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DISTRICT IV

September 23, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2016AP44 Hensen Associates, LLP v. Ricky E. Hensen (L.C. # 2014CV3443)

Before Lundsten, Sherman and Blanchard, JJ.

Ricky Hensen (Hensen) appeals an order granting summary judgment and damages against him for slander of title and dismissing his counterclaim seeking dissolution of the Hensen Associates, LLP, (Associates) partnership of which he is a member.[1] Based upon our review of the record and the briefs, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[2] We summarily affirm.

[1] Associates is comprised of two partners: Eugene Hensen, who holds a two-thirds interest in the partnership, and Ricky Hensen, who holds a one-third interest.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Associates is governed by a partnership agreement. Associates sued Hensen, alleging slander of title and other claims against Hensen after Hensen filed an affidavit with the Dane County Register of Deeds objecting to the impending sale of real estate owned by Associates. Hensen filed a counterclaim, seeking dissolution of Associates and an accounting of its funds. The circuit court concluded that Hensen's affidavit "creat[ed] a cloud on [the] title" and was an "effort to gum up a sale"; thus, the court concluded Associates established slander of title and awarded damages totaling $9714.04, including statutory damages of $1000 pursuant to WIS. STAT. § 706.13(1) and the remainder related to the delay of the real estate closing and loss of the use of escrowed sales proceeds.[3] The court also dismissed Hensen's counterclaim.

Hensen raises two arguments on appeal: (1) that Associates dissolved by operation of law, and (2) that the circuit court erred in computing damages related to the slander of title. Hensen's briefs are wholly undeveloped and amount to nothing more than conclusory statements, a summary of several cases from other jurisdictions that have no real bearing on the issues raised and which Hensen does not attempt to tie to the facts of this case, and brief references to WIS. STAT. ch. 178, the Uniform Partnership Act.[4] We are not required to consider Hensen's undeveloped arguments. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (this court may decline to consider undeveloped and unexplained

[3] The circuit court denied several additional claims that Associates brought against Hensen; however, none of those are before us on appeal.

[4] Chapter 178, the Uniform Partnership Act, was repealed and recreated as the Wisconsin Uniform Partnership Law effective July 1, 2016, by 2015 Wisconsin Act 295. As noted, our references are to the 2013-14 version of the Act.

arguments). However, in light of the fact that we recently rejected a similar attempt by Hensen to dissolve Associates,[5] we will address the matters raised.

Associates was created and is governed by a written, detailed partnership agreement. ***Bushard v. Reisman***, 2011 WI 51, ¶43, 334 Wis. 2d 571, 800 N.W.2d 373, explains: "Wisconsin Stat. [c]h. 178 reflects the legislature's public policy choices about the rights and obligations of partners *in the absence of agreements to the contrary*." (Emphasis added.) Further, ***Bushard*** underscores the value a written partnership agreement brings to the membership and advises partners to draft explicit agreements with terms that permit the partners to protect their interests. ***Id.*** at ¶¶44-45. As relevant to this appeal, Associates' partnership agreement provides:

> The Partnership may engage in any lawful business permitted to be conducted by a partnership under the laws of Wisconsin or the laws of any jurisdiction in which the Partnership may do business. The Partnership shall have the authority to do all things necessary or convenient to accomplish the purpose and operate its business as described in this Article.

Hensen repeatedly ignores the plain language of Associates' partnership agreement which, pursuant to ***Bushard***, largely governs our review.

The circuit court concluded that Hensen's counterclaim for dissolution was at least partially disposed of and precluded by the prior litigation, a legal determination that is not before us on appeal. The court also concluded that none of the grounds for statutory dissolution, such as inability to make a profit or any equitable reason, *see* WIS. STAT. §§ 178.27(1)(e) and (f), existed to require dissolution by court decree. Finally, the court noted that by the terms of the

[5] *See* ***Hensen v. Hensen Associates, LLP***, No. 2014AP1030, unpublished slip op. (WI App Oct. 29, 2015).

agreement, the partnership is authorized to engage in any lawful business, which includes "liquidating some or all of the real property and utilizing the money otherwise in an appropriate way."

Hensen argues in his reply brief that dissolution is appropriate because Associates' "particular undertaking" was to rent the real estate at issue to another entity which the Hensens controlled, and that when that entity ceased business operations, the "particular undertaking" could no longer exist because the lease no longer existed, and, thus, dissolution occurred by operation of law. Again, Hensen cites no legal authority to support his theory. Further, Hensen points to no section of the partnership agreement that specifies a "particular undertaking" of the partnership. The fact that for some years Associates' primary "undertaking" may have been to act as a landlord for a particular entity which no longer exists is immaterial to the operation of WIS. STAT. § 178.26(1), which provides that dissolution occurs if a "particular undertaking" is *specified in the partnership agreement* and that "particular undertaking" has terminated. As noted, Associates' partnership agreement specifies that the partnership "may engage in any lawful business." Accordingly, the agreement in this case does not restrict the partnership to a "particular undertaking," much less the lease Hensen points to. For that matter, Hensen's argument overlooks the possibility that Associates could lease the property to a new tenant, or, as the circuit court noted, sell the real estate and use the resulting proceeds in some appropriate way.

We agree with the circuit court that Hensen has demonstrated no basis for dissolution by court decree or operation of law and that Associates remained engaged in lawful business pursuits pursuant to the terms of the governing agreement.

Similarly, Hensen has offered no basis to support his argument that the circuit court improperly calculated the damages related to slander of title. The calculation of damages lies within the court's discretion. ***J.K. v. Peters***, 2011 WI App 149, ¶32, 337 Wis. 2d 504, 808 N.W.2d 141. We will not reverse the court's findings of fact relating to damages unless they are clearly erroneous. ***Id.***

Hensen, who conceded in a motion for reconsideration that he had committed slander of title, does not argue that the circuit court's findings of fact related to damages were clearly erroneous and does not discuss the court's exercise of discretion. In awarding statutory damages in addition to damages for loss of the use of the real estate sale funds resulting from delay in the closing and escrowing of funds, the court determined that using the market rate of 1.5 percent keyed to dates the parcels of real estate were originally scheduled to close was reasonable, and explained:

> Ricky Hensen was attempting to—well, initially it seemed like he was attempting to gum up the sale or to extract advantage by gumming up the sale …. [I]t was the combination of the slander of title and the failure to release the funds that resulted in these damages, and so I think they're warranted as a matter of law.

Hensen advised the court at the oral decision hearing that the proposed 1.5 percent interest rate was agreeable in the event the court determined damages were appropriate. We are satisfied that the court properly exercised its discretion in computing the damage award.

Upon the foregoing reasons,

IT IS ORDERED that the order granting summary judgment and dismissing the counterclaim is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals