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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 07-13-2010  
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BY: GH

KEN CRATTE and MARCI CRATTE, ) 1 CA-CV 09-0239  
husband and wife, )  
 ) DEPARTMENT E  
Plaintiffs/Appellants, )  
 ) **MEMORANDUM DECISION**  
v. )  
 ) (Not for Publication -  
TOM ESTABROOK and JOANNE ) Rule 28, Arizona Rules of  
ESTABROOK, husband and wife, ) Civil Appellate Procedure)  
 )  
Defendants/Appellees. )  
 )

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Appeal from the Superior Court in Navajo County

Cause No. CV0020060532

The Honorable John N. Lamb, Judge

**VACATED AND REMANDED**

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G E M M I L L, Judge

¶1 Ken Cratte and Marci Cratte ("Crattes") appeal the judgment of the superior court which did not award them or

defendants Tom Estabrook and Joanne Estabrook ("Estabrooks") the complete relief sought on the parties' respective claims and counterclaims. The Crattes further challenge the superior court's denial of costs and attorney's fees. For the following reasons, we vacate the judgment and remand the case for further proceedings consistent with this decision.

#### **BACKGROUND AND PROCEDURAL HISTORY**

¶2 The Crattes and Estabrooks entered into a verbal partnership to open a restaurant in January 2006. The partnership's business was variously funded by the four partners and a loan from a third party. The restaurant opened on April 9, 2006, and soon thereafter conflicts developed between the partners. On September 10, 2006, the Crattes withdrew from the partnership on the basis of the conflicts. The Estabrooks, as the two remaining partners, elected to continue with the business of the partnership.

¶3 When the parties were unable to resolve the disposition of the partnership's business and assets, the Crattes brought an action seeking the liquidation of the partnership's assets, accounting of operational proceeds from the partnership's business from its inception through its last day of operation, and distribution of all proceeds. The Crattes based their action on the Estabrooks' alleged breach of the partnership agreement and the covenant of good faith and fair

dealing. The Estabrooks counterclaimed seeking the court's determination and division of the partnership's assets and proceeds. The Estabrooks based their arguments on the proper distribution of assets and proceeds on the basis of the Crattes's alleged breach of contract and unjust enrichment; and the Estabrooks also sought a partition of the partnership's real property and a one-third reduction in any amount due the Crattes pursuant to a verbal agreement regarding the wrongful withdrawal of any partner.

¶4 In response to the counterclaims, the Crattes asserted the provisions of Arizona Revised Uniform Partnership Act ("ARUPA"), Arizona Revised Statutes ("A.R.S.") §§ 29-1001 to -1111 (1998), as an affirmative defense to the counterclaims raised by the Estabrooks. The Crattes also asserted that ARUPA controls the distribution of assets of the partnership, whether the partnership must wind up, and whether the Crattes must be bought out.

¶5 Based on the jury's verdict, the judgment of the superior court established the parties' relative interests in the partnership and the value of the partnership as of the date of the Crattes' dissociation (September 10, 2006); and the court ordered distribution of the value of the partnership in equal shares to the Crattes and the Estabrooks. What the court did not do in its judgment is provide the mechanism by which the

distribution of the value of the partnership might be accomplished, i.e., buyout of the Crattes by the Estabrooks or liquidation of the partnership's assets and distribution pursuant to the value established as of September 10, 2006. Nor did the court apply the provisions of ARUPA to the results of the litigation.

¶16 The question presented by the Crattes is whether the superior court's judgment is proper and complete with respect to the relief sought by one or both parties when both parties sought not only a determination of their relative interests in the value of the partnership, but also the court's order regarding the distribution of that value through either buy-out or liquidation. In addition, the Crattes challenge the court's refusal to apply ARUPA in the case and to award costs and attorney's fees to the Crattes as the prevailing parties in the litigation.

¶17 We have jurisdiction pursuant to A.R.S. § 12-2101(B)(2003).

#### **ANALYSIS**

##### **The Waiver Issue**

¶18 We first address the Estabrooks' argument that the Crattes waived the application of ARUPA by failing to cite the statute in their complaint. Arizona is a notice pleading state, and under notice pleading statutory citation is not required so

long as the pleadings give fair notice of the claims asserted and the relief sought. See *Best v. Edwards*, 217 Ariz. 497, 504, ¶ 28, 176 P.3d 695, 702 (App. 2008) (notice pleading requires merely "notice of the relief sought"); *Toney v. Bouthillier*, 129 Ariz. 402, 408, 631 P.2d 557, 563 (App. 1981) ("[F]ailure to make reference to a statute is not fatal to a claim."). In addition, the Crattes' assertion of the provisions of ARUPA as an affirmative defense to the Estabrooks' counterclaims for partition and dissolution gave the Estabrooks fair notice of the potential application of ARUPA to the case and the Crattes' position that ARUPA was applicable. We conclude, therefore, that the Crattes did not waive the application of ARUPA as to their claims or affirmative defenses.

¶19 In addition to the fact that the Crattes did not waive the application of ARUPA, Arizona Rule of Civil Procedure 54(d) states plainly that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings." The relief to which a party is entitled depends upon the facts pleaded rather than upon the theories advanced. *Keystone Copper Min. Co. v. Miller*, 63 Ariz. 544, 560, 164 P.2d 603, 611 (1945).

Where a plaintiff states a cause of action for any relief, he will be granted the relief to which he is entitled under the

facts pleaded, regardless of his designation of the cause or what he has asked for in his prayer. The party entitled to a judgment must be allowed such relief as the pleaded facts justify, regardless of the formal demands.

*Id.* (citations omitted). Even if the Crattes had failed to assert ARUPA in their answer to the counterclaims, therefore, they still would be entitled to and subject to its benefits and restrictions based on the facts of the case if it became clear that the statute applied to the circumstances of the partnership.

#### **Application of the Arizona Revised Uniform Partnership Act**

¶10 Dissociation of partners and the dissolution of partnerships are governed by ARUPA. ARUPA states that "[e]xcept as otherwise provided . . . relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership." A.R.S. § 29-1003(A). The Crattes and Estabrooks had no formal written partnership agreement -- only a broad verbal agreement regarding the equal division of the interest in the partnership between the four partners and a possible penalty for the wrongful withdrawal of a partner from the partnership. Thus, the applicable sections of ARUPA apply to determine the result

of dissociation of partners from the partnership, with the exception of the penalty for wrongful dissociation contained in A.R.S. §§ 29-1052(C) and -1061(H).<sup>1</sup>

¶11 The dissociation of a partner from a partnership results in either the elimination of the partner from the partnership or the winding up and dissolution of the partnership depending on whether the partnership business continues on after the dissociation. See A.R.S. §§ 29-1061 and -1071. In this case, after the dissociation of the Crattes, the Estabrooks continued on with the partnership business rather than winding it up. Thus, § 29-1061 determines the disposition of the dissociated partners' interest. Section 29-1061 states that when dissociation does not result in dissolution and winding up under § 29-1071, "the partnership *shall* cause the dissociated partner's interest, if any, in the partnership to be purchased for a buyout price determined pursuant to subsection B of this

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<sup>1</sup> It is unclear to us whether the parties considered the withdrawal of a partner under the verbal partnership agreement to be the same as the dissociation of a partner as covered in ARUPA. However, the parties' pleadings, the conduct of the trial, and the jury instructions strongly suggest that the parties' agreement in regard to withdrawal applied in the case of a wrongful withdrawal or dissociation from the partnership. Accordingly, the application of A.R.S. § 29-1052(C) regarding penalty for wrongful dissociation would presumably be limited by the parties' agreement. In any case, the jury found that the Crattes did not wrongfully withdraw from the partnership and the Estabrooks do not dispute this finding, so we need not further consider the application of A.R.S. § 29-1052(C).

section." (Emphasis added). The buyout price is established by § 29-1061(B) as follows:

The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner . . . if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the continuing services of any of the partners and the partnership were wound up as of that date.

Additionally, A.R.S. § 29-1035(B) provides that a partner may maintain an action against the partnership or another partner for legal or equitable relief to enforce the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to § 29-1061.

¶12 The jury was given three issues of fact to decide: 1) percentage distribution of the partnership as agreed to by the partners; 2) whether the Crattes had wrongfully withdrawn from the partnership; and 3) the value of the partnership on the date of dissociation minus an outstanding loan to the partnership. The parties agreed that the dissociation date was September 10, 2006, and this date was reflected in the jury verdict forms and the written judgment. Once the jury determined these facts, the court was in a position to render a final judgment pursuant to the partnership agreement and ARUPA.



¶13 We conclude that the superior court erred when it did not order the complete relief sought by the parties and required by statute in its final judgment. For this reason, the case must be remanded to allow completion.

#### **Costs and Attorney's Fees**

¶14 The Crattes further contend that the superior court erred by not deciding that they were the prevailing parties and by not awarding them attorney's fees and costs. The superior court's decision on the amount of fees to award is reviewed under the abuse of discretion standard. *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, 13, ¶ 12, 6 P.3d 315, 318 (App. 2000); see also *Assoc. Indem. Corp. v. Warner*, 143 Ariz. 567, 571, 694 P.2d 1181, 1185 (1985) (finding that the trial court did not abuse its discretion when it denied the award of attorney's fees). In regard to taxable costs, the superior court has the "discretion to determine the successful or prevailing party for purposes of awarding costs under section 12-341." *McEvoy v. Aerotek, Inc.*, 201 Ariz. 300, 302, ¶ 9, 34 P.3d 979, 981 (App. 2001). However, if one party is deemed to have prevailed in the case, then the court has no discretion in the award of costs. A.R.S. § 12-341 (2003).

¶15 Because we are remanding to allow the superior court to order complete relief to the parties in accordance with the law and the facts, we also vacate the court's ruling regarding

attorney's fees and costs. If, after further relief is ordered, one or both sides again seek attorney's fees or costs, the superior court may exercise its considerable discretion to consider again and determine these issues.

**CONCLUSION**

¶16 The superior court erred when it did not apply ARUPA in this case and did not order the complete relief sought by the parties and required by statute. We therefore vacate the judgment, including the consideration of attorneys' fees and costs, and we remand for further proceedings consistent with this decision.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
SHELDON H. WEISBERG, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PHILIP HALL, Judge