

IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Cause No. DA 18-0431

BONNIE BALLOU, Individually as General Partner of L O Ranch Limited Partnership, and L O RANCH LIMITED PARTNERSHIP, a Montana Limited Partnership,

Appellant,

v.

WILLIAM WALKER, Individually as Former General Partner of L O Ranch Limited Partnership,

Appellee.

On Appeal from the Montana Sixteenth Judicial District Court
Carter County
District Court Docket No. DV 6-2014-5
Hon. Michael Hayworth, District Court Judge, Presiding

APPENDIX TO APPELLANTS' BRIEF

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FILED

JUL 02 2018

Lacey Fuller
CLERK OF DISTRICT COURT
By
DEPUTY CLERK OF COURT

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT
CARTER COUNTY

BONNIE BALLOU, Individually as
General Partner of L O Ranch Limited
Partnership, and L O RANCH LIMITED
PARTNERSHIP, a Montana Limited
Partnership,

Plaintiffs,

v.

WILLIAM WALKER, Individually as
Former General Partner of L O Ranch
Limited Partnership,

Defendant.

Cause No. DV-6-2014-5

Judge Michael Hayworth

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW:
VALUATION PHASE**

ORDER

WILLIAM WALKER,
Counterclaimant
and Third-Party Plaintiff,

v.

BONNIE BALLOU,
Counterclaim Defendant
and

DORAN PRIEWE,
Third-Party Defendant.

This matter was before the Court on June 5, 2018, for evidence hearing upon remand from the Montana Supreme Court, *Ballou v. Walker*, 2017 MT 197. The case was remanded for a hearing to determine the value of William Walker's Partnership interest.

Based upon the evidence presented, the Court enters FINDINGS OF FACT:

Background

1. Plaintiff Bonnie Ballou ("Bonnie") and Defendant William Walker ("William") are the children of Willie and Eunice Walker. *See Findings, Conclusions, and Order of April 2, 2015, at ¶ 1.*
2. In the early 1980's, after Willie's death, Eunice became the sole owner of certain real property located in Carter County, Montana. In 2000, as part of her estate planning, Eunice formed the Eunice I. Walker Revocable Trust, and the real property was transferred into the name of the Trust. The Trust contributed the real property, then valued at \$1,073,800, to the Partnership in exchange for a 99.5% interest in the Partnership. *See Findings, Conclusions, and Order of April 2, 2015, at ¶¶ 10-16.*
3. Upon formation of the Partnership, William contributed \$5,000 in cash to the Partnership in exchange for a 0.5% general partnership interest. *See Findings, Conclusions, and Order of April 2, 2015, at ¶ 16.*
4. Eunice formed the Trust and the Partnership to provide for the orderly transfer of the real property to her children. *See Findings, Conclusions, and Order of April 2, 2015, at ¶ 12.*
5. Through lifetime gifts, and distributions from the Trust following Eunice's death, the Partnership was owned by Eunice's five children following her

death, with William owning a 25.2% interest in the Partnership, and Eunice's other four children (including Bonnie) each owning an 18.7% interest in the Partnership.

6. Eunice passed away on July 10, 2009. The assets of the Trust were distributed and its Partnership interest was divided equally amongst her children as a Limited Partner interest- 9.7% each.

7. In 2011, three siblings filed a lawsuit against the Partnership, William, and Bonnie.¹ On March 26, 2013, the case was settled and all the parties signed a Stipulated Global Settlement Agreement and Release of Claims for buyout of the three siblings' interests.

8. As part of the settlement, William and Bonnie purchased their brothers' interests. After that purchase, William owned 53.25% of the Partnership, and Bonnie owned 46.75% of the Partnership.

9. William and Bonnie borrowed \$737,986.06 from Pinnacle Bank to satisfy the settlement buyout. The debt is a personal loan for which they are jointly and severally liable. The Partnership guaranteed and provided collateral for this loan. During this time in 2013, the Partnership property was appraised at \$2,600,000.00.²

10. On July 3, 2013, William wrote himself a check from the Partnership account at Pinnacle Bank, payable to him, personally, in the sum of \$22,891.38. William's payment to himself of \$22,891.38 was a violation of Sections 9.5 and 9.8 of the Partnership Agreement.

¹ Cause No. DV-6-2011-3, Montana Sixteenth Judicial District Court, Carter County.

² One of the three appraisals averaged by Seth Blades, discussed hereafter.

11. This Court did not find William acted with malice in managing the Partnership. The Supreme Court noted that “the District Court determined that [William] acted completely in good faith, never attempting to hide or misrepresent” a payment he had made to himself, which resulted in him being removed as a general partner and triggering the Partnership’s right to purchase his interest in the Partnership. *Ballou* at ¶ 6.

12. On July 10, 2014, Bonnie removed William as a General Partner pursuant to Paragraph 12.8 of the Partnership Agreement.

13. Williams’s General Partner interest was converted to a Limited Partner interest as defined and limited by the Agreement. § 12.1.

14. On July 10, 2014, the same day William was removed as a general partner of the Partnership, Bonnie gifted a 0.5% interest in the Partnership to her son, Third-Party Defendant Doran Priewe.

15. On July 11, 2014, Bonnie and the Partnership filed this lawsuit against William seeking a declaration that her actions under the Partnership Agreement were valid. It has been determined that Section 16.7 of the Partnership Agreement requiring the payment of \$1.00 for an expelled partner’s interest was unconscionable and void.

16. On December 29, 2015, this Court entered an Order in this matter requiring L O Ranch Limited Partnership to be dissolved. See Findings and Conclusions at ¶ 46 (Dec. 29, 2015). The Montana Supreme Court reversed this Court’s Order mandating dissolution of the Partnership in its decision dated August 15, 2017. *Ballou v. Walker*, 2017 MT 197, ¶ 24, 388 Mont. 283, 294, 400 P.3d 234, 242.

17. The Montana Supreme Court noted the following with respect to this Court's earlier determination to dissolve the Partnership:

The District Court's order requiring dissolution envisioned a future for the partnership, if it remained intact, in which Walker would have remained a majority limited partner with standing to further litigate his grievances with Ballou and as such, an impediment to the partnership's operations and management. The District Court foresaw culpability for Ballou too, observing that she had now, as the sole general partner, the unchecked ability to aggrieve Walker by withholding distributions, especially those originally contemplated for use as payments on the Pinnacle promissory note.

Ballou v. Walker, 2017 MT 197, ¶ 19, 388 Mont. 283, 292, 400 P.3d 234, 241. Rather than affirm this Court's decision ordering dissolution of the Partnership, the Montana Supreme Court ruled that the Partnership would be allowed to continue with Bonnie and her son Doran as partners. *Id.*

18. The Montana Supreme Court recognized that if the Partnership were to continue with William as a "majority limited partner with standing to further litigate his grievances with Ballou . . . [William could act as] an impediment to the partnership's operations and management."

19. To curtail any ongoing impediment to the Partnership operation, and future litigation among the partners, the Supreme Court concluded that William's interest would be purchased by the Partnership. "Walker's buyout would remove not only his standing to litigate a potential breach of duty by Ballou, but would also curtail any further acrimony between the siblings over how the partnership should be run—Walker would no longer have any interest in the partnership." *Ballou*, at ¶ 19.

Partnership's Exercise of Election

20. On appeal, the Partnership represented to the Montana Supreme Court that it had "elected to exercise its option" to purchase William's interest in the Partnership under Section 16.3 of the Partnership Agreement, and that "all that remains to be determined is the value of Walker's interest, pursuant to Section 16.6 of the Partnership Agreement." *See* L O Ranch Opening Brief on appeal, at ¶ 28.

21. Section 16.3 of the Partnership Agreement states that the exercise of the purchase option by the Partnership "shall be final and binding on the Partnership and the withdrawing Partner." *See* Partnership Agreement, § 16.3.

22. As the Montana Supreme Court noted, Section 16.1 requires the withdrawing Partner to sell his interest if the Partnership has exercised its right to purchase. *Ballou*, at ¶ 17-18.

Interest to Be Purchased; Result of Purchase

23. Total Partnership Units in L O Ranch are 10,000 units. *See* Partnership Agreement, at ¶¶ 3-4. As a 53.25% interest owner, William's Partnership Interest is 5,325 units. Bonnie Ballou owns 46.25%, or 4,625 units. Doran Priewe owns the remaining 0.5%, or 50 units.

24. Together, Bonnie and Priewe own 4,675 units.

25. Although the Partnership Agreement requires two General Partners, at present Bonnie is the only general partner of the Partnership. § 12.9.

26. The purchase of William's Partnership Interest by the Partnership will consolidate control of the Partnership in Bonnie.

27. After the purchase of William's interest, Bonnie will have complete control of L O Ranch. Namely, as Bonnie will hold more than 75% of the Partnership Units, she alone will be able to consent to any of the actions requiring the prior written consent of the Partners holding at least 75% of the Partnership Units, Partnership Agreement § 12.6, and as the only general partner, she alone will be able to consent to any of the actions requiring the consent of all general partners, Partnership Agreement § 12.7.

28. Further, the consolidation terminates William as a "majority limited partner with standing to further litigate his grievances with Ballou and as such, an impediment to the partnership's operations and management." *Ballou v. Walker*, 2017 MT 197, ¶ 19, 388 Mont. 283, 292, 400 P.3d 234, 241.

Valuing William's Interest

29. Section 16.1 requires that the withdrawing Partner's Partnership Interest be valued as of the date of the Withdrawal Event. Partnership Agreement at § 16.1. The Withdrawal Event here occurred on July 10, 2014, the effective date of William's removal as a General Partner of the Partnership. Findings and Conclusions (Mar. 30, 2015) at ¶ 36.

30. Accordingly, the value of William's interest in the Partnership as of July 10, 2014, is the amount at which the Partnership is required to purchase, and the amount for which William is required to sell his interest in the Partnership.

31. The purchase price is to be "fair market value" as guided by the considerations set forth in the Partnership Agreement. § 16.6.

32. Section 16.6 provides that the partners would agree to the "fair market value" of a withdrawing partner's interest. The Partnership Agreement provides for a mechanism for valuation in the event a value cannot be reached by agreement, to wit: "the Partner[s], including the withdrawing Partner shall hire an independent appraiser to value the interest. ... The appraiser shall evaluate the value of the Partnership Interest considering all relevant factors... ." § 16.6.

33. Perhaps tacitly, the parties have waived the process set forth in § 16.6 in favor of a value determination by the Court based upon counter-appraisals and counter-valuations. Nonetheless, the Court looks to § 16.6 for considerations within the parameters of the Partnership Agreement to establish the "fair market value."

34. When, under the Agreement, there is a need to establish "fair market value" an appraiser "shall evaluate the value of the Partnership Interest considering all relevant factors, such as, the value and condition of the property of the Partnership; the projected income of the Partnership; the past performance of the Partnership; discounts for the size of the interest, lack of a market for the interest, and the inability of the interest to exercise any control over the Partnership; and other things which would reasonably affect the value of the interest. In determining such value, no allowance shall be made for good will or other intangible assets. Any unpaid Capital Contributions of the withdrawing Partner and any damages occurring to the Partnership as a result of the Withdrawal Event shall be taken into account in determining the net amount due the withdrawing Partner." Partnership Agreement at § 16.6.

35. The term "fair market value" is not otherwise expressly defined in the Partnership Agreement. *See, generally*, Partnership Agreement.

36. Restating Section 16.6, the following factors to consider in determining the value of William's 53.25% Partnership Interest:

- Value and condition of the property of the Partnership;
- Projected income of the Partnership;
- Past performance of the Partnership;
- Discounts for the size of the interest, lack of market for the interest, and the inability of the interest to exercise any control over the Partnership; and other things that would reasonably affect the value of the interest;
- Any unpaid Capital Contributions of the withdrawing Partner; and
- Any damages occurring to the Partnership as a result of the Withdrawal Event shall be taken into account in determining the net amount due the withdrawing Partner.

37. Findings on each of the items to be addressed by Section 16.6 of the Partnership Agreement are set forth below.

Methodology

38. Bonnie and William each retained a valuation expert. William retained Joanne Sheridan, CPA/ABV, CVA of Anderson Zurmuehler, who testified at the hearing. Bonnie retained Seth Blades, CPA/CFF, CVA of Seth Blades, CPA, P.C., who testified at the hearing.

39. The Court received testimony from both experts as an overview of the methodologies a valuation professional may employ to specific assets and circumstances.

40. The Court found the testimony of both experts to be useful in understanding the considerations. However, the Court is careful to address the considerations identified in Section 16.6 of the Partnership Agreement. Where there was discord in the testimony, the Court applied the considerations as stated in the Agreement.

Value and Condition of the Property of the Partnership as of July 10, 2014

41. Scott Griswold, of Hall & Hall, Inc., conducted an appraisal of the real property owned by L O Ranch, with an effective date of the valuation as of July 10, 2014. Mr. Griswold testified in support of the appraisal.

42. The valuation expert engaged by L O Ranch, Seth Blades, originally relied on an appraisal conducted for purposes of bank financing one year prior to the valuation date. Mr. Blades later also relied on an appraisal conducted nearly a year after the valuation date, and Mr. Griswold's appraisal, taking an average of the three appraisals with three effective dates. The authors of the other two appraisals did not testify.

43. Although other appraisals can be relied upon by the valuation experts, an appraisal not formulated for the date of July 10, 2014, and not supported by testimony at hearing, is of lesser value for the Court's purpose of determining the value of the Partnership's assets pursuant to Section 16.6 as of the valuation date, as of July 10, 2014.

44. As of July 10, 2014, the property owned by L O Ranch consisted of 8,332.44 deeded acres of real property in Carter County, Montana, including structures, and cash in a Pinnacle Bank checking account.

45. Griswold's opinion is that the L O Ranch real property and structures had a market value of \$2,950,000, on July 10, 2014.

46. On July 10, 2014, L O Ranch had cash of \$30,813 in its Pinnacle Bank checking account. *See* Pinnacle Bank Statement.

47. Mr. Griswold testified that July 10, 2014, was a time of 'high' beef market prices, resulting in high demand (and market prices) for grazing land, such as the L O Ranch. The market 'high' explains some of the difference from the other two appraisals.

48. Bonnie testified that the residence quarters in an outbuilding (not a home, but a residence area in a shop) was not completed as of July 10, 2014, although Mr. Griswold valued the building as complete. Bonnie also noted addition of a water well after July 2014, and a significant portion of fencing requires repair. Upon examination Mr. Griswold indicated these items were not of significance to his total valuation, however the Court has made an adjustment to reflect the lesser value as of July 10, 2014

49. In reaching a value, Mr. Griswold's appraisal did not factor any adjustment for an absence of unrestricted, insurable legal access between the three non-contiguous parcels that comprise the L O Ranch; however, the Court has made an adjustment to value based on this concern (although less than the adjustment argued by Bonnie).

Projected Income of the Partnership and Past Performance of the Partnership

50. Income from the Partnership is derived from two sources. First, the Partnership has a grazing lease with Ballou Angus Ranch, which by its terms, should

provide income to the Partnership in the amount of \$42,988.50 each spring. Second, the Partnership has crop share agreements with Ballou Angus Ranch, which is to provide income from the sale of hay each fall, although the amount is not set.

51. Ballou Angus Ranch is Bonnie Ballou's sheep-ranching business.

52. It appears that Partnership 'income' from these sources (both Bonnie Ballou's sheep-ranching business), has been calculated to be sufficient to satisfy the real estate taxes, insurance, and semi-annual payments due on the Pinnacle Bank loan; and little more.

53. Partnership income (or loss) in the tax years prior to the valuation date of July 10, 2014, was as follows:

2010	(\$14,662)
2011	\$58,501
2012	\$12,907
2013	(\$26,971)

The average of these four years is income of \$7,444.

54. Regarding projected Partnership income, the Partnership has reported the following income in the tax years 2014 through 2017:

2014	\$39,180
2015	\$49,163
2016	\$108,633
2017	\$6,142

The average of these four years of income is \$50,780, but the income swings are significant from year to year.

55. The Court does consider that the Partnership's current and only sources of income (not counting insurance proceeds for crop losses) are the grazing and crop share leases with Ballou Angus Ranch. As the controlling Partner of L O Ranch, Bonnie will be free to renegotiate the contracts that L O Ranch has with herself as Ballou Angus Ranch. Bonnie will have no incentive to maximize the profits of L O Ranch (at the expense of Ballou Angus Ranch), as both L O Ranch and Ballou Angus Ranch will be under Bonnie's control.

Discounts for the Size of the Interest, Lack of Market for the Interest, and the Inability of the Interest to Exercise any Control over the Partnership, and Other Things that Would Reasonably Affect the Value of the Interest.

56. William's interest represents 53.25% of the total Partnership Interest, more than half of the Partnership.

57. The Partnership Agreement requires written consent from at least 75% of the Partnership Units for certain actions to be taken by the Partnership, including changing the nature or character of the business or doing any act which would make it impossible to carry on the ordinary business of the Partnership. See Partnership Agreement, § 12.6.

58. No single partner owns at least 75% of the Partnership Units. However, William can prevent the Partnership from taking the actions described in § 12.6. Thus, William has control to limit those actions from being taken, and accordingly exercises some control over the Partnership.

59. Further, the consolidation terminates William as a "majority limited partner with standing to further litigate his grievances with Ballou and as such, an

impediment to the partnership's operations and management." *Ballou v. Walker*, 2017 MT 197, ¶ 19, 388 Mont. 283, 292, 400 P.3d 234, 241.

60. As long as William or anyone but the Partnership or Bonnie holds William's 53.25% Interest, Bonnie cannot exercise complete control over the Partnership.

61. Following the purchase of William's Partnership Interest, Bonnie will hold 98.93% of the Partnership Units. Bonnie is the only general partner. Bonnie will exercise complete control over the Partnership after the purchase of William's Partnership Interest.

62. Through operation of the Partnership Agreement, and Bonnie's own testimony, there is no absence of a market for William's Partnership interest. Through representations apart of the Supreme Court filings, and testimony at the valuation hearing, Bonnie affirmed she desired to purchase William's interest. There is no 'lack of market' for William's interest, and thus this consideration is not a basis for significant discount.

63. Discount based on the size of William's Partnership Interest, the lack of market for the interest, or the inability of the interest to exercise any control over the Partnership is far less significant percentage than argued by Bonnie.

64. Neither party has suggested taking goodwill or other intangible assets into account for purposes of valuation.

65. Noting the prior rulings, the Partnership Agreement does not provide for a discount to 'punish' the withdrawing or expelled partner.

Any unpaid Capital Contributions of the withdrawing Partner

66. The Court has no evidence that unpaid capital contributions existed as of July 10, 2014, or thereafter.

67. No adjustment is made for this consideration.

Any Damages Occurring to the Partnership as a result of the Withdrawal Event

68. Repayment of the July 3, 2014, self-dealing check was previously addressed. The loss of value to the Partnership as a result of the withdrawal event was previously addressed.

69. This Court entered a judgment against William for the damages occurring to the Partnership as a result of the withdrawal event, and William has fully satisfied that judgment.

70. Bonnie asks that the Court adjust the value of the Partnership for amounts paid for attorney's fees and costs stemming from the litigation initiated based on the self-dealing check. The Court does not have a basis to do so.

71. The Montana Supreme Court reversed the award of the attorney fees set forth in this Court's Order.

72. The Partnership Agreement does not provide for an award of attorneys' fees for either party on the buyout of a partner's interest.

73. Bonnie has paid amounts for the Partnership attorney fees and costs incurred in this litigation. No evidence was presented that the amounts paid have reduced the value of the Partnership assets or accounts.

74. No adjustment is made for this consideration.

Valuation of William's Partnership Interest

75. Bonnie's valuation expert, Seth Blades, reviewed three appraisals for the property that concluded a market value of \$2,600,000 (2013), \$2,900,000 (2014), and \$2,710,000 (2015), respectively.³ Starting with the three-appraisal-average as the baseline value, and applying a myriad of discounts, Seth Blades valued William's 53.25% Partnership interest in a property to be \$463,300.

76. To the Court, the discounts applied by Mr. Blades appeared to overlap, or double-count, the considerations set forth in § 16.6. Further, some of the discounts applied were considerations not set forth in § 16.6 (such as discounting because L O Ranch had only one customer- Bonnie- and only one manager- Bonnie).

77. On behalf of William, Ms. Sheridan testified that she would apply the Asset Approach to valuation, and based on real estate appraisal prepared by Scott Griswold of Hall and Hall, she concluded the 'fair value' of Walker's 53.25% interest as of July 10, 2014 was \$1,587,200, and 'fair market value' as of that date to be \$1,190,400. Each of these valuations is based upon application of terms and methodologies utilized by a valuation expert. Specifically, 'fair market value' as understood by a valuation professional, dictates application of discounts to the market 'fair value' to reach a 'fair market value.'

78. As with Mr. Blades, the 'fair market value' valuation by Ms. Sheridan applied discounts and valuation methodologies from the profession, but these discounts were not always encapsulated in § 16.6 considerations. Recognizing the disconnect between valuation expert methodology and § 16.6 considerations, Ms. Sheridan's

³ The Pinnacle Bank account balance is in addition to these amounts.

testimony urged the Court to reject the 'fair market value' she calculated, in favor of the market 'fair value' with no discounts.

79. However, the "fair market value" as directed in § 16.6, does contemplate discounts for specific considerations. The Court has applied discounts for these considerations.

80. The value of Bonnie's interest following the purchase of William's Partnership Interest will be equal to her percentage share of the Partnership's market value. Valuing William's interest at less than his percentage share of the Partnership's market value must be founded in the Section 16.6 criteria.

81. Applying the Section 16.6 criteria, the value of William's Partnership Interest is 53.25% of the value of the Partnership's assets as of July 10, 2014, is \$1,421,863.00 (rounded).

Loan Secured by Partnership Property

82. In 2013, to finance their purchase of their brothers' interests in the Partnership, William and Bonnie signed a promissory note in the original principal amount of \$737,986.06. The loan was guaranteed by the Partnership and secured by the Partnership's property.

83. Both William and Bonnie (on behalf of herself and as general partner of the Partnership) have expressed an interest in having the loan refinanced so that William is no longer obligated under the loan.

84. The current principal balance of the loan is approximately \$647,894.55. William's one-half share of that balance is approximately \$323,947.28.

85. Pursuant to the Court's Order as set forth below, Bonnie and the Partnership are given 60 days to pay off or refinance the loan in the name of Bonnie and/or the Partnership, so that William is no longer obligated under the terms of the loan.

86. If the loan is paid off or refinanced within 60 days of the date of this Order, the amount payable to William for his Partnership Interest will be reduced by the amount of William's one-half share of that balance, approximately \$323,947.28.

Payment of the Purchase Price

87. The Partnership Agreement governs payment of the purchase price, at Section 16.8, as follows:

The purchase price shall be paid by the delivery of a promissory note for the sum of the purchase price. The note shall provide for payment of the purchase price by the Partnership or the remaining Partners in ten (10) equal annual installments of principal together with interest. Such interest shall accrue from the date of closing, at the lowest 3-month long-term Applicable Federal Rate (the "AFR") under Section 1274(d) of the Internal Revenue Code permitted for the month in which the first payment is made.

88. To the extent that a finding of fact herein is more properly a conclusion of law, it is made a conclusion of law.

CONCLUSIONS OF LAW

1. Any Conclusion of Law set forth in the Findings of Fact is incorporated herein.
2. This Court has jurisdiction over this matter and over all parties.

3. L O Ranch Limited Partnership was formed when original partners William J. Walker and the Eunice I. Walker Revocable Trust entered into the written Partnership Agreement on April 21, 2000.

4. “A partnership agreement is essentially a contract between the partners ... to be interpreted and applied in accordance with principles of contract law.” *Ballou v. Walker*, 2017 MT 197, ¶ 15, 388 Mont. 283, 290, 400 P.3d 234, 239, *quoting In re Estate of Bolinger*, 1998 MT 303, ¶ 54, 292 Mont. 97, 971 P.2d 767.

5. The interpretation and construction of a contract is a question of law. *Krajacich v. Great Falls Clinic, LLP*, 2012 MT 82, ¶ 13, 364 Mont. 455, 459, 276 P.3d 922, 926.

6. At issue in this hearing on the valuation of William’s Partnership Interest is the interpretation of § 16.6 of the Partnership Agreement. Bonnie and the Partnership ask this Court to apply a strict definition of “fair market value” that is advocated by her expert, Seth Blades. William asks this Court to look to the factors set forth in § 16.6, all of which require consideration, and the general intent of the Partnership Agreement.

7. As the Montana Supreme Court has held, when interpreting a contract, “[t]he whole of a contract is to be taken together so as to give effect to every part if reasonably practicable, each clause helping to interpret the other.” *Krajacich* at ¶ 13, *citing Richards v. JTL Group, Inc.*, 2009 MT 173, ¶ 14, 350 Mont. 516, 212 P.3d 264 (quoting § 28–3–202, MCA).

8. The *Krajacich* Court also provided the following guidance:

“It is [a] well-established principle of contractual construction that in interpreting a written instrument, the court will not isolate certain phrases of the instrument to garner the intent of the parties, but will grasp the

instrument by its four corners and in the light of the entire instrument, ascertain the paramount and guiding intent of the parties. Mere isolated tracts, clauses and words will not be allowed to prevail over the general language utilized in the instrument." *Rumph v. Dale Edwards, Inc.*, 183 Mont. 359, 368, 600 P.2d 163, 168 (1979) (citations omitted); *accord Sandtana, Inc. v. Wallin Ranch Co.*, 2003 MT 329, ¶ 26, 318 Mont. 369, 80 P.3d 1224 (citations omitted). "Particular clauses of a contract are subordinate to its general intent." Section 28-3-307, MCA. Moreover, contract terms that are inconsistent with the general nature of the contract or the primary intention of the parties are to be rejected. Section 28-3-503, MCA; *Rumph*, 183 Mont. at 369, 600 P.2d at 169.

Krajacich, ¶ 13.

9. The intent of the Partnership Agreement was, in significant part, for the orderly transfer of the real property to Eunice Walker's children. By gifting and transferring shares of the Partnership as she did, Eunice's intention was to provide for her children in relatively equal shares, although Eunice provided for William to receive and hold a slightly greater interest in the Partnership than any of his siblings.

10. Nothing in the Partnership Agreement reflects an intent by the parties to grossly favor one partner over another, or to penalize a partner whose share is being bought out.

11. The Montana Supreme Court has found in similar circumstances that discounts should not be taken when determining the value of shares that are sold back to the entity. *Hansen v. 75 Ranch Co.*, 1998 MT 77, ¶ 40, 288 Mont. 310, 325, 957 P.2d 32, 41. Such discounts are "inherently unfair" to the selling partner, "who did not pick the timing of the transaction and is not in the position of a willing seller." *Id.*

12. The *Hansen* court further noted that valuing an owner's interest "at less than [its] proportionate share of the [entity's] fair value produces a transfer of wealth" from the selling interest owner to the interest owners in control. *Hansen* at ¶ 40.

13. Here, valuing William's interest at less than its proportionate share of the market value of the Partnership produces a transfer of wealth from William to Bonnie. Such transfer of wealth is disfavored under Montana law, and would be inconsistent with the intent of the Partnership Agreement.

14. To the extent that a conclusion of law herein is more properly a finding of fact, it is made a finding of fact.

ORDER

In accordance with the foregoing Findings and Conclusions,

IT IS HEREBY ORDERED AND DECREED as follows:

1. The Partnership shall purchase William's Partnership Interest and William shall sell his Partnership Interest for \$1,421,863.00.

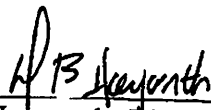
2. If within 60 days of the date of this Order, Bonnie Ballou or the Partnership is able to pay off or refinance the outstanding loan made by Pinnacle Bank to Bonnie and William in 2013, then the purchase price set forth in paragraph 2 above shall be reduced by William's one-half share of that balance, approximately \$323,947.28.

3. The purchase price, and interest if any, shall be paid pursuant to Section 16.8 of the Partnership Agreement. The date of closing is the date of this Order.

4. Each party to this action will bear its own attorney fees and costs.

5. The Clerk of Court shall notify the parties of the making of this Order.

DATED this 2nd day of July, 2018.



Michael B. Hayworth, District Judge

cc: Brandon J.T. Hoskins/Afton E. Ball
Michelle M. Sullivan/Michael A. Monson/Brianne McClafferty
Erica Griffith Brown

Appendix Exhibit B

FILED

MAY 14 2018

L. Priewe
CLERK OF DISTRICT COURT
By DEPUTY CLERK OF COURT

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT
CARTER COUNTY

BONNIE BALLOU, Individually as General
Partner of L O Ranch Limited Partnership, and
L O RANCH LIMITED PARTNERSHIP, a
Montana Limited Partnership,

Plaintiffs,
vs.

WILLIAM WALKER, Individually as Former
General Partner of L O RANCH LIMITED
PARTNERSHIP

Defendant.

Cause No. DV-6-2014-5

Judge Michael B. Hayworth

**ORDER GRANTING, IN PART, WILLIAM
WALKER'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE ABOUT
PARTNERSHIP CAPITAL ACCOUNTS**

WILLIAM WALKER,
Counterclaimant, and Third Party
Plaintiff,

vs.

BONNIE BALLOU,
Counterclaim Defendant,

and

DORAN PRIEWE,
Third-Party Defendant.

Before the Court is Defendant *William Walker's Motion in Limine to Exclude Evidence
About Partnership Capital Accounts*. Plaintiffs filed a Response that was joined by Third-Party

1 Defendant. Defendant has filed a Reply. Thus, the matter is deemed submitted and ripe for decision.

2 Background

3 This case is on remand from the Montana Supreme Court "for a hearing on the value of
4 Walker's complete interest, subject to the parameters of the Partnership Agreement and consistent
5 with this Opinion." *Ballou v. Walker*, 2017 MT 197, ¶24. The Opinion expressly states that
6 Defendant's "interest is [] subject to the terms of Sections 16.1 and 16.6, which together require,
7 among other things, that his interest is to be valued at fair market value at the time the Withdrawal
8 Event occurred."
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10
11 Section 16.6 provides the mechanism for valuation in the event there is "a disagreement as to
12 the fair market value of the withdrawing Partner's Partnership Interest" to wit: "the Partner[s],
13 including the withdrawing Partner shall hire an independent appraiser to value the interest. ... The
14 appraiser shall evaluate the value of the Partnership Interest considering all relevant factors,"
15 Although the Montana Supreme Court directed the Court to hold a hearing, it did not expressly
16 direct the District Court to undertake to value Walker's interest utilizing a method other than "an
17 independent appraiser to value the interest". However, rather than engage an independent appraiser,
18 the parties have tacitly agreed to forgo the contractual process in favor of adversarial litigation
19 whereby the Court will determine the fair market value of Walker's interest upon hearing set for
20 June 5, 2018.
21

22
23 The Court intends to value Walker's share as of July 10, 2014, the date of the Withdrawal
24 Event.¹
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26
27 ¹ Section 16.1 provides: "The withdrawing Partner's Partnership Interest shall be valued as of the date of the Withdrawal
28 Event." Under Section 15.2: "A 'Withdrawal Event' occurs when a General Partner is removed as a General Partner... ."
Walker contends that "the 'Withdrawal Event' was William's withdrawal of \$22,891.38 from the Partnership's bank
account on July 3, 2013." On multiple occasions, the Court and the parties have referred to the July 3, 2013 transaction

1 The Court will value Walker's share as of July 10, 2014, apply the standard set forth in
2 Section 16.6:

3 ... The appraiser [here, the Court] shall evaluate the value of the Partnership Interest
4 considering all relevant factors, such as, the value and condition of the property of the
5 Partnership; the projected income of the Partnership; the past performance of the Partnership;
6 discounts for the size of the interest, lack of a market for the interest, and the inability of the
7 interest to exercise any control over the Partnership; and *other things which would*
8 *reasonably affect the value of the interest.* ...
9

10
11 (P/S Agt. Sec. 16.6) (emphasis supplied).

12
13 Plaintiffs have engaged an expert, Leo O'Brien, who has identified various transactions prior
14 to the valuation date that would have impacted "the partnership and or the capital account of Mr.
15 Walker" (if capital accounts had been set up as required by the Partnership Agreement). (Mot., Ex. B
16 – January 25, 2018 Letter from O'Brien to counsel for Plaintiffs).

17
18 Walker's Motion argues that: (1) capital account balances are not relevant to the inquiry
19 before the Court; (2) the Partnership Ranch has never asserted a claim to recover any purported
20 deficiency in Walker's capital account and the Court cannot hear evidence and enter judgment on a
21 claim never pleaded; and (3) even if such a claim had been made, it would be barred as a matter of
22 law on the grounds of release, judicial admission, and estoppel.
23

24 Discussion

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26
27
28 as a "Withdrawal Event." However, while self-dealing is *grounds* for withdrawal, the *date* of withdrawal for purposes of
valuation is the date when a General Partner is actually removed.

1 As the Montana Supreme Court has stated: "'The purpose of a motion in limine is to
2 "prevent the introduction of evidence which is irrelevant, immaterial, or unfairly prejudicial."
3 Accordingly, the authority to grant or deny a motion in limine 'rests in the inherent power of the
4 court to admit or exclude evidence and to take such precautions as are necessary to afford a fair trial
5 for all parties.'" *State v. Krause*, 2002 MT 63, ¶32 (citations omitted).

6
7 Motions *in limine* are frequently encountered in the criminal context as a means to avoid the
8 presentation of improper matters before a jury. While the upcoming hearing does not involve a jury,
9 it is appropriate and in the interest of judicial efficiency that the Court consider the exclusion of
10 proposed expert testimony on the grounds that it is irrelevant.

11
12 As a general proposition, transactions that affect a partner's capital account are "other things
13 which would reasonably affect the value of [a Partner's] interest." Thus, the Court hereby rejects
14 Walker's first and second arguments.

15
16 Walker's third argument, with three sub-parts, merits further examination as follows:

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18 1. Release of Claims.

19 Walker describes the 2011 Litigation in his briefing and attaches a copy of the Complaint
20 together with Defendants' Answer and Counterclaim. Plaintiffs do not dispute the accuracy of
21 Walker's characterization of the 2011 Litigation. That action was largely concerned with the alleged
22 "breach of fiduciary duty and negligence" by Walker, including the alleged use of Partnership assets
23 for Walker's personal benefit without compensation back to the Partnership.
24

25 The 2011 Litigation was settled and the parties thereto signed a *Stipulated Global Settlement*
26 *Agreement and Release of Claims*. The Release is broadly drafted and by its terms is to be broadly
27 construed "to settle all claims" as of the date of its execution, March 26, 2013. The Release applies
28

1 to "all claims, debts, rights, causes of actions and liabilities, whether known or unknown, asserted or
2 unasserted, foreseen or unforeseen, alleged or which could have been alleged in the proceeding,"
3 and releases each party to the agreement "from all claims, demands, and causes of action each party
4 may now have or which may hereafter accrue, arising out of *or related to, in any way* the [2011
5 Litigation]." (Walker MIL, Ex. 10, p. 5)(emphasis supplied).
6

7 Plaintiffs' Response states that nothing in the Release "allows Walker to avoid the creation
8 of his Capital Account and an appropriate discount to his Capital Account for purposes of
9 valuation." Plaintiffs suggest a narrow identification of the transactions as merely items to be
10 accounted for, and that "[t]hese transactions are not asserted to be anything different than that."
11 However, by advancing an argument supported by Mr. O'Brien's testimony and report, Plaintiffs
12 take a position (make a 'demand') in an adversarial setting to litigate concerns arising out of (or
13 related to) the claims in the 2011 Litigation that were, or could have been raised. In other words,
14 Plaintiffs are not merely 'opening the books' for inspection by an independent appraiser, they are
15 advocating an argument through their expert. Because the parties chose to engage in an adversarial
16 approach to determining the value of Walker's interest, it is appropriate that the Court to examine
17 whether the Release bars the parties from advancing certain positions in this litigation.
18
19

20 Thus, to the extent that Mr. O'Brien justifies an opinion that any of the transactions
21 identified should result in an adjustment to Walker's interest with reference to mismanagement,
22 mischaracterization of expenses, personal use of partnership assets and the like, the evidence is
23 barred by the Release and thus irrelevant to the present inquiry.² This rationale applies to bar all
24 transactions identified in the O'Brien Letter prior to March 26, 2013, i.e., 2010 mileage
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26

27 ² The Court acknowledges that Mr. Priewe was not a party to the 2013 Release, but he did come to the Partnership after
28 the Release and, other than joining Plaintiffs' Response, has not offered any specific argument as to the application of
the Release to the issue before the Court.

1 reimbursement, 2007/2008 equipment purchases, 2004-2010 fuel purchases, employment taxes paid
2 by the Partnership, and the 2004 underpayment.³

3
4 The O'Brien Letter identifies one transaction that occurred after March 26, 2013: the
5 November 6, 2013, check in the amount of \$56,000 that Walker wrote himself from the Partnership
6 account. The Court expressly found that the \$56,000 was compensation and not a distribution. As
7 such, the payment was to be treated as a Partnership cost and expense.⁴ The Court confirms Walker's
8 contention that "[t]o the extent O'Brien's report is at odds with this Court's previous ruling, it
9 should be excluded."

10
11 In summary, due to the Release, testimony based on Mr. O'Brien's report (O'Brien Letter
12 and attachments thereto) is largely irrelevant. However, in an abundance of caution, the Court will
13 stop short of excluding Mr. O'Brien's testimony entirely because he has been identified as being
14 able to "provide any additional and further testimony concerning any other tangential partnership
15 valuation and/or accounting issue that would be helpful to the Court in determining any remaining
16 triable issue(s)." (Walker MIL, Ex. 2 - Partnership's Expert Disclosure).

17
18 2. Judicial Admission.

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20 "A judicial admission is an express waiver made to the court by a party or its counsel
21 'conceding for the purposes of trial the truth of an alleged fact.'" *Carle v. Steyh*, 2015 MT 193 citing
22 *Bilesky v. Shopko Stores Operating Co., LLC*, 2014 MT 300. A judicial admission eliminates the
23 need for proof at a trial, facilitating efficiency and preventing a party from "playing fast and loose
24 with the facts to suit the exigencies of self-interest." *Folsom v. Mont. Pub. Emples. Ass'n*, 2017 MT

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26
27 ³ From Mr. O'Brien's letter, in addition to 'wrongful' payments to or on behalf of Walker, he identifies at least one
28 underpayment of wages (from 2004 in the approximate amount of \$4,000). This adjustment too comes within the
Release in the event Walker puts forth the argument.

⁴ April 2, 2015 FOF/COL, Doc. 72, Findings ¶¶97-104; December 29, 2015, FOF/COL, Doc. 169, Findings ¶115.

204. Walker argues that because Plaintiffs denied in their Answer to the 2011 Litigation that Walker "used partnership assets for his personal benefit," Mr. O'Brien's testimony and report are barred as a matter of law in the present action. The Court declines to apply judicial admission in this case to bind Plaintiffs to the blanket denial from their Answer in the 2011 Litigation.⁵

3. Collateral Estoppel (Issue Preclusion).

Walker also argues that collateral estoppel bars the presentation of Mr. O'Brien's testimony and report in this case. The parties accurately set forth the elements of collateral estoppel in the briefing. The Court agrees with the substance of Plaintiffs' argument that the doctrine does not apply in this case. In particular, issues related to concerns raised by Mr. O'Brien's analysis were not fully litigated in the 2011 Litigation.

IT IS HEREBY ORDERED THAT: Defendant *William Walker's Motion in Limine to Exclude Evidence About Partnership Capital Accounts* is GRANTED, IN PART, as provided herein.

Dated this 14th day of May, 2018.

Michael B. Hayworth
Michael B. Hayworth
DISTRICT JUDGE

Cc: Counsel of Record

CERTIFICATE OF SERVICE

The foregoing was duly served by U.S. Mail or Email scan upon the parties or their attorneys of record at their last known address on

May 14, 2018.

By Lucy Fisher

⁵ "Judicial admission" is distinct from "judicial estoppel" which was not raised by Walker. "Judicial estoppel" requires: (1) the estopped party had knowledge of the facts at the time he or she took the original position; (2) the estopped party succeeded in maintaining the original position; (3) the position presently taken is inconsistent with the original position; and (4) the original position misled the adverse party so that allowing the estopped party to change its position would injuriously affect the adverse party." *Stanley L. & Carolyn M. Watkins Trust v. Lacosta*, 2004 MT 144, ¶33 (citations omitted); see also David S. Coale, *ARTICLE: A New Framework for Judicial Estoppel*, 18 Rev. Litig. 1 (Winter 1999).

CERTIFICATE OF SERVICE

I, Afton Eva Ball, hereby certify that I have served true and accurate copies of the foregoing
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