit submitted in opposition to adoption of the special master's report, are adjusted only at year-end "under our system whereby individual Partner profit distributions are only determined at the end of the year." The attachment to

[7] We are aware plaintiffs contend that there are other components of "capital account" as used in the Partnership Agreement, but we address only this argument.

[8] The amounts for the withdrawing partners are:

Sullivan:	$ 7,028
Hannan:	$11,771
Siesennop:	$ (661)

Godfrey's affidavit, entitled "Statements of Changes in Partners' Capital (Deficit)—Cash Basis—Years Ended November 30, 1996 and 1995," indicates that the specific amounts totaling the $18,138 paid the plaintiffs were computed based on the difference between each partner's income distribution for the fiscal year and the draw received by the partner during that year, with that difference carried forward from one year to the next.

¶24 We agree with the plaintiffs that, because "capital accounts" is not defined in paragraph 14B, it is reasonable to consult paragraph 4, which states what a capital account includes, and that it is reasonable to infer that "capital accounts" as described in paragraph 4 are the "capital accounts" referred to in paragraph 14B. We do not agree with defendants that by referring to paragraph 4, we are substituting "capital" for "capital account"; rather, paragraph 4 describes "capital" in the first sentence and describes "capital account" in the second sentence as "includ[ing] present capital and future contributions toward capital," and provides more detail about the "capital accounts" in the third and fourth sentences.

¶25 Reading paragraph 4 together with paragraph 14B, we conclude that one reasonable interpretation is that the "capital accounts" referred to in paragraph 14B include some value associated with the fixed capital assets described in the first sentence of paragraph 4. However, we do not agree with plaintiffs that it is plain that this value is to be determined by an appraisal of these assets when a partner withdraws. This may be one reasonable interpretation, but in the absence of a specific provision to this effect, we are not persuaded this is the only reasonable interpretation.

¶26 We do not agree with the defendants that "capital accounts" in paragraph 14B plainly refers only to the totals for 1996 on the "Partners' Capital (Deficit)—Cash Basis—Years Ended November 30, 1996 and 1995" statement. These amounts, computed as they are by comparing income distribution to draws, do not have an obvious and unambiguous correlation with the language of paragraph 4 describing what is included in "capital accounts," such that we can say it is undisputed that the parties intended these amounts, and nothing else, to constitute the partners' "capital accounts" under paragraph 14B.

¶27 The trial court concluded that the Partnership Agreement did not contemplate an appraisal of the fixed capital assets to determine the amount of the withdrawing partners' capital accounts because an appraisal was not specifically mentioned. In our view, that omission contributes to the ambiguity concerning how the amount in the capital accounts for withdrawing partners is to be determined; it does not remove the ambiguity. The trial court also stated that to appraise and divide the value of the fixed capital assets would constitute a dissolution of the partnership, which, it had already ruled, the Partnership Agreement plainly did not provide for upon the withdrawal of a partner or partners. However, the fact that the agreement does not provide for dissolution when one or more partners withdraw does not, in itself, say anything about the terms of withdrawal: we must look to the Partnership Agreement for that. *See* ***Adams v. Jarvis***, 23 Wis. 2d 453, 459, 127 N.W.2d 400 (1964) (holding that the partnership agreement there provided for continuation of the partnership upon the parties' withdrawal, then looking to the partnership agreement for the "method of paying the withdrawing partner his agreed shared").

¶28 In support of their position on the meaning of "capital accounts" in paragraph 14B, the plaintiffs point to the special master's reference to the

April 17, 1997 memorandum from Godfrey to all partners, stating: "I enclose copies of the 3/31/97 Financials for your information. As usual, the Capital Accounts should be ignored." The special master, after referring to the description of "capital account" in paragraph 4, stated: "However, it appears that the Partnership routinely ignored this provision of the Agreement. The managing partner's memorandum of April 17, 1997, is conclusive." Godfrey's affidavit, filed in opposition to the special master's report, avers: "This memo references the 3-31-97 monthly financial statements of the Partnership and, as I previously advised the Partners, the computer program was malfunctioning and we had not yet been able to get the accountants in to clear that up." The meaning of the memo and its relation to the interpretation of "capital accounts" in paragraph 14B is not clear. The memo does not conclusively resolve the issue of the meaning of "capital accounts" in paragraph 14B one way or the other; nor does Godfrey's affidavit resolve the issue. Rather, this memo and the parties' conflicting interpretation of it is one example of the factual issues that need to be resolved in order to interpret the meaning of "capital accounts" in paragraph 14B.

¶29 In the same manner, the use of the term "capital accounts" in the stipulated standstill to describe the $18,138 to be paid to the plaintiffs does not remove the ambiguity over the meaning of "capital accounts" in paragraph 14B. As pointed out by the plaintiffs, that stipulated order also provides: "By accepting the terms of this stipulated order, neither Plaintiffs nor Defendants waive, nor are they estopped to assert, any positions they have or will take in this action." The use of "capital accounts" in the order may be evidence of the parties' understanding of that term as used in paragraph 14B, but it does not resolve the ambiguity in the contract language.

¶30 We conclude that the intent of the parties concerning the meaning of "capital accounts" in paragraph 14B cannot be discerned from the language of the contract because that language is ambiguous. Therefore, we conclude that the plaintiffs are entitled to a trial on the meaning of that term. Although the plaintiffs assert that the trial court made other errors in interpreting paragraph 14B, we find it unnecessary to address them. Since a trial is necessary on at least one of the issues in interpreting paragraph 14B that the plaintiffs raise on appeal, we are satisfied the proper course is to remand for trial on the other issues that the plaintiffs raise under paragraph 14B. Our decision to remand also makes it unnecessary for us to address the plaintiffs' contentions that their amended complaint contains issues besides the application and interpretation of paragraph 14B, and that the trial court erred in concluding that its resolution of the issues under paragraph 14B disposed of all the claims in the amended complaint.

¶31 We emphasize these points. First, we are not remanding for a trial on the question whether the Partnership Agreement contemplates a dissolution of the partnership when a partner or partners withdraw. The trial court has already granted a partial summary judgment on that issue and the plaintiffs do not challenge that ruling on appeal. Second, our use of the term "remand for trial" is not intended to preclude the trial court's use of a referee as authorized by WIS. STAT. § 805.06. Third, we are deciding neither whether there are any claims in the amended complaint that are unrelated to the interpretation and application of paragraph 14B, nor whether, if there are, the plaintiffs are entitled to a trial on those claims. It appears there may be a disagreement between the parties on the claims that the trial court intended to permit the plaintiffs to add. Nothing in our decision prevents the trial court from conducting any proceedings appropriate to resolve that disagreement, or any proceedings appropriate to resolve claims

asserted in the amended complaint that do not relate to the interpretation and application of paragraph 14B.

By the Court.—Judgment and order reversed and cause remanded.

Not recommended for publication in the official reports.