IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

COLIN F. YOUNG, Appellant/Cross-Respondent, v. DAVID ELLIS; BRADLEY K. JOHNSON; and MICHAEL M. JOHNSON, Respondents/Cross Appellants.	No. 40796-5-II UNPUBLISHED OPINION

Penoyar, J. — In 2007, David Ellis, Bradley Johnson, Michael Johnson, and Colin Young formed Olympic Holdings, LLC, and Yank A Part, LLC. A few months after the formation of the limited liability companies (LLCs), Ellis, Bradley, and Michael met and voted to remove Young as manager of Yank A Part.

Young brought a lawsuit against Ellis and the Johnsons claiming tortious interference, breach of contract, and bad faith. After a bench trial, the trial court concluded that Ellis and the Johnsons had the authority to remove Young as manager of Yank A Part; further, the trial court concluded that Young should be dissociated from the LLCs and compensated for his membership share. The trial court also concluded that neither party was the prevailing party and declined to award attorney fees.

Young appeals, arguing that the trial court erred by (1) concluding that Ellis, Bradley, and Michael could remove Young as manager of Yank A Part and then concluding that Young should be dissociated from the LLCs, (2) failing to address whether a partnership pre-existed the formation of the LLCs, (3) calculating the value of his membership share in Yank A Part, and (4) calculating wages owed to him based on the amount alleged in his complaint. Ellis and the

Johnsons cross-appeal, arguing that the trial court erred by declining to award them attorney fees. Ellis and the Johnsons acted properly, and within the authority granted to them by Yank A Part's LLC agreement, when they removed Young as manager of Yank A Part; the trial court properly dissociated Young from the LLCs in accordance with the LLC agreements; Young did not raise the partnership issue at trial and thus did not preserve the issue for appeal; the trial court properly valued Young's membership share in Yank A Part; and the trial court properly awarded Young the wages he requested in his complaint. Finally, because neither party prevailed, the trial court properly declined to award attorney fees. Accordingly, we affirm.

FACTS

In 2007 Young contacted Bradley and suggested they go into business to operate a wrecking yard. Bradley Johnson eventually contacted his brother, Michael, and Ellis about joining the business.

In November 2007, the certificates of formation to the LLCs, Olympic Holdings, a real estate holding company, and Yank A Part, the wrecking yard business located on the real property, were filed with the Washington Secretary of State. Young drafted the majority of the LLC agreements. Bradley and Young took the agreements to an attorney for review; despite the attorney's disfavor of the agreements, the four men signed the agreements.

Yank A Part purchased Jim's Auto Wrecking for $255,000: equipment ($15,000), inventory ($50,000), non-compete ($40,000) and goodwill ($120,000). As security for the purchase of the business, Ellis and his wife used their home as collateral to borrow $246,000 from the bank as a second mortgage. Olympic Holdings purchased the land on which the wrecking yard was situated for $450,000. Olympic Holdings borrowed $475,000 from Westsound Bank to

purchase the land and used the land as security for the purchase.

Under the terms of the original LLC agreement, Olympic Holdings is member-managed. The manager members were Ellis, the Johnsons, and Young.

Olympic Holdings' original LLC agreement contemplates the expulsion of members and the continuation of the LLC after such an event; further, the agreement sets forth the voting requirements for decisions affecting Olympic Holdings. Under provision 9.1.4,

> The company will be dissolved on the happening of . . . . [t]he death, incompetence, *expulsion*, or bankruptcy of a Member, or the occurrence of any event that terminates the continued membership of a Member in the Company, unless there are then remaining at least the minimum number of Members required by law and all of the remaining Members, within 120 days after the date of the event, elect to continue the business of the Company.

Ex. 2, at 6 (emphasis added). Under provision 5.1.1, "The Members, within the authority granted by the Act and the terms of this Agreement shall have the complete power and authority to manage and operate the Company and make all decisions affecting the Company and will be subject to Majority Vote of the Members." Ex. 2, at 2. Under provision 5.2, "Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall mean a Majority of the Members." Ex. 2, at 3.

Although Young was the manager member of Yank A Part, LLC, Yank A Part's original LLC agreement also contemplates the expulsion of members and the continuation of the LLC upon the expulsion of a member; the LLC agreement also requires a majority of members to approve of decisions affecting the LLC. Provisions 9.1.4 and 5.2 of this LLC agreement read identically to provisions 9.1.4 and 5.2 in the Olympic Holdings LLC agreement. Provision 10.1

reads, "Amendments to this Agreement may be proposed by any Member. A proposed amendment will be adopted and become effective as an amendment only on the written approval of all the Members." Ex. 3, at 7. Provision 10.3 reads, in part, "No modification or amendment of any provision of this Agreement will be binding on any Member unless in writing and signed by all the Members." Ex. 3, at 8. Both certificates of formation read, "The company can continue the business after the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or any other event that terminates membership, upon the unanimous consent of the remaining members." Ex. 2, at 1; Ex. 3, at 1.

"[R]elatively quickly a schism developed with Colin Young on one side and Brad Johnson, Michael Johnson, and Dave Ellis on the other." Clerk's Papers (CP) at 1513. In February 2008, the Johnsons and Ellis voted to hire Karen Silva as bookkeeper. Young voted against the hiring of Silva; once she started working, she refused to deal with Young and only dealt with Bradley. On February 26, Ellis and the Johnsons voted to terminate Young as manager of Yank A Part. Young's name was removed from the bank accounts and the official filings for the LLCs, the locks on the office and on the gate to the wrecking yard were changed, and Young was warned to stay away from the business.

Young brought a lawsuit against Ellis and the Johnsons, claiming tortious interference, breach of contract, and bad faith. Young also sought unpaid wages and damages for interference with business expectation and for embarrassment and injury to his reputation. Young sought "judicial dissociation" of Ellis and the Johnsons from the LLCs. CP at 22. Ellis and the Johnsons brought a counterclaim against Young, alleging breach of fiduciary duties and seeking a judicial dissolution of Yank A Part and Olympic Holdings under RCW 25.15.275 and "such other relief as

the Court may deem just and equitable." CP at 47.

After a bench trial, the trial court concluded that Ellis and the Johnsons had the ability to remove Young as manager of Yank A Part LLC. The trial court concluded that no parties had breached their fiduciary duties. The trial court also concluded that "the relationship between these parties is irretrievably broken and cannot be reconciled or remedied." CP at 1518. Consequently, the trial court concluded that Young should be dissociated from the LLCs and compensated for his membership share in both of the LLCs. In reaching this conclusion, the trial court considered the following factors: current employees vowed to quit if Young returned as manager, the company was profitably operating "under a business model different from the model proposed and promoted" by Young, Bradley had provided the business's line of credit "during lean times as permitted by the Operating Agreement and RCW 25.15.035 with the result that the business has stayed afloat," and Ellis and his wife "encumbered their home on the gamble of this new business." CP at 1516.

Young moved for reconsideration and revaluation of the LLCs' assets. The trial court denied Young's motion for reconsideration and partially granted his motion for revaluation, ultimately calculating Young's share in Olympic Holdings to be worth $7,623 and Young's share in Yank A Part to be worth $25,037. The trial court also awarded Young $2,880 in unpaid wages. The trial court concluded that neither party was the prevailing party and, thus, declined to award either party attorney fees. Young appeals. Ellis and the Johnsons cross-appeal, arguing that the trial court erred by declining to award them attorney fees.

ANALYSIS

I. Standard of Review

We review a trial court's findings of fact and conclusions of law to determine whether

substantial evidence supports the findings of fact and, if so, whether the findings of fact support the trial court's conclusions of law. *Scott v. Trans-Sys., Inc.*, 148 Wn.2d 701, 707-08, 64 P.3d 1 (2003). Substantial evidence is the "quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). We review conclusions of law de novo. *Sunnyside Valley Irrigation Dist.*, 149 Wn.2d at 880.

II. Removal of Young

Young argues that substantial evidence does not support the trial court's conclusion that Ellis and the Johnsons could remove Young as manager of Yank A Part LLC. We disagree.

The words in a contract are generally given their plain, ordinary meaning. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005). A contract provision is ambiguous when its terms are uncertain or are capable of being understood as having more than one meaning. *Mayer v. Pierce County Med. Bureau, Inc.*, 80 Wn. App. 416, 421, 909 P.2d 1323 (1995).

"In construing a written contract, the basic principles require that (1) the intent of the parties controls; (2) the court ascertains the intent from reading the contract as a whole; and (3) a court will not read an ambiguity into a contract that is otherwise clear and unambiguous." *Mayer*, 80 Wn. App. at 420. "An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective." *Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980). In harmonizing contract terms, we give greater weight to specific terms than general terms. *Adler v Fred Lind Manor*, 153 Wn.2d 331, 354-55, 103 P.3d 773 (2004). "If the contract is ambiguous, the doubt created by the ambiguity

will be resolved against the one who prepared the contract." *Felton v. Menan Starch Co.*, 66 Wn.2d 792, 797, 405 P.2d 585 (1965).

In reaching its conclusion, the trial court relied on provision 5.2 of Yank A Part's LLC agreement, "Decisions by Members. Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall mean a Majority of the Members." Ex. 3, at 3. Provision 5.1.1 of Yank A Part's LLC agreement granted Young the following authority: "The Member-Manager, within the authority granted by the Act and the terms of this Agreement[,] shall have the complete power and authority to manage and operate the Company and make all decisions affecting the Company's day to day business, banking, and affairs," excepting certain business matters. Ex. 3, at 2. The reference to "day to day business" makes it clear that this provision did not deprive the other Members of all of their managerial rights and that decisions that were not day-to-day could be made by a "Majority of the Members," in accordance with provision 5.2. *See* Exhibit 3 at 2, 3. And the agreement clearly contemplated that the Members could cause a dissolution of the LLC by the expulsion of a member. Here, the LLC agreement requires only a *majority* of members to approve such actions.

Young argues that under provisions 10.1 and 10.3 of the Yank A Part LLC agreement, Ellis and the Johnsons could not remove Young as manager. Provision 10.1 of the LLC agreement reads, "Amendments to this Agreement may be proposed by any Member. A proposed amendment will be adopted and become effective as an amendment only on the written approval of all of the Members." Ex. 3, at 7. Provision 10.3 reads, in part, "No modification or amendment of any provision of this Agreement will be binding on any Member unless in writing

and signed by all the Members." Ex. 3, at 8. On the other hand, as previously noted, other provisions in the LLC agreement grant the members authority to take action by majority vote and specifically reference expulsion. Young's reading of the LLC agreement would lead to absurd results; as Ellis and the Johnsons point out, "The construction argued by Young places him in the position of manager of the LLC for his lifetime or until he chooses to resign." Resp'ts' Br. at 11. As Young was the primary drafter of the Yank A Part LLC agreement, we decline to resolve the ambiguity created by the conflicting provisions in his favor.

Young also contends that substantial evidence does not support the finding that a "majority" of Yank A Part's members decided to remove him as manager of Yank A Part. Appellant's Br. at 20. Minutes from the February 26 meeting, signed by Ellis and the Johnsons, read: "Colin Young is removed as sole Manager of the Company effective immediately. . . . The Motion for this action was brought by David Ellis and seconded by Brad Johnson with the agreement of Michael Johnson." Ex. 15, at 3. Substantial evidence supports this finding.

Young then contends that substantial evidence does not support the trial court's determination that just cause existed to remove him as manager. He contends that no evidence supports the trial court's conclusion that the "other members had just cause to remove Mr. Young" and the "other three members were justified in removing Colin Young as manager because of his unorthodox methods of record keeping and the resultant confusion." CP at 1517. These conclusions are supported by finding of fact 15, which reads, "The most superficially persuasive reason [the other members removed Young] is the disarray . . . of the books as reported by Karen Silva. Although there was no specific requirement in the Operating agreement, or statute, that a particular type of paper work and bookkeeping was required (e.g. double entry),

nonetheless certain minimum standard could be expected." CP at 1515. Substantial evidence supports finding of fact 15: Silva[1] testified that when she started working as book keeper she discovered problems in the books; she did not find the accounting of the checks to be "comprehensive" or to follow the standard of "double-entry bookkeeping." 3 Report of Proceedings (RP) at 523. Silva testified that "[t]here was no recordkeeping." 4 RP at 546. The finding supports the trial court's conclusion that Young's disorganized method of recordkeeping provided the other members of Yank A Part with justification for removing Young as manager of the LLC.

In the alternative, Young contends that his position as manager of Yank A Part was "perpetual." Appellant's Br. at 16. As support, he cites the first paragraph of Yank A Part's certificate of formation, "The term of the Company commences on November 30, 2007, and shall continue perpetually." Ex. 3, at 1. As we have noted, Young's "perpetual manager" argument is not persuasive. The trial court did not err by determining that Ellis and the Johnsons had just cause to remove Young as manager of Yank A Part.

Finally, Young argues that Ellis and the Johnsons breached their fiduciary duty "through their bad faith exclusion of Young and their willful removal of him from [Olympic Holdings] by forgery and false filing." Appellant's Br. at 57. As discussed above, Ellis and the Johnsons had

[1] Citing the trial court's second amended memorandum opinion, Young argues that the trial court found Silva to lack credibility. The second amended memorandum opinion does note that Silva's "behavior on the stand diminished her credibility as an objective reporter." CP at 1502 n.5. But, this finding is not in the formal findings or conclusions and "[a] finding or conclusion stated in either an oral or a memorandum decision has no binding effect unless it is incorporated in the formal findings or conclusions." *City of Walla Walla v. $401,333.44*, 164 Wn. App. 236, 253-54, 262 P.3d 1239 (2011). Furthermore, this finding did not indicate that Silva was not credible, just that she was not an objective reporter.

the authority from provision 5.2 to remove Young as manager of Yank A Part through a member-majority decision. So, not having made any finding of bad faith or willfulness, the trial court correctly concluded that the removal of Young did not constitute a breach of Ellis and the Johnsons' fiduciary duty.[2] Substantial evidence thus supports the trial court's conclusion that Ellis and the Johnsons acted properly, and within the authority granted to them by Yank A Part's LLC agreement, when they removed Young as manager of Yank A Part.

III. Dissociation

Next, Young argues that the trial court erred by concluding that he should be dissociated from the LLCs. Young argues that the trial court did not have the authority, under statute or the LLC agreements, to make this conclusion.[3] In response, Ellis and the Johnsons contend that "expulsion was provided for in the certificate of formation and operating agreements. In addition, all parties to the litigation requested disassociation as a remedy." Resp'ts' Br. at 13 (internal citations omitted). We agree with Ellis and the Johnsons.

"A person ceases to be a member of a limited liability company . . . upon the occurrence of one or more of the following events. . . . The member is removed as a member in accordance with the limited liability company agreement." RCW 25.15.130(1)(c). Both LLC agreements

[2] Accordingly, Young's argument that he is "entitled to an award of Front Pay for lost employment due to defendants[']breach of contract, bad acts, and requirements of litigation" also fails because it is premised on the facts and agreements being other than as found. Appellant's Br. at 60.

[3] In its memorandum opinion, the trial court stated, "There is no such provision [to expel any member] in the agreements or in the statute. The only authority granted to a court by statute is to dissolve the company which . . . shows every sign of profitability and continued growth. Since both sides asked this court for the same relief, this court will accede to that implied grant of authority and exercise it in a commercially reasonable manner." CP at 1503.

contain provision 5.2: "Decisions by Members. Whenever in this Agreement reference is made to the decision, consent, approval, judgment, or action of the Members, unless otherwise expressly provided in this Agreement, such decision, consent, approval, judgment, or action shall mean a Majority of the Members." Ex. 2, at 3; Ex. 3, at 3. Under provision 9.1.4 of both LLC agreements,

> The Company will be dissolved on the happening of . . . [t]he death, incompetence, expulsion, or bankruptcy of a Member, or the occurrence of any event that terminates the continued membership of a Member in the Company, unless there are then remaining at least the minimum number of Members required by law and all of the remaining Members, within 120 days after the date of the event, elect to continue the business of the Company.

Ex. 2, at 6; Ex. 3, at 7. Further, both certificates of formation read, "The company can continue the business after the death, retirement, resignation, expulsion, bankruptcy, or dissolution of a member or any other event that terminates membership, upon the unanimous consent of the remaining members." Ex. 2, at 1; Ex. 3, at 1. Although the LLC agreements are silent as to the procedure for expelling an LLC member, the agreements do contemplate that the expulsion of an LLC member may occur.

Here, a majority of the LLC members—three, Ellis and the Johnsons,— asked the trial court to expel Young as a member of the LLCs.[4] Again, the LLC agreements do not set forth a specific procedure for expelling a member from the LLCs. But, by requesting the trial court's expulsion of Young from the LLCs, a majority of the members did make the decision to expel Young. As all of the remaining members, Ellis and the Johnsons, were entitled to continue

[4] In a footnote, the trial court found that "This action [of removing Young as manager] was later characterized as a "firing" of Colin Young as manager, but contemporaneous actions of the remaining members show that they intended to exclude him as member as well." CP at 1513 n.3.

operation of the wrecking yard under the LLC agreements, Young's expulsion from the LLCs did not necessitate dissolution of the LLCs.

IV. Partnership

Young asserts that an implied partnership preexisted the formation of the LLCs and "this partnership continued to function and control the wrecking yard venture beyond LLC formation." Appellant's Br. at 32. Ellis and the Johnsons contend that Young did not raise this issue below and cannot raise it for the first time on appeal. Young's argument fails because he did not raise this issue below and there is no evidence in the record to support his assertion.

Generally, we do not entertain issues raised for the first time on appeal. RAP 2.5(a); *Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008). Although Young mentions the existence of a partnership throughout his complaint, he uses this basic terminology to describe the relationship between the LLC members. Similarly, the trial court wrote in its findings of fact, "Four partners entered into an ill-fated arrangement in November 2007. . . . The term 'partners' is used only in the very generic sense for ease of reference. The parties became members in Limited Liability Companies which is the proper legal label." CP at 1497 n.1.

Further, there is no evidence in the record to support Young's assertion. Here, the parties clearly intended to operate their businesses as LLCs. A "Prospectus for the Potential Investor," prepared by Young and Bradley Johnson, reads:

> The new business will be operated under a manager-management type LLC owned solely by the partners. Under this form of LLC just one of the partners will act as manager and the LLC's formal operating agreement governs dispersal of profits. The land will be owned by a separate LLC, leased to the business LLC, and thus be protected from incidental loss and liability of the business.

Ex. 14, at 4.

Finally, Young contends that he is entitled to quantum meruit damages for his

"uncompensated partnership work prior to LLC formation." Appellant's Br. at 57. Again, we agree with the trial court's conclusion of law 15, "Because Colin Young's claim for quantum meruit was neither pled nor tried, no award is proper on that basis." CP at 1521. Young did move to amend his complaint to present the argument that the doctrine of quantum meruit should be applied to compensate him for his "pre LLC formation work;" however, the trial court denied Young's motion to amend his complaint. CP at 1083. Accordingly, Young's claim fails.

III. Valuation of Yank A Part

Next, Young argues that the trial court "erroneously valued the LLC assets and liabilities." Appellant's Br. at 34. Specifically, Young contends that the trial court erred "in not valuing inventory separately from its general assessment of [Yank A Part's] 10% per annum growth."[5] Appellant's Br. at 36. Ellis and the Johnsons contend that (1) "Young's failure to produce any expert testimony, his lack of objection to the court's valuation of the businesses and his successful motion for revaluation operate as a waiver of appellant's right to now complain about these issues on appeal" and (2) the trial court properly valued Young's share of the LLCs. Resp'ts' Br. at 17. We hold that the trial court properly valued Young's share of the LLCs.

The trial court entered the following relevant conclusions of law:

> A starting place for this calculation [of Young's interest in Yank A Part] is the purchase and sale agreement from the Melsons of $255,000. At the time that the parties believed this business was worth $255,000 it had generated an income tax basis profit of $3,600. Since that time, the inventory has significantly increased and the equipment has been upgraded. The property itself has been cleaned up and the number of customers has increased. The company went through a lean period, during which Brad Johnson had to tap his personal line of credit to pay the bills, but that period has passed and most of the debt has been repaid. The company has also generated sufficient income to pay Brad Johnson the same level of salary for

[5] Young focuses his argument on the trial court's valuation of Yank A Part and, thus, apparently does not contest the trial court's valuation of Olympic Holdings.

> his work as manager as was contracted for with Colin Young. Brad Johnson went without wages at the outset, but is current in his salary. A review of the profit and loss statements shows an uneven profitability from month to month but a steady growth on an annual basis.

CP at 1519-20.

> It appears that the company has grown approximately 10% per year since [Yank A Part] started operations. Thus, based upon the sale price, the current gross value of the company should be $308,550. The debt owed to Cheryl and Dave Ellis is currently $255,000. The debt still owed Brad Johnson is roughly $17,000. In addition to these liabilities, [Yank A Part] also had a bank account with an ending balance of $33,598 in the month of February. The statement also confirms the influx of cash from the business. The net value of the Yank A Part LLC at month end February 2010 was $100,148. Accordingly, Colin Young's share is worth $25,037.

CP at 1520 (footnote omitted).

Contrary to Young's assertions,[6] the trial court explicitly took into account the fact that "inventory has significantly increased" when calculating the value of Yank A Part. CP at 1519. The inventory was clearly included in the trial court's calculation "that the company has grown approximately 10% per year since [Yank A Part] started operations." CP at 1520. While Young makes various arguments about other views the trial court could or should have taken on the value of the company, Young himself offered no expert testimony or evidence about the value of the company and the trial court's conclusion is supported by substantial evidence.

IV. Wages

Young contends that the trial court erred by failing to award him $4,380 in unpaid wages. We disagree.

[6] On appeal, Young's argument focuses on the trial court's alleged failure to consider inventory in its calculation of Yank A Part's value. He makes bare assertions that the trial court failed to consider several "substantial assets" but does not support his arguments with citations to the record. Appellant's Br. at 35.

The trial court awarded Young $2,880, the amount he requested in his complaint. Until trial, Young estimated that he was entitled to unpaid wages in the amount specified in his complaint. At trial, Young argued that he was owed $4,380 in unpaid wages; he presented as evidence a piece of paper torn from a notebook with numbers written throughout the page; apparently, the numbers are the hours Young worked in February 2008. On cross-examination, Ellis and the Johnsons' counsel impeached Young's credibility asking him, "and you just happened to find [the notebook paper], coincidentally, as we started this trial?" 14 RP at 2104. Young responded that after filing the complaint, he had found the blue notebook containing a record of his hours in his car. The trial court apparently determined that Young was not credible in this new assertion and had wrongfully increased the value of his unpaid wages at trial. Substantial evidence supports the trial court's finding. After trial, Young moved for reconsideration, asking the trial court to reconsider the unpaid wages award. The trial court declined:

> You are asking that I reconsider my decision to give you $2,880, because that was the amount you pled in your complaint, but at trial there was evidence different from that amount. The concept that I'm using is called "judicial estoppel" and that is when you make a complaint, that's the complaint. We don't have a moving target throughout the trial, which happened a great deal in this case.
>
> And I'm going to find that you are judicially estopped from asking any more than was in your complaint. You did try to amend your complaint but never on that issue. So I could go on and on and on. But I'm not going to. That also will be denied.

RP (April 9, 2010) at 21-22. The trial court properly awarded Young $2,880.

V. Attorney Fees

Ellis and the Johnsons contend that the trial court erred by denying their request for attorney fees. Specifically, Ellis and the Johnsons argue that under the LLC agreements, the

prevailing party may recover attorney fees and the trial court erred in its determination that neither party was the prevailing party. Because the trial court correctly concluded that neither party prevailed, we disagree.

The trial court concluded that "[n]either party is the prevailing party, and as such, neither party is entitled to attorney's fees." CP at 1521. The trial court concluded that "Young should be the member disassociated," but this conclusion was based on the trial court's earlier conclusion that "[t]he relationship between these parties is irretrievably broken and cannot be reconciled or remedied. Consequently, one side has to be expelled and compensated for their membership share in both companies." CP at 1518. In concluding that Young should be the member dissociated, the trial court took into consideration the fact that Ellis and Bradley Johnson had made significant capital contributions to the businesses and the remaining three members had a strong, trusting relationship. Further, Ellis and the Johnsons did not prevail in their claim that Young breached his fiduciary duties. We conclude that the trial court did not err by denying Ellis's request for attorney fees.[7]

Ellis and the Johnsons also request attorney fees under RAP 18.1[8] "for having to defend this appeal." Resp'ts' Br. at 25. Again, because Ellis and the Johnsons do not prevail on their cross-appeal, neither party is the prevailing party, and we decline to award attorney fees. *See Phillips Bldg. Co. v. An*, 81 Wn. App. 696, 702, 915 P.2d 1146 (1996) ("If both parties prevail

[7] Young devotes a large portion of his reply brief to make numerous arguments for why we should decline to award attorney fees to Ellis and the Johnsons. Because we conclude that the trial court properly declined to award attorney fees on the basis that neither party prevailed, we decline to address Young's various arguments.

[8] Presumably, Ellis and the Johnsons request attorney fees under both RAP 18.1 and the LLC agreements.

on major issues, however, there may be no prevailing party.").

Young requests attorney fees, arguing that Ellis and the Johnsons' intransigence supports an attorney fees award on appeal. He cites the following rule: "As an independent ground we may award attorney fees and costs based on intransigence of a party, demonstrated by litigious behavior, bringing excessive motions, or discovery abuses." *In re Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002) (citing *Gamache v. Gamache*, 66 Wn.2d 822, 829-30, 409 P.2d 859 (1965); *Eide v. Eide*, 1 Wn. App. 440, 445-46, 462 P.2d 562 (1969)). Young erroneously relies on marital dissolution case law. We decline to award Young attorney fees on this basis.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.