IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

NORMAN C. IVERSON, Respondent, v. KIRI JOINT VENTURE, a Washington general partnership; ROBERT J. KNUTSEN, a single man; and ARTHUR J. REDFORD and DALLAS J. REDFORD, husband and wife; PENNY C. DUKE and ROBERT DUKE, wife and husband, and the marital community of them composed; JEFFERY B. IVERSON and SUSAN IVERSON, husband and wife, and the marital community of them composed; and IVERSON REAL ESTATE, LLC, a Washington limited liability company, Appellants.	)	No. 64925-6-I DIVISION ONE UNPUBLISHED OPINION FILED: August 30, 2010

Grosse, J. — An agreement signed by a majority of partners may validate a prior agreement even if that prior agreement was invalid at the time it was entered. Here, all but one of the members of the joint venture signed an agreement among partners acknowledging a previous contract in which the members of the joint venture agreed to pay another of its members a management fee. Any dispute as to whether that previous contract was valid was thus resolved. The trial court is affirmed.

FACTS

Prior to the formation of KIRI joint venture, Norman C. Iverson (Nick) had

worked for his father and was engaged in searching for raw land along the Interstate 5 (I-5) corridor. In 1973, Nick located the Hawks Prairie property which Norman and Marie Iverson acquired with different partners. From 1973 to 1977, Nick acted as manager for the property, performing such duties as ensuring contract payments were made, property taxes were paid and continuously investigating commercial development and/or sale of the property. When the Iversons became the sole owners of the property, Nick sought another partner for the venture. Nick approached Robert Knutsen offering him a 49 percent interest in the property. Knutsen was interested, but only in half of that amount. Knutsen found Arthur and Dallas Redford who accepted the other 24.5 percent.

On June 20, 1977, KIRI joint venture was formed to hold/and or develop real property located near the Hawks Prairie Exit off I-5. The joint venture members were:

25.5 percent, Norman and Marie Iverson (Iversons)
25.5 percent, Iverson Trust
24.5 percent, Robert Knutsen
24.5 percent, Arthur and Dallas Redford (Redfords)

Prior to 1977, Nick was compensated for management of various properties as they were sold or developed. Nick expected that he would likewise be compensated when KIRI's property was sold. An undated management agreement, signed by all the original KIRI investors except the Redfords, agreed to pay Nick a fee of 3.5 percent upon the sale of the property. Over a span of approximately 20 years Nick performed a variety of functions pursuant to the

management agreement. These included employing attorneys, realtors, accountants, engineers, and the like.

In 1996, there was a potential sale of the property. A dispute arose over whether all the partners should pay the fee as set forth in the management agreement or whether the Redfords did not have to pay the fee. In March 1996, the KIRI members entered into an "AGREEMENT AMONG PARTNERS" (1996 Agreement), which contained recitals recognizing Nick's entitlement to a 3.5 percent management fee to be paid from the sale of KIRI's property. The 1996 Agreement also recognized that the Redfords did not agree.

The Iversons held or controlled two 25.5 percent interests for a total of 51 percent interest in the property. Over the course of the years, they periodically transferred those interests to their children, Penny, Jeff, and Nick, equally.

Marie Iverson died on July 13, 2000 and Norman L. Iverson died on March 3, 2003. In October 2003, KIRI repudiated the contract and notified Nick that he was not to act as "the" manager of the property. The property sold in May 2008 for over 14 million dollars. The trial court found a valid contract ratified by the 1996 Agreement and held that Nick was entitled to the 3.5 percent management fee from the sale of the property. KIRI appeals.

ANALYSIS

Agreement Among Partners

KIRI contends that it could not have ratified the management agreement in its 1996 Agreement because it was signed by only 50 percent of its members. But this is incorrect.

The opening paragraph of the 1996 Agreement among the partners states:

> THIS AGREEMENT is made and entered into this ___day of March, 1996, by and between IVERSON REAL ESTATE, LLC, NOR-RAE TRUST, JEFFREY B. IVERSON, PENNY C. DUKE, NORMAN L. IVERSON, MARIE K. IVERSON, IVERSON TRUST, dated June 19, 1970, Norman L. Iverson Trustee, NORMAN C. IVERSON and ROBERT J. KNUTSEN.

The document was signed "individually and as joint venture partners of Kiri Joint Venture" by the following:

- Iverson Real Estate LLC by Normal L. Iverson
- Jeffrey B. Iverson
- Norman L. Iverson
- Norman C. Iverson
- Iverson Trust by Norman L. Iverson, Trustee
- Nor-Rae Trust by Norman C. Iverson, Trustee (Nick)
- Penny C. Duke
- Marie K. Iverson
- Robert J. Knutsen

KIRI contends that at the time this was signed all of the Iversons' interest in the limited liability company (LLC) had been transferred to Penny, Jeff, and Nick. Thus, KIRI argues, Iverson could not sign for the LLC and, since the siblings did not sign specifically in their capacity as members of the LLC, the LLC cannot be bound. We disagree.

As noted in a leading treatise on close corporations, the enforcement of obligations undertaken by individual shareholders on behalf of the corporation are favored:

> The objection that even a unanimous agreement which departs from the normal pattern of corporation management violates a mandatory statutory norm is a technical objection at best. It has less force today than formerly because most states have amended their corporation statutes to permit variations, by charter provision or otherwise, from the traditional pattern of director control.[1]

The management of an LLC is vested in its members. Penny, Jeff, and Nick are the sole members of the LLC and as such can bind the LLC. Moreover, the attestation clause provided that the document was signed both individually and as members of the joint venture. The LLC was a member of the joint venture and all its members signed. See, e.g., Nursing Home Bldg. Corp. v. DeHart[2] (a seller and a purchaser of shares of a close corporation can agree to transfer a corporate asset as part of the stock purchase agreement even if the corporation is not a party to the agreement).

That the siblings had authority to bind the LLC to the 1996 Agreement is in accord with RCW 25.15.150, which provides in pertinent part:

> (a) Management of the business or affairs of the limited liability company shall be vested in the members; and (b) each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company.

KIRI next argues that Paragraph 18 of the joint venture agreement (JVA) prohibits it from entering into a management agreement without a meeting or without all its members agreeing to do so. Paragraph 18 provides in pertinent part:

> 18. MISCELLANEOUS. The parties agree that they will execute any instruments and perform any acts which are or may become reasonable and necessary to effectuate and carry on the joint venture and its business pursuant to the terms of this agreement. . . . This agreement incorporates the entire understanding of the parties with respect to the establishment and operation of the joint venture. This agreement may be

[1] F. Hodge O'Neal & Robert B. Thompson, O'Neal and Thompson's Close Corporations and LLCs: Law and Practice § 5.30, at 5-155 -56 (Rev. 3d ed. 2004).
[2] 13 Wn. App. 489, 496, 535 P.2d 137 (1975).

> amended only by written agreement signed by all parties or their authorized representatives.

But Paragraph 8 of the JVA clearly indicates that the carrying on the business of the joint venture (which would include entering into contracts) only requires a majority vote. Paragraph 8 provides:

> 8. MANGEMENT OF BUSINESS AND ASSETS. The parties shall use their best efforts in the management and leasing of said real property and buildings and other improvements and in conducting any other business of the joint venture. All decisions relating to the conduct, management and operation of the business of the joint venture, including but not limited to, choosing contractors and entering contracts for the construction of any improvements and buildings on said real property and leasing said real property and improvements, shall be made by a vote of the parties according to their interests in the joint venture as specified in paragraph 4 hereof, which vote shall be taken after the parties have been afforded the opportunity to meet and fully discuss such matters.[3]

Only the Redfords did not agree and the 1996 Agreement itself states that fact. A majority of members signed the 1996 Agreement and it is a reasonable conclusion that KIRI conferred authority upon Nick to act in that capacity. KIRI's argument that a meeting had to occur before any management decision could be made is without merit. Paragraph 8 of the JVA merely states that a meeting shall be "afforded" the members. It is clear from the language used in the 1996 Agreement that the matter was fully discussed amongst the joint adventurers, even if not within the four walls of a meeting room. For example, the 1996 Agreement contains a clause in which the signing partners endorse Nick's suing the Redfords, if necessary, to obtain a declaratory judgment deeming the signing partners had authority to enter into the management agreement and to expedite

[3] (Emphasis added.)

the closing of the property sale. Such an endorsement could have only been entered into if the partners fully discussed among themselves the positions that each one took with regard to the 1996 Agreement.

RECITALS

A joint venture is in the nature of a partnership and the rights, duties and liabilities of joint adventurers are generally subject to the rules applicable to partnerships.[4] In 1996, a majority of the joint venture members entered into an agreement which clearly ratified the management agreement, stating in Paragraph 3:

> WHEREAS, on June 20, 1977, Normal L. Iverson, Trustee of the Iverson Trust, Norman L. Iverson as Trustee for the Norbeck Trust, and Marie K. Iverson and Robert J. Knutsen, executed a Management Agreement by and between Kiri Joint Venture and Norman C. Iverson to pay him a management fee of three and one-half percent (3.5%) of the gross sales price payable in cash on closing or, if the property was sold on contract, prorated over three (3) equal payments over three (3) years.

Citing Rains v. Walby, KIRI argues that the recitals contained in the 1996 Agreement are not enforceable contract terms because they do not constitute the parties' agreement and cannot be a "'promise or condition which would amount to a contractual element of the agreement.'"[5] But Nick is not asserting here that the recitals provide additional elements of the contract, but rather, only verify that an agreement was indeed reached.

As the Washington Supreme Court noted in Riss v. Angel, under agency

[4] Malnar v. Carlson, 128 Wn.2d 521, 523 n.1, 910 P.2d 455 (1996).
[5] 13 Wn. App. 712, 716, 537 P.2d 822 (1975) (quoting Northern State Const. Co. v. Robbins, 76 Wn.2d 357, 365, 457 P.2d 187 (1969)).

law "[r]atification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him."[6] Here, it is clear that the recital acknowledged the management agreement. The parties signed with full knowledge. "A party ratifies an otherwise voidable contract if, after discovering facts that warrant rescission, [the party] remains silent or continues to accept the contract's benefits."[7] Everyone, but the Redfords, who ever had an interest in the joint venture at any time since 1977, signed the 1996 Agreement.[8]

Statute of Limitations

KIRI's argument that the statute of limitations bars Nick's suit to recover from the management agreement as it was more than three years before the lawsuit for breach of the management agreement is without merit. RCW

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[6] 131 Wn.2d 612, 636, 934 P.2d 669 (1997) (citing National Bank of Commerce of Seattle v. Thomsen, 80 Wn.2d 406, 413, 495 P.2d 332 (1972) and Restatement (Second) of Agency § 82 (1958)).

[7] Snohomish County v. Hawkins, 121 Wn. App. 505, 510-11, 89 P.3d 713 (2004).

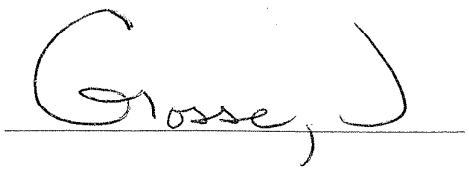
[8] KIRI also argues that there was no enforceable contract because the management agreement to pay Nick was illusory because it failed to state with particularity what duties Nick was required to perform. But the agreement clearly stated that the work was for "services rendered." "A unilateral contract consists of a promise on the part of the offeror and performance of the requisite terms by the offeree." Multicare Med. Ctr. v. State, Dep't of Soc. & Health Servs., 114 Wn.2d 572, 583, 790 P.2d 124 (1990). Here, KIRI promised to pay for the services that Nick rendered. Nick submitted declarations and documentary evidence substantiating the services he performed on behalf of KIRI. KIRI made an enforceable promise to pay 3.5 percent of its gross from the sale of the property in recognition of Nick's services. Nick has performed and KIRI has received the benefit of the contract. The management agreement is a valid contract.

4.16.040(1) establishes a six year limitation period for an "action upon a contract in writing, or liability express or implied arising out of a written agreement."

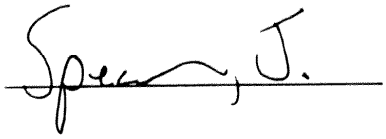
Moot

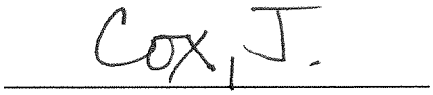
Nick's argument that this appeal should be dismissed as moot because the judgment was partially satisfied is meritless. Satisfying the judgment does not moot the appeal. A party who has satisfied a judgment may be entitled to restitution.[9]

Accordingly, we affirm the trial court.



WE CONCUR:





[9] Murphree v. Rawlings, 3 Wn. App. 880, 479 P.2d 139 (1970).