COURT OF APPEALS
DECISION
DATED AND RELEASED

FEBRUARY 21, 1996

NOTICE

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No. 94-3289

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

DANIEL WILLIAMS, ED JOSEPH and ALAN J. ROGERS, a Wisconsin partnership, a/k/a BLOCK 14, a general partnership, a/k/a WILLIAMS, JOSEPH AND ROGERS, a/k/a BLOCK 14 (a partnership), by DANIEL WILLIAMS, MURIEL WILLIAMS and BERNICE JOSEPH,

Plaintiffs-Respondents,

v.

ALAN ROGERS,

Defendant-Respondent,

DAVID L. KACHEL,

Defendant,

DLK ENTERPRISES, INC.,

Defendant-Counter Claimant-Third Party Plaintiff-Appellant,

v.

DANIEL WILLIAMS, MURIEL WILLIAMS and BERNICE JOSEPH,

Third Party Defendants-Respondents,

CZARNECKI FOODS, INC., FIRST CITIZENS STATE BANK OF WHITEWATER and CITY OF WHITEWATER COMMUNITY DEVELOPMENT AUTHORITY,

Third Party Defendants.

APPEAL from a judgment of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Snyder, JJ.

ANDERSON, P.J. DLK Enterprises, Inc. (DLK) appeals from that part of a final judgment touching upon an earlier grant of a partial summary judgment against it. It also appeals the results of a bench trial contained within the action. In particular, DLK argues that the trial court erred regarding whether DLK's opponents in this action intended to form a partnership, and even if there was a partnership, whether the real estate that DLK coveted was partnership property, whether one of the principals in the partnership had the power to convey his interests to DLK, whether DLK was nonetheless a bona fide purchaser and whether the death of another of the principals to the partnership terminated the partnership. We decide against DLK on all the issues and affirm.

Daniel Williams, Ed. Joseph and Alan Rogers began doing business together, for the purposes of this action, in 1963 when they acquired interest in property in Marinette county. The individuals formed a corporation known as Wilderness Lodge, Inc. in 1964 and assigned their interest in the Marinette property to Wilderness Lodge. The corporation was later sold. Subsequently, the association bought parcels of land in the city of Whitewater upon which it erected a shopping center.

Daniel Williams, Muriel Williams and Bernice (Bea) Joseph filed a complaint[1] alleging that the partnership of Williams, Joseph and Rogers (WJR) was formed in 1965 in order to purchase five adjoining parcels of real estate (Block 14) with buildings on them for the purpose of using the space to erect a shopping center and parking lot. The complaint alleged that Rogers, who did the legal work for the partnership, unlawfully executed a sale of partnership property to DLK in 1990.

The partnership also alleged that there was a buy-sell agreement which prevented any of the partners from selling their interest in the partnership to any third party unless the same was offered for sale to the partners. In Rogers' answer to the complaint, however, he denied that a partnership was formed in 1965 known as Williams, Joseph and Rogers and admitted that a joint venture was created for the purpose of purchasing the

[1] The plaintiffs filed the complaint as "Daniel Williams, Ed Joseph, Alan J. Rogers, a Wisconsin Partnership …, a/k/a Block 14, a General Partnership, a/k/a Williams, Joseph and Rogers, a/k/a Block 14 (a Partnership) by Daniel Williams, Muriel Williams and Bernice Joseph." We will refer to the plaintiffs in the appeal as "WJR."

parcels of property in order to form a shopping center. No written partnership agreement or the buy-sell portion of the agreement could be found.

In its amended answers, affirmative defenses and counterclaim, DLK alleged that it was the owner of an undivided one-third interest in Lots 11, 12 and 13 in Block 14. DLK demanded that its interest in the subject real estate be established against the adverse claims of the plaintiffs/counterclaim defendants. DLK requested, among other things, a judgment for the partition of the premises according to the respective rights and interests of the parties. DLK further alleged in its third-party complaint that "D. Williams and Joseph are tenants in common of the subject real estate with DLK." WJR, however, denied in its answer that DLK was a tenant in common with any of them and denied that DLK was a partner in the partnership or was a partner with respect to the subject real estate.

Both parties filed summary judgment motions. The court granted summary judgment on several issues, including its determination that a partnership did exist which was the owner of Block 14. The court also granted WJR's motion that Rogers could not assign any specific property owned by the WJR partnership and that DLK could not claim that it was a bona fide

purchaser of the real estate. The court denied DLK's summary judgment motions.[2] The court concluded that there were issues of fact that it could not resolve by summary judgment: "I do not grant plaintiffs' summary judgment … on the question of whether or not Rogers could assign his one-third interest in the partnership." A bench trial was held where the court heard testimony as to whether there was a buy-sell agreement between the parties. The court subsequently decided that there was a buy-sell agreement with a right of first refusal.

In finding for the plaintiffs, the trial court related the evidence it relied on: Muriel Williams, Daniel Williams, Bea Joseph and Paul Joseph stated that they saw the document. Three of them said that they signed it. Regarding Rogers, the court stated:

I also felt that in reference to his problems with partnership and joint ventures that I did not find him very credible. I find it hard to believe that he would have constantly referred to partnership in documents, never referred— as far as I could see—to the term "joint venture" where any other witness testified he used it until such time as it came to his contacts with Mr. Kachel. I think that he knew well that it was a partnership in this case; and because I think that, it

[2] The court denied DLK's motion for summary judgment that the death of Ed Joseph terminated the partnership. The court stated:

I'm asked to grant summary judgment to the effect that if a partnership existed, that the death of Edward Joseph terminated that partnership. I deny summary judgment on that. Dissolution is not termination. … Termination does not occur until a point in time where all the partnership's affairs are cleared up. … That's directly contrary to both the statute and the case law to the position argued by DLK in that case, and obviously I must deny summary judgment.

> buttresses my belief that he is not telling the truth and is not a very credible person at this time.

The court concluded that Rogers had to give the other partners the right of first refusal—the right to match a third-party offer. Because he did not do so, the court stated that Rogers had no right under the contract partnership agreement to transfer his one-third interest or to assign his one-third interest in the partnership. Because he had no such right, that transfer was void. DLK appeals both the summary judgment and the judgment rendered after the bench trial.

DLK argues that "[t]here was clearly a genuine issue as to a material fact with regard to the issue of whether or not a partnership existed." In reviewing summary judgment determinations, we apply the same standards as the trial court. ***Posyniak v. School Sisters of St. Francis***, 180 Wis.2d 619, 627, 511 N.W.2d 300, 304 (Ct. App. 1993). A summary judgment motion shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Section 802.08(2), STATS. The party moving for summary judgment is required to demonstrate that a trial is not necessary and establish a record sufficient to demonstrate to the satisfaction of the court that

there is no triable issue of material fact on any issue presented. ***Heck & Paetow Claim Serv., Inc. v. Heck***, 93 Wis.2d 349, 356, 286 N.W.2d 831, 834 (1980).

Existence of a Partnership

We must decide whether there is a genuine issue as to any material fact that a partnership was formed. In order for a partnership to exist, four elements must be proven:

(1) The parties intended to form a bona fide partnership and accept the accompanying legal requirements and duties,

(2) The parties have a community of interest in the capital employed,

(3) The parties have an equal voice in the partnership's management, and

(4) The parties share and distribute profits and losses.

Tralmer Sales & Serv., Inc. v. Erickson, 186 Wis.2d 549, 563, 521 N.W.2d 182, 187 (Ct. App. 1994). "A partnership agreement, whether expressed or implied, may be in writing or proven by circumstantial evidence demonstrating that the conduct of the parties was of such a nature as to clearly express the mutual intent of the parties to enter into a contractual relationship." ***Heck & Paetow Claim Serv.***, 93 Wis.2d at 359, 286 N.W.2d at 836. Whether a partnership exists requires the application of facts to a legal standard. This is a question of law

that we review de novo. *See* ***Kimberly-Clark Corp. v. LIRC***, 138 Wis.2d 58, 66, 405 N.W.2d 684, 688 (Ct. App. 1987). The burden of proof of establishing a partnership relationship is on the party claiming that such a valid relationship exists. *See* ***First Nat'l Bank v. Schaefer***, 91 Wis.2d 360, 373-74, 283 N.W.2d 410, 417-18 (Ct. App. 1979).

Initially, we look to the evidence of whether the parties intended to form a bona fide partnership and accept the legal requirements and duties necessary to such a relationship. WJR asserts that Daniel and Muriel Williams and Bea Joseph testified that they signed a partnership agreement.[3] In the A & P lease, the association between the plaintiffs is characterized as a partnership. WJR also asserts that:

> Countless other legal documents and papers identify the group as a partnership at its inception. From … 1969 through 1990, the partnership had a separate taxpayer I.D. number and filed partnership tax returns. … All are accompanied by a Schedule K and K-1, also identified as part of Federal Form 1065. The schedules show form K-1 income/loss to each partner which passed through their individual tax returns.

We agree with WJR that this information is probative of the parties' intent to

[3] WJR cites to the trial transcript for this information. Trial testimony is irrelevant to our consideration of the motions for summary judgment. We must address the motions on the record that existed when they were decided by the trial court, not on a record expanded by the testimony at trial. ***Universal Die & Stampings v. Justus***, 174 Wis.2d 556, 558, 497 N.W.2d 797, 803 (Ct. App. 1993). Similar information is contained in deposition testimony submitted at the summary judgment stage. We therefore consider this evidence as it was presented for summary judgment.

form a partnership. "Tax returns which show the person or entity as receiving profits from the business are prima facie evidence that a partnership exists. Once a prima facie case is made that a partnership existed, the burden then shifts to the other party to show that no partnership existed." ***Id***. at 373, 283 N.W.2d at 417 (citations omitted).

DLK disagrees that there was intent to form a partnership, stating that Block 14 was deeded to Rogers, Williams and Joseph as tenants in common or with no designation at all as to the form of the ownership. It argues that this case involved a single transaction—the purchase of Block 14 to build a shopping center and further the interest of the joint venture. "A joint venture exists when two or more parties agree to contribute money or services in any proportion towards a common objective, exercise joint ownership and control and share profits but not necessarily losses." ***Bulgrin v. Madison Gas & Elec. Co.***, 125 Wis.2d 405, 412, 373 N.W.2d 47, 51-52 (Ct. App. 1985). DLK argues that "[a]ny preparation of income tax returns in a joint venture, other than between spouses, may require the preparation of a partnership income tax return."[4]

[4] DLK contends that a partnership income tax return is merely informational and different types of entities can use Federal Form 1065 for annual reporting purposes.

After reviewing the parties' briefs and the evidence presented at summary judgment, we conclude that there is no genuine issue as to any material fact that a partnership existed. DLK fails to present affirmative proof that there was no intent to form a partnership. The fact that Block 14 was deeded to Rogers, Williams and Joseph as tenants in common is a neutral designation and does nothing to further the argument that a partnership did not exist.[5] Additionally, the assertion that this association was a joint venture is unpersuasive considering that multiple parcels of land were bought with different loans, which were later developed into a shopping center with numerous leases. This is more than a single transaction.

Furthermore, DLK's assertion that different types of entities can use Federal Form 1065 for annual reporting purposes does not provide evidence that the association was something other than a partnership. Mere allegations cannot be used to defeat a summary judgment motion. *See* § 802.08(3), STATS.

There is little dispute as to the other elements necessary to prove the existence of a partnership. There is evidence which showed a community of interest in the capital employed. We agree with WJR that all three of the partners signed business notes or mortgages "making them jointly and severally liable for the whole amount to any creditor."

[5] Under the Uniform Partnership Act, § 178.04(2), STATS., "Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such coowners do or do not share any profits made by the use of the property."

Additionally, the parties had an equal voice in the partnership's management. Numerous lease agreements were signed by all three individuals. There is evidence that Rogers collected rent on property owned by the partnership. All three individuals signed business notes. Rogers also signed continuing guaranties with the First Citizens State Bank in 1988 and 1989.

Lastly, WJR asserts that the partners' sharing and distribution of profits and losses was indisputable. It points to the partnership tax returns with Schedules K and Forms K-1. It contends that each partner received one-third of the income or loss which was then passed on to their personal tax returns. We agree and conclude that no material issue of fact exists as to this claim and that WJR is entitled to judgment as a matter of law.

Partnership Property

We further conclude that summary judgment was appropriately granted on the issue of whether Block 14 was partnership property. The Uniform Partnership Act, § 178.05, STATS., provides in part:

> **(1)** All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property.
>
> **(2)** Unless the contrary intention appears, property acquired with partnership funds is partnership property.

In the present case, the partnership acquired the parcels of real estate constituting Block 14 through various loans in the mid-sixties. The partnership also borrowed the money in 1968 and built a shopping center. Additionally,

numerous partnership income tax returns show that the partnership was claiming the depreciation on the building. The tax returns also show that the partnership paid the taxes and insurance on the property. "Once the existence of a partnership is established, there is a statutory presumption that property purchased with partnership funds belongs to the partnership unless a 'contrary intent' is shown." ***Schaefer v. Schaefer***, 72 Wis.2d 600, 605, 241 N.W.2d 607, 609 (1976) (quoting § 178.05(2)). DLK has failed to show a contrary intent.

Conveyance of Specific Partnership Property

WJR states: "The property in this case was specific partnership property. As such, it could only be assigned by all of the partners." We agree. Under the Uniform Partnership Act, a partner cannot sell his or her interest in specific partnership property. Section 178.21(2) and (3)(b), STATS., provides:

> **(2)** A partner is coowner with the other partners of specific partnership property holding as a tenant in partnership.
>
> **(3)** The incidents of this tenancy are such that:
>
> ....
>
> (b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property.

We conclude that the trial court's grant of summary judgment that Rogers could not assign any specific property owned by the WJR partnership was appropriate.

Buy-Sell Agreement

The trial court made a factual determination that there was a buy-sell agreement and that:

Rogers had to turn to the other partners and give them the right of first refusal, the right to match the offer. He did not do so. Because he did not do so, Mr. Rogers had no right under the contract partnership agreement to transfer his one-third interest or to assign his one-third interest in the partnership. Because he had no such right, that transfer was void.

We will not set aside the trial court's findings of fact unless they are clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Section 805.17, STATS.

We conclude that the trial court's decision that there was a buy-sell agreement which prohibited Rogers from conveying his interest without giving his partners the right of first refusal is not clearly erroneous. The trial court weighed the credibility of the witnesses at trial and found several of them to be very convincing:

The next thing that favors the plaintiffs' case is the [sheer] credibility of Muriel Williams and David Williams and Bea Joseph. I'm not so much including Paul Joseph in that, although there are elements of credibility for him too. But I did find all three of those people very credible and believable people, and that's one of the things a judge does; and I just found nothing in their testimony like I found in Mr. Rogers' testimony that lead me to doubt in any way their honesty and integrity.

Daniel Williams testified in detail at the trial as to the reason for wanting, and the existence of, a partnership agreement:

Q And what protections did you agree to?

A One is that we'd have the ability to—to—we had to prove any new partner that wanted to come in.

Q Prove or approve? I didn't hear.

A Approve. In other words, an unwanted partner couldn't buy in. And—

Q What was the process—okay, go ahead, continue.

A If a partner came to us, one of the partners said, "I have a—my son that wants to buy my share," we'd say, "How much does your son want to pay for your share?"
And if he said a given amount that was a good buy, we said, "We'll buy your son's share." That's in the buy and sell agreement.

Daniel Williams also testified as follows:
[W]e had, I think they call it the—I know they call it the right of first refusal. If a partner was offered some money for his share, we had the right to buy it at that amount, and the partner would be gone; or we would have the right to refuse it. In that case, if we refused it and we approved the partner, we ended up with a new partner.

Muriel Williams testified:

A That we would have a right to buy out if someone brought in a proposal. If someone wanted to get out and brought in a proposed partner, that we would have the right to accept or refuse it.
That we would have to—have the right to buy it from him if we felt that it was a satisfactory price. That we would also have the right to say no, to get rid of that person and make the partners stay with us.

....

Q Do you recall seeing a written document?

A Yes.

Bea Joseph testified:

Q What did they say would happen in that event if one of [them] wanted to sell his interest, for example?

A Well, the other people, the other parties should have the right to buy them out before they brought in somebody new.

....

Q … But did there come a time when you signed a partnership agreement?

A That I signed it, yes.

....

Q Now, you had understood from earlier conversations that you heard between the husbands, including Mr. Rogers, what the terms of this document were supposed to be; is that correct?

A Yes.

Q Okay. And was it your understanding at the time you signed it that there would be a provision in it such as you had heard them discuss about buying each other out if they wanted to sell?

A That's right.

Q Okay, and when you signed it, was it your understanding that such a provision was in that document?

A Yes.

This evidence supports the trial court's conclusion that a buy-sell agreement existed which prevented Rogers from selling his interest to DLK.

Bona Fide Purchaser

DLK asserts that it is a bona fide purchaser of the one-third interest in the real estate and is therefore entitled to a judgment of declaration of interest in the real estate and a judgment of partition. DLK cites ***Kordecki v. Rizzo***, 106 Wis.2d 713, 719-20, 317 N.W.2d 479, 483 (1982), for the proposition that a bona fide purchaser is one who is without notice of a prior interest. In the present case, however, there is overwhelming evidence that DLK was aware that a partnership existed. A title commitment from the Chicago Title Insurance Company, listing DLK as the proposed insured, mentions Rogers, Joseph, Williams and their wives as a partnership.

Additionally, Rogers executed a bill of sale from himself to DLK which states:

> Any and all right, title and interest Seller may have in a "partnership" known as "Williams, Joseph and Rogers, a Partnership." Seller does not warrant or represent that this is a partnership. Seller owns an undivided one-third interest in a shipping center at West Center Street, Whitewater, Wisconsin. Seller holds title to an undivided one-third interest in said real estate with other parties.
>
> In the event that the interest of the Seller is deemed to be a partnership interest, Seller hereby conveys any and all right, title and interest he may have in said partnership to the Buyer. In conjunction with the execution of this Bill of Sale, Seller has also executed and delivered to Buyer a certain quit claim deed conveying any and all right, title and interest Seller may have in the real estate. Upon execution of these documents, Seller shall have no interest in either the real estate or the partnership. All right, title and interest of the Seller is hereby conveyed to the Buyer.

We conclude that there is no genuine issue as to any material fact that DLK had

notice, whether actual or constructive, that a partnership was involved with the property in question and that WJR is entitled to judgment as a matter of law.[6]

Termination of Partnership

DLK argues that the trial court committed error in determining that a partnership existed and that the death of Ed Joseph did not terminate the activities of the partnership. We agree with WJR that "Ed Joseph's death did not affect partnership status when the remaining partner continued the partnership as reconstituted." The death of a partner causes dissolution of the partnership. Section 178.26(4), STATS. Section 178.25, STATS., provides:

> **(1)** The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.
>
> **(2)** On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

According to ***First Nat'l Bank***, 91 Wis.2d at 378, 283 N.W.2d at 419, the legal

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[6] Additionally, David Kachel, DLK's principal officer, testified in deposition as follows:

> Q So anyway, it would be a fair statement, however, that when you called Mr. Rogers, you were aware of the fact that he had two partners in the community?
>
> A Yes, sir.
>
> ….
>
> A Well, I called him up and asked him if he would be interested —interested in selling his share in his partnership. And he said he might be, and I asked him what he'd be interested to sell it for, and I can't remember whether he told me at that time. But in another conversation he did tell me. He told me that he thought he would want $70,000 for his share.

representatives of the deceased partner have the power to consent to the continuation of the business. Specific consent is not required. "Acquiescence by the legal representatives in the continuation of the business is sufficient for consent …." ***Id.***

We agree with WJR that while the partnership had been dissolved when Rogers executed the bill of sale to DLK in October 1989, "the business of the partnership had continued as contemplated by the statutes, and there had been no winding up or termination of that business." We conclude that under the Uniform Partnership Act and the circumstances of this case, there is no genuine issue as to any material fact that Ed Joseph's death did not terminate the partnership and that WJR is entitled to judgment as a matter of law.

Alleged Prejudice

Lastly, we reject DLK's claim that "the trial court displayed a prejudicial pre-judgment of the credibility of Alan Rogers by attempting to have an alcohol breathalyzer test performed of him prior to the completion of his testimony." DLK has not fully developed its argument as to how the trial court's request, which it later reconsidered, was prejudicial and cites no case law for its assertions. We therefore do not consider it. Issues not fully developed will not be considered on appeal. ***Vesely v. Security First Nat'l Bank Trust Dep't***, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1985).[7]

[7] We do, however, express our conclusion after reviewing the extensive record in this appeal that the trial court examined the relevant facts, applied the proper legal standards and reached conclusions that a reasonable judge could reach using a demonstrated rational process. *See* ***Loy v. Bunderson***, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982).

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

SNYDER, J. (*dissenting*). Because ch. 178, STATS., Wisconsin's Uniform Partnership Act (UPA), clearly applies and controls the conveyance/assignment of Alan Rogers' partnership interests to DLK[8] in the absence of a producible written partnership agreement containing a buy-sell provision or an acquiescence to such an agreement by the partners, I respectfully dissent. Simply put, an alleged, but unproduced, contested parole evidence partnership buy-sell agreement cannot usurp the provisions of the UPA where the UPA provides a statutory remedy.

I concur that WJR is a partnership. It is undisputed that no written partnership agreement or written buy-sell provision was ever produced as evidence. The two surviving original partners disagree as to the existence of any such documents. Rogers says "no"; Williams says "yes." The partners, therefore, do not acquiesce in the existence or the terms of the documents. Under the circumstances, I conclude that the UPA prohibits an evidentiary reconstruction of disputed partnership documents to the exclusion of the UPA and for the benefit of one partner against another partner and a third party. My underlying concerns are four-fold.

First, as a Wisconsin partnership, WJR is subject to the provisions of the UPA in resolving partnership disputes and issues unless a clear partnership intent is expressed otherwise that would not violate the UPA. That is fundamental partnership law. The UPA is intended to protect more than

[8] Section 178.01(2)(e), STATS., includes a corporation under the UPA term "person."

partners; it is "intended ... to both protect partners from one another and ... [is] also intended to protect persons who deal with partnerships." ***Wyss v. Albee,*** 193 Wis.2d 101, 114, 532 N.W.2d 444, 448 (1995). Because the trial court fashioned a remedy outside of the UPA, contrary to the intent and purpose of the UPA, the ***Wyss*** intentions were mooted. The UPA is to be construed liberally to meet the legislative intentions. *See* § 178.02(1), STATS.

Second, faced with WJR's contention that a written, but not producible, partnership buy-sell agreement existed, the trial court wrongly applied the rules of contract law, parol evidence and witness credibility in an evidentiary trial to resolve the partnership interest assignment issue. However, the issue was resolvable under UPA provisions. "*In any case not provided for in this chapter* the rules of law and equity ... shall govern." Section 178.02(6), STATS. (emphasis added). Chapter 178, STATS., provided a statutory resolve of the WJR/Rogers/DLK issue.

Third, the following UPA provisions apply directly to the assignment of Rogers' partnership interest to DLK:

> The property rights of a partner are that partner's rights in specific partnership property, *that partner's interest in the partnership*, and his or her right to participate in the management.

Section 178.21(1), STATS. (emphasis added).

> A *partner's interest in the partnership* is the partner's share of the profits and surplus, and the same is personal property.

Section 178.22, STATS. (emphasis added).

> A conveyance by a partner of the *partner's interest in the partnership* ... merely entitles the assignee to receive ... the profits to which the assigning partner would otherwise be entitled.

Section 178.23(1), STATS. (emphasis added).

> *In case of a dissolution of the partnership, the assignee is entitled to receive the assignor's interest and may require an account* from the date only of the last account agreed to by all the partners.

Section 178.23(2) (emphasis added).

The UPA clearly provides that Rogers can assign/convey his partnership interests and that DLK has rights as the assignee of Rogers' profits and, because the partnership was in dissolution, of Rogers' "interests." Ignoring the UPA provisions by indulging an outside remedy to the partnership dispute undermines the intent and purpose of the UPA and renders meaningless the ***Wyss*** message.

Finally, ***Schaefer v. Schaefer,*** 72 Wis.2d 600, 241 N.W.2d 607 (1976), is cited as the only authority for the trial court's proposition that "if there was an oral contract in this particular case, and if its terms are clear enough, [the trial court] can enforce [the oral contract] even though ... it was not in writing."[9] If that is valid partnership law, the Wisconsin UPA has been effectively gutted.

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[9] The trial court specifically found, however, that there was both a written partnership agreement and a buy-sell provision, and applied the provisions as if the written documentation were before the

Schaefer provides a narrow exception to the statute of frauds where a partnership created to deal in real estate lacks a written partnership agreement but "where all parties have performed the contract, indicating their acquiescence in its terms." ***Id.*** at 606-07, 241 N.W.2d at 610. ***Schaefer*** does not provide judicial authority to substitute an equivocal legal procedure for the certain application of the UPA. The terms and conditions of a buy-sell agreement were wrongly imposed upon Rogers and DLK where no written document was produced and no partner acquiescence can be established.

Under the UPA provisions, Rogers had the ability to assign/convey his partnership interests to DLK, and DLK acquired rights as a UPA assignee for value. Rogers and DLK were wrongly denied UPA protections. I would reverse the enforcement of the alleged buy-sell provision and remand with directions to apply the UPA as intended by the legislature.

(..continued)
trial court.