FILED
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NOVEMBER 20, 2017
STATE OF NORTH DAKOTA

IN THE SUPRME COURT
STATE OF NORTH DAKOTA

Linda D. Nelson; Jill E. Mattson; Jeffrey C. Mattson; and Joan Louise Mattson, Plaintiffs, v. Steven R. Mattson; Joyleen A. Mattson; Steven R. Mattson and Joyleen A. Mattson as Trustees of the Steven R. Mattson Living Trust, dated April 12, 2012; Roald Mattson; Marilyn Mattson; Roald F. Mattson and Marilyn Mattson, Trustees of the Roald F. Mattson Living Trust, dated February 5, 2007; Crescent Point Energy U.S. Corp.; and all other persons unknown claiming any estate or interest in, or lien or encumbrance upon, the property described in the complaint, Defendants.	

Supreme Court No. 20170286 & 20170287

Appeal from the Findings entered February 28 2017, and the Judgment entered June 1, 2017

Northwest Judicial District, Williams County, North Dakota

Honorable Joshua Rustad, Presiding

Consolidated Cases: 53-2014-CV-00297 and 53-2014-CV-00173

BRIEF OF THE APPELLANTS, LINDA D. NELSON, JILL E. MATTSON, JEFFREY C. MATTSON AND JOAN LOUISE MATTSON

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[¶2] Whether the District Court erred in finding that the Property was not partnership property of RAL Farm and the contribution of the Mattson Brothers' interests in the Property to the partnership severed the joint tenancy by alienation.

[¶3] Whether the District Court erred in holding the Mattson Appellees were entitled to recover under a theory of unjust enrichment for the purchase price paid to the Nelson/Mattson Appellants for their interest in the surface of the subject property and the oil and gas lease bonus payments received by the Nelson/Mattson Appellants from a third party.

[¶4] Whether the District Court erred in failing to apply Appellants' voluntary payment doctrine affirmative defense to Appellees claims for conversion and unjust enrichment, where the payments were voluntarily made, and if made under a mistake, the mistake was that of law and not fact.

II. STATEMENT OF THE CASE

[¶5] This appeal arises from the Findings of Fact, Conclusions of Law and Order for Judgment, dated February 28, 2017 (the "Findings") (Appendix "App." 1-7), and the Judgment, dated June 1, 2017, (the "Judgment") (App. 8-10) entered by the district court following a bench trial quieting title to certain interests in the subject real property and awarding a money judgment in favor of Steven R. Mattson, Joyleen A. Mattson, individually and as Trustees of the Steven R. Mattson Living Trust, dated April 12, 2012; and Roald Mattson and Marilyn Mattson, individually and as Trustees of the Roald F. Mattson Living Trust, dated February 5, 2007 (hereinafter, the "Mattson Appellees") and against Linda D. Nelson, Jill E. Mattson, Jeffrey C. Mattson and Joan Louise Mattson (hereinafter, "Nelson/Mattson Appellants").

[¶6] On or about February 12, 2014, Nelson/Mattson Appellants commenced an action against the Mattson Appellees and Crescent Point Energy U.S. Corp. ("Crescent") in Case No. 53-2014-CV-00207 for the purpose of quieting title to an undivided interest in the subject property and recovery of the related oil and gas royalties. At approximately the same time, the Mattson Appellees initiated a separate action against Nelson/Mattson Appellants in Case No. 53-2014-CV-00173 seeking quiet title to the same undivided interest in the subject property and money damages for payments received by Nelson/Mattson Appellants under theories of unjust enrichment and conversion. The separate actions were consolidated and all the parties' claims were tried together in a single proceeding before the district court. Crescent stipulated to be bound by the outcome of the consolidated cases. Following the entry of the Findings and Judgment, Nelson/Mattson Appellants filed a Notice of Appeal on July 31, 2017, initiating this appeal.

[¶7] The dispute between the parties is based on whether the joint tenancy purportedly created by a 1973 deed from Julia Alvstad to her sons, Roald Mattson, Alf Mattson and Leif Mattson (the "Mattson Brothers") was severed by the Mattson Brothers prior to Leif Mattson's death in 2001. The Mattson Brothers' intentions that the subject property be partnership property, thus severing the joint tenancy, was established through decades of representations, conduct and a course of dealing. The district court erred in determining that the Mattson Brothers did not establish a partnership and that Nelson/Mattson Appellants did not show evidence sufficient to establish the Mattson Brothers intent to sever the joint tenancy.

[¶8] Further, this appeal also involves the money judgment the district court awarded the Mattson Appellees for certain payments received by Nelson/Mattson Appellants related to the subject property. Notwithstanding the issue of severance of the joint tenancy, the district court erred in awarding damages based upon theories of unjust enrichment and conversion. The Mattson Appellees failed to establish the essential elements necessary to recover under these theories and, further, their recovery should have been precluded by application of the voluntary payment doctrine.

III. STATEMENT OF FACTS

The Subject Property

[¶9] On February 2, 1973, Julia Alvstad conveyed the following property located in Williams County, North Dakota, to her sons, the Mattson Brothers, purportedly as joint tenants with the right of survivorship by way of two warranty deeds:

> Township 158 North, 100 West
> Section 26: NW¼, SE¼

(the "Property"). App. 64-65; Trial Transcript ("T.") 3-4; 6-7; 51. The deeds conveying the Property to the Mattson Brothers were recorded six (6) years later in Williams County, North Dakota on March 30, 1979 in Book 208 of Deeds, Page 311 and 312 (the "Alvstad Deeds"). Id.

[¶10] Julia Alvstad died intestate on March 20, 1979. T. 3-4; 6; 51. Her estate was administered and the assets transferred to her three children, Leif Mattson, Alf Mattson and Roald Mattson. Each received an equal 1/3 share of the distribution. Id. The property transferred to the Mattson Brothers included the following properties located in North Dakota:

> Mountrail County, North Dakota
> Township 157 North, Range 88 West
> Section 1: Lot 2

(the "Mountrail County Farm Property")

> Ward County, North Dakota
> Township 157 North, Range 82 West
> Section 20: West 12 acres of the SW4SW4

(the "Ward County Farm Property")

> Ward County, North Dakota
> Lots 7 and 8, Block 1, Subdivision of Outlots 3 and 4, River Park Addition to the City of Minot, commonly referred to as 627 and 631 1st St NW, Minot, ND 58703

(the "Minot Rental Houses") (the "Property", the "Mountrail County Farm Property", the "Ward County Farm Property" and the "Minot Rental Houses" are collectively referred to as the "RAL Farm Properties"). Id.

Formation of the RAL Farm Partnership

[¶11] On or about January 1, 1980, the Mattson Brothers formed a partnership in RAL Farm. App. 71-78; T. 3-4; 6-7; 51-54. The Mattson Brothers each agreed to contribute their respective interest in the Property, the Mountrail County Farm Property, the Ward County Farm Property and the Minot Rental Houses to the partnership, with the purpose of operating and managing the RAL Farm Properties together as a partnership, with the intent of making a profit. Id.; T. 51-54; 61-62. The contribution of real property to the RAL Farm partnership, an entity distinct from the partners themselves, by the Mattson Brothers did not require an executed written agreement or deed of conveyance to effectuate the transfer. The Mattson Brothers managed and operated the RAL Farm Properties as a business for profit. T. 51-54. They negotiated and entered into different leasing arrangements, including sharecropping and cash rent leases, based on their analysis of market leasing data. Id. The Mattson Brothers each owned an equal 33.333% interest in the profits, losses and capital of RAL Farm partnership. App. 71-78; T. 3-4; 51-54.

RAL Farm Partnership Management and Treatment of Assets

[¶12] The Mattson Brothers managed the RAL Farm partnership together, but mutually agreed to delegate the day-to-day management and accounting work to an associate working for Mattson Construction, Inc. T. 51-54; App. 114-116; 131-135. Starting in 1982, Gail Mattern became responsible for the general management and accounting for RAL Farm partnership. T. 51-54. She was responsible for performing the year-end accounting, managing the RAL Farm

Properties, managing the bank account, maintaining the books and accounting, calculating and making annual distributions to the partners and providing the necessary accounting information to the accountant to prepare the annual Form 1065 Partnership Income Tax Returns and Schedule K-1 for each partner. T. 51-55; App. 114-116; 131-135. The Mattson Brothers opened a separate bank account for the partnership where all income from the properties was deposited and all expenses were paid. App. 114-115; T. 51-63. Each of the partners was an owner and signer for the account. Additionally, they authorized Gail Mattern as a signer on the partnership bank account to perform her responsibilities for the partnership. Id.

[¶13] Gail Mattern testified that when the Mattson Brothers delegated the general management of the RAL Farm partnership business in 1982, Roald Mattson specifically stated to her that the RAL Farm Properties (including the subject Property) were owned by the RAL Farm partnership, and not by the individual partners who contributed their ownership interests to the partnership. T. 51-63; App. 114-16; 131-135. Gail Mattern further testified that while she was responsible for RAL Farm partnership general management, from 1982 to 2010, Roald Mattson maintained, and continued to represent to her, that the RAL Farm Properties were owned by the partnership. Id.; App. 71-78; 88-113; 117-130; ROA Doc ID# 183.

[¶14] Gail Mattson also testified that following Leif Mattson's death in 2001 and the distribution of his ownership interest in RAL Farm partnership that Roald Mattson specifically told her that Leif Mattson's ownership interest in the partnership had been transferred to his heirs, and not his ownership interest in the RAL Farm Properties. T. 51-63. Leif Mattson's 33.333% ownership in the profits, losses and capital of RAL Farm partnership was transferred to his heirs as personal property. App. 78-87; 100-113; T. 3-4; 10-16. Because the partnership

owned the RAL Farm Properties, no deed, written argument or other instrument of conveyance was necessary to effectuate the transfer to Leif Mattson's heirs. Id.; T. 51-63.

[¶15] In 2002, Steven Mattson purchased Alf Mattson's ownership interest in RAL Farm partnership. At that time, Roald Mattson specifically told Gail Mattern that Steven Mattson had purchased Alf Mattson's ownership interest in RAL Farm partnership, and not Alf Mattson's individual ownership interest in one or all of the RAL Farm Properties. T. 51-63; App. 114-16; 131-135. Alf Mattson's partnership interest was transferred to Steven Mattson as personal property. Id. No deed, written agreement or other instrument of conveyance was necessary to effectuate the transfer to Steven Mattson. Id. Gail Mattern was instructed by Roald Mattson to make annual partnership distributions to Steven Mattson thereafter in accordance with his purchase of RAL Farm partnership interest. T. 51-63; App. 114-16; 131-135.

[¶16] The Mattson Brothers, and their successors-in-interest (the "RAL Farm Partners"), including Nelson/Mattson Appellants and Steven Mattson, listed the properties as partnership property on the Form 1065 Partnership Income Tax Return filed on an annual basis. App. 71-77; 88-113; 117-130; 149-162; ROA Doc ID# 190. The RAL Farm partnership tax returns appropriately assigned each of the RAL Farm Partners an equal 33.333% share of profits, losses and capital of the partnership. Id. Roald Mattson was the designated tax matters partner for RAL Farm, and therefore executed each of the RAL Farm partnership tax returns in that capacity. Id.

RAL Farm Partnership and Leif Mattson's Heirs

[¶17] Leif Mattson died on June 25, 2001. T. 3-4; 6; 54-55; ROA 194. His estate was administered and the assets transferred to his five (5) heirs in equal 1/5 shares. Id. Leif

Mattson's 33.333% ownership interest in RAL Farm partnership profits, losses, capital and right to receive distributions was transferred to his heirs in equal shares as follows:

- 6.667% ownership interest share to Plaintiff Linda D. Nelson, his daughter;
- 6.667% ownership interest share to Plaintiff Jill E. Mattson, his daughter;
- 6.667% ownership interest share to Plaintiff Jeffrey C. Mattson, his son;
- 6.667% ownership interest share to Kevin A. Mattson, his son. Kevin A. Mattson died on September 12, 2008. Plaintiff Joan Louise Mattson is Kevin A. Mattson's surviving spouse and sole heir his estate and interest in RAL Farm; and
- 6.667% ownership interest share to Douglas Leif Mattson, his son.

(collectively, "Leif Mattson's Heirs"). Id.; App. 100-113; 117-130; T. 6-14; 51-63.

[¶18] As part of the administration of the estate and tax returns, a valuation of the assets of Leif Mattson's estate was prepared. T. 3-4; 10-16; App. 78-87; ROA Doc ID# 199, 200. The valuation included Leif Mattson's 33.333% ownership interest in RAL Farm partnership. Id. It specifically indicated that the Property, and the RAL Farm Properties were assets of, and owned by, the partnership and not the individual partners. Id. The valuation of RAL Farm partnership was utilized in the estate tax return filed by the Estate of Leif Mattson. ROA Doc ID# 199, 200.

[¶19] The rights to the profits and losses, capital and distributions related to Leif Mattson's 33.333% ownership interest in RAL Farm partnership were transferred from his estate to her heirs as personal property. App. 78-87; 100-113; 117-130; T. 3-4; 10-17; 51-63.

[¶20] At the direction of the heirs, Leif Mattson's partnership interest was transferred to L.A.M. Properties, LLC, an existing entity owned by the heirs ("LAM"). T. 3-4; 15-17; 51-63; App. 100-113. In 2001, Roald Mattson expressly stated to Gail Mattern that Leif Mattson's partnership interest had been transferred to his heirs and instructed her to make distributions to Leif Mattson's Heirs in LAM. T. 51-63.

[¶21] Starting with the 2001 distribution, the annual distribution of profits for RAL Farm were made to Alf Mattson, Roald Mattson and LAM in equal shares corresponding with their respective 33.333% ownership interest in RAL Farm. App. 88-113; T. 3-4; 51-63.

Steven Mattson's Purchase of Alf Mattson's Interest in RAL Farm Partnership

[¶22] In 2003, Alf Mattson sold his 33.333% in RAL Farm to Steven Mattson. T. 55-63; App. 114-116; 131-134. Roald Mattson instructed Gail Mattern that Steven Mattson was purchasing Alf Mattson's interest in RAL Farm Partnership and to make the annual partnership distribution for Alf Mattson's 33.333% ownership interest to Steven Mattson. T. 55-63; App. 114-116; 131-134. In December 2003, RAL Farm made its annual partnership distributions to Steven Mattson, Roald Mattson and to LAM, with each receiving their respective 33.333% share based on their ownership interest, by check in the amount of $5,000.00. T. 55-63; Trial Exhibits 105, 106 and 108. The annual distributions for RAL Farm were made to Steven Mattson based on his 33.333% ownership interest in 2003, 2004, 2005 and each subsequent year until dissolution. T. 55-63; App. 114-116; 131-134.

Oil and Gas Leases for the minerals in the Property by RAL Farm Partners

[¶23] Steven and Joyleen Mattson executed an oil and gas lease to Petro-Hunt, LLC on December 21, 2007. App. 143-145. They were paid a lease bonus based upon ownership of an undivided 1/3 interest in the Property, which amounts to 106.667 net mineral acres. App. 137-142.

[¶24] Roald Mattson and Marilyn Mattson executed an oil and gas lease to Petro-Hunt, LLC on July 11, 2010. ROA Doc ID# 182. They were paid a lease bonus based upon ownership of an undivided 1/3 interest in the Property, which amounts to 106.667 net mineral acres. ROA Doc ID# 179.

[¶25] Prior to executing the recorded versions of the oil and gas leases outlined above, the Mattson Appellees agreed to lease their mineral interests to Petro-Hunt, LLC under leases containing a 1/8th royalty provision. App. 143-148; T. 3-4; 36-38. Nelson/Mattson Appellants were offered the same terms for their interest but did not accept unless Petro-Hunt, LLC agreed to a 1/6th royalty provision in their lease and it agreed to amend the terms of the leases the Mattson Appellees previously granted to include the same increased 1/6th royalty provision. Id. Nelson/Mattson Appellants' involvement in the RAL Farm partnership, the Property and their actions with Petro-Hunt, LLC directly benefited the Mattson Appellees with the increased royalty provision. Without Nelson/Mattson Appellants' involvement, the Mattson Appellees' undivided mineral interest in the Property would be leased with a 1/8th royalty provision. Id. Further, the negotiations by Nelson/Mattson Appellants on behalf of the Mattson Appellees resulted in uniform lease agreements for the entire Property, which was consistent with the minerals in and under the Property being treated as partnership property of RAL Farm. Id.

Steven Mattson's Purchase of Leif Mattson's Heirs Ownership Interest in RAL Farm

[¶26] As part of a mutual agreement to dissolve the partnership, in 2010, Steven Mattson offered to purchase Nelson/Mattson Appellants' and Douglas Leif Mattson's combined 33.333% ownership interest in RAL Farm partnership, which also included the sale of the Minot Rental Houses to third parties. T. 24-34; ROA Doc ID# 187, 188.

[¶27] Nelson/Mattson Appellants' agreed to sell their interest in the partnership to Steven Mattson, but as part of the dissolution of the partnership and distribution of its assets, the parties agreed that Nelson/Mattson Appellants would receive an undivided 1/3 mineral interest in the Property (the "Mineral Estate"). ROA Doc ID# 187, 188; Trial Transcript 24-34.

[¶28] Nelson/Mattson Appellants and Douglas Leif Mattson transferred their 33.333% ownership interest in RAL Farm partnership to Steven Mattson as personal property in December of 2010. T. 3-4; 24-34; 48-50; ROA Doc ID# 187, 188, 190.

[¶29] Nelson/Mattson Appellants and Douglas Leif Mattson agreed to convey the surface estate of the 1/3 undivided interest in the Property to Steven Mattson by quitclaim deed. T. 8:21-9:20; 24-34. The minerals were expressly reserved in the quitclaim deed. Id.

[¶30] In negotiations leading to the 2010 sale of Nelson/Mattson Appellants' ownership interest in RAL Farm partnership to Steven Mattson, Jeff Mattson prepared a memorandum of understanding detailing each of the parties' ownership interest in RAL Farm partnership before and after the contemplated sale (the "MOU"). T. 24-35; ROA Doc ID# 187, 188. The MOU stated that RAL Farm partnership owned the Property, and the other RAL Farm Properties, and set forth each of the parties respective ownership interest in RAL Farm partnership. Id. It further provided that Nelson/Mattson Appellants' and Douglas Leif Mattson owned a combined 33.333% ownership interest in RAL Farm partnership, with each owning an equal 6.667% interest. Id.

[¶31] The MOU was reviewed and discussed in detail by Jeffrey Mattson, Steven Mattson and Roald Mattson. Id. Roald Mattson and Steven Mattson expressly agreed with the statements of RAL Farm partnership ownership of all of the RAL Farm Properties and the detail of the present division of ownership interest in the partnership. Id. They further agreed with the contemplated transactions and the resulting division of ownership detailed in the MOU.

[¶32] The purchase and sale agreements and quitclaim deeds that the parties utilized to finalized the transactions set forth in the MOU were consistent with, and based upon, the parties' agreement to the statements and substance of the MOU. Id.

[¶33] The RAL Farm Partnership Tax Return for 2010, which was reviewed and executed by Roald Mattson as the designated tax matters partner, detail the transactions and the effective dissolution of RAL Farm partnership. T. 8:21-9:20; 22-34; ROA Doc ID# 183. The revenue from the sale of the Minot Rental Houses was combined with the income and expenses of the other RAL Farm properties, and distributions were made in accordance with the partners' respective ownership interest of the profits, losses and capital of the partnership. Id.

[¶34] As nonresidents with an ownership interest in a North Dakota based partnership, Jill Mattson and Jeffrey Mattson were required to pay North Dakota Income tax in accordance with their ownership interest in the liabilities of RAL Farm partnership. T. 8:21-9:20; 34-36; ROA Doc ID# 192.

[¶35] The RAL Farm Partnership Tax Returns for 2011 were reviewed and executed by Roald Mattson as the designated tax matters partner. ROA Doc ID# 190. In the 2011 Partnership Tax Returns, the capital accounts for Nelson/Mattson Appellants were adjusted to reflect the sale of their ownership interest in RAL Farm to Steven Mattson, consistent with partnership ownership of the Property and the other RAL Farm Properties, and not simply a sale of Nelson/Mattson Appellants' ownership interest in the surface of the Property to Steven Mattson. ROA Doc ID# 190; T. 24-36.

The Mattson Appellees' Change of Position and Litigation

[¶36] On April 15, 2013, more than 12 years after Leif Mattson's death, Roald Mattson and Steven Mattson retained an attorney to assist with the title curative requested by Crescent Point and an affidavit of death for Leif Mattson was recorded in Williams County as Document No. 758224. ROA Doc ID# 194.

[¶37] On August 20, 2013, the Mattson Appellees' formally notified Nelson/Mattson Appellants they had altered the position they had maintained for over 12 years regarding ownership of the Property and Mineral Estate via a demand letter from their attorney.

[¶38] Prior to August 20, 2013, all interested parties' representations, conduct and course of dealing evidenced an intent consistent with RAL Farm partnership's ownership of the Property. From the Mattson Brother's formation of the partnership in 1980, when the joint tenancy was severed by alienation to the partnership, through the sale of Nelson/Mattson Appellants' interest to Steven Mattson, the Mattson Appellees never once raised an issue with Nelson/Mattson Appellants' interest in the partnership and its ownership of the Property prior to 2013. To the contrary, all interested parties' representations, conduct and course of dealing was consistent with the Property being a partnership asset of RAL Farm.

IV. ARGUMENT

A. STANDARD OF REVIEW

[¶39] Findings of fact are subject to the clearly erroneous standard of review. Hill v. Weber, 1992 ND 74, ¶ 12, 592 N.W.2d 585. A finding of fact is clearly erroneous "if although there is some evidence to support it, a reviewing court, on the entire record, is left with a definite and firm conviction that a mistake has been made, or if it was induced by an erroneous view of the law." Id. Conversely, questions of law in North Dakota are fully reviewable on appeal. Moran v. North Dakota Dept. of Transportation, 543 N.W. 2d 767, 769 (N.D. 1996). Mixed questions of fact and law are "fully reviewable by this Court without the structure imposed by Rule 52(a) NDRCivP." Earth Builders, Inc. v. State for an on Behalf of State Highway Dept., 325 N.W.2d 258, 259 (N.D. 1982).

B. WHETHER THE DISTRICT COURT ERRED IN ITS DETERMINATION THAT RAL FARM WAS NOT A PARTNERSHIP.

[¶40] The district court erred in holding that the Mattson Brothers did not establish a partnership in RAL Farm. The formation of a partnership simply requires two or more persons to carry on as co-owners a business for profit, regardless of whether or not the persons intend to form a partnership. N.D.C.C. § 45-14-02. The essential elements of the existence of a partnership are: (1) intent to be partners; (2) co-ownership of the business; and (3) profit motive. Tarnavsky v. Tarnavsky, 2003 ND 110, ¶ 7, 666 N.W.2d 444, 446. Parties who have admitted that they are in a partnership, either by express statement or conduct, will be held to that admission." Degen v. Brooks, 43 N.W.2d 755, 760 (N.D. 1950) (quoting Cobb v. Martin, 32 Okl. 588, 122 P. 422 (1912). The existence of a partnership is a mixed question of law and fact, with the ultimate determination a question of law. Tarnavsky, 2003 ND 110, ¶ 7, 666 N.W.2d at 447 (citing Tarnavsky v. Tarnavsky, 147 F.3d 674, 677 (8th Cir. 1998). Mixed questions of fact

and law are "fully reviewable by this Court without the structure imposed by Rule 52(a) NDRCivP."

[¶41] Intent is shown when the parties want to work together and be part of a relationship that includes the other essential elements, co-ownership and profit motive. Gangl v. Gangl, 281 N.W.2d 574, 580 (N.D. 1979). It does not need to be vocalized orally or in writing, but can be derived from the actions of the parties. Id. If intent is shown through the parties' actions, a party cannot simply state they are not involved in a partnership. Id. A partnership can be created regardless of the parties' subjective intentions. Ziegler v. Dahl, 2005 ND 10, 691 N.W.2d 271, 277.

[¶42] Co-ownership requires a showing that the parties have mutual control and a community of interest. Ziegler, 2005 ND 10, ¶ 21, 691 N.W.2d at 277. Community of interest also means with respect to the sharing of the profits and losses of the business. Id. at ¶ 24, 691 N.W.2d at 277-278. Parties may relinquish management control of the business to the other partners or an associate and still maintain a partnership; the right to manage is all that is required. Id. at ¶ 21, 691 N.W.2d at 277.

[¶43] Profit motive requires showing that the business was intended to operate for a profit. Gangl, 281 N.W.2d at 581.

[¶44] Each of the elements of a partnership was established at trial. The testimony of Gail Mattern, which clearly provided that Roald Mattson acknowledged and admitted that the Mattson Brothers created and maintained the RAL Farm partnership, should have been held as an admission of such by the district court. The simple denial of the existence of a partnership by the Mattson Appellees' counsel should not have been sufficient to override this admission under North Dakota law. The Mattson Brothers mutually controlled RAL Farm partnership decisions,

maintained mutual access to the partnership bank account, where all income was deposited and expenses paid and each owned an equal 33.333% of the profits, losses and capital of the partnership. The Mattson Brothers evidenced intent to make a profit by analyzing prior lease data and entering into different lease agreements to maximize their profits.

[¶45] Despite the presence of each of the elements of a partnership the district court concluded that a joint venture, not a partnership existed. This determination of a question of law was in error and provided the basis for other findings made by the district court, specifically whether the Mattson Brothers contributed their interests in the Property to the RAL Farm partnership resulting in an alienation and severance of the joint tenancy.

C. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT THE PROPERTY WAS NOT PARTNERSHIP PROPERTY OF RAL FARM AND THE CONTRIBUTION OF THE MATTSON BROTHERS' INTERESTS IN THE PROPERTY TO THE PARTNERSHIP SEVERED THE JOINT TENANCY BY ALIENATION.

[¶46] The district court erred in its determination that the Mattson Brothers did not contribute their interests in the Property to the RAL Farm partnership resulting in an alienation and thus severance of the joint tenancy. While the determination of whether property is partnership property is typically a question of fact, subject to a clearly erroneous standard, the district court's determination was induced by an erroneous view of the law on two separate issues. First, the district court's finding was erroneously based on its holding that RAL Farm was not a partnership. Second, it was erroneously based on the requirement of showing unequivocal and unambiguous evidence of intent to sever the joint tenancy. Alienation is alone sufficient to sever a joint tenancy under Renz v. Renz, 283 N.W.2d 883, 886 (N.D.1977), unequivocal and unambiguous evidence of intent to sever the joint tenancy is not required in addition to evidence of alienation. Although somewhat a unique situation, where a partnership

and partnership property is involved, evidence of the Mattson Brothers' intent to contribute their interests in the Property to the partnership should be sufficient to sever the joint tenancy. The district court's requirement of evidence, unequivocal and unambiguous, of intent to sever should be satisfied by evidence of alienation. Finally, even under the standard utilized by the district court, the evidence presented at trial established the unambiguous intent of the Mattson Brothers to alienate their interests to the partnership as necessary to sever the joint tenancy.

[¶47] A joint tenancy can be severed by partition, alienation, sale under a judgment lien, mutual agreement, court decree, by one tenant, without the consent of the cotenant or cotenants, and by "any conduct or course of dealing sufficient to indicate that all parties have mutually treated their interest as belonging to them in common. Renz, 283 N.W.2d at 886. A transfer of interest in the Property from the Mattson Brothers as individuals to RAL Farm partnership, an entity distinct from its partners, is an alienation and thus sufficient to sever a joint tenancy. N.D.C.C. § 45-14-01.

[¶48] Partnership Property includes all property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property. Eckert v. Eckert, 425 N.W.2d 914, 915-916 (N.D. 1988). Record title of ownership is not conclusive when a partnership or joint venture is involved. Eckert, 425 N.W.2d at 915. For example, "property which is titled in the name of an individual partner may nevertheless be partnership property." Id. citing Svihl v. Gress, 216 N.W.2d 110, 115 (N.D. 1974). In determining whether the property is partnership property, the relevant inquiry is whether the partners intended that the property in question be partnership property or individual property. Id.

[¶49] The contribution of real property interests to a partnership by the partners does not require an instrument or written agreement, nor is the enforcement of the contribution precluded by the statute of frauds. As partners or joint adventurers, the relationship between the parties was fiduciary in character. Gehlhar v. Konoske, 50 N.D. 195, 195 N.W. 558, 561 (N.D. 1923). The real estate involved, however titled, is held in trust for the benefit of the partnership in the partnership. Id. The statute of frauds does not apply to agreements between partners related to real property. Id. A written conveyance, transfer or deed is not required for a real property interest to be transferred by a partner or partners to the partnership and become partnership property. Id. (emphasis added); *see also* Grosboll v. Grosboll, 315 P.3d 1284, 1288 (Colo. App. 2013); Turley v. Ethington, 246 P.3d 1282, 1287 (Ariz. Ct. App. 2006); Vlamis v. De Weese, 140 A.2d 665, 669 (Md. 1958); Crowe v. Smith, 603 So.2d 301, 305 (Miss. 1992); Bastjan v. Bastjan, 215 Cal. 662, 12 P.2d 627, 629 (1932); Arnold v. Wainwright, 6 Minn. 358, 369 (1861); Minter v. Minter, 80 Or. 369, 157 P. 157, 159 (1916). Where the acts of the parties support the intent to treat the property as an asset of RAL Farm, proof of an oral agreement is not necessary. Gelhar, 195 N.W. at 561.

[¶50] While the North Dakota Supreme Court has not directly examined what factors should be considered in determining the intent of the partners when examining whether certain property is partnership property, courts from other jurisdictions have identified the following factors to consider in determining the intent of the partners as to whether specific property is partnership property:

1. The language of the partnership agreement;
2. The use of the property in the partnership business;
3. The listing of the property as an asset and of its mortgage as a liability in the partnership books and tax returns;
4. The construction of improvements on the property at partnership expense;

5. Use of partnership funds to maintain the property, including payment of the payment of taxes and insurance premiums;
6. A party's declaration of intent, such as by letter or will, accompanying his act of entering the partnership;
7. The attribution of profits or losses from the property to the partnership;
8. The parties' course of conduct with respect to the property;
9. The representations of the parties to others as to ownership of the property;
10. After the death of a partner, the treatment of that partner's ownership interest in administration of the partner's estate;
11. The surviving partners' conduct and course of dealing in relation to ownership of the property; and
12. The allocation of subsequent partnership distributions.

Grosboll, 315 P.3d at 1290; Crowe, 603 So.2d at 305; Thomas v. Lloyd, 17 S.W.3d 177, 183 (Mo. Ct. App. 2000); Lutz v. Schmillen, 899 P.2d 861, 864 (Wyo. 1995); Mischke v. Mischke, 530 N.W.2d 235, 240 (Neb. 1995); Brown v. Morrill, 45 Minn. 483, 490-491, 48 N.W. 328 (Minn. 1991); Brooks, Inc. v. Brooks, 201 N.W.2d 128, 130-131.

[¶51] All of the factors of intent where evidence was presented support the intent of the Mattson Brothers contribution of the Property to the RAL Farm partnership. The Property was listed on the partnership tax returns as an asset of the partnership, partnership funds were utilized to maintain the property, including payment of taxes and other expenses, and each partner was allocated with the right to their share of profits and liability for their share of losses in accordance with their ownership interest in the partnership. Furthermore, after the death of Leif Mattson, the surviving partners, Roald and Alf Mattson, continued to state and represent the Property was partnership property, treated it in as partnership property, allowed Leif Mattson's ownership interest to be transferred to his heirs as personal property and made partnership distributions in accordance with the Property as partnership property. Prior to 2013, there is no evidence that any interested party took any action inconsistent with RAL Farm partnership's ownership of the Property and the severance of the joint tenancy by the Mattson Brothers. The district court's finding that the Property was not partnership property simply ignored over 33

years of all the interested parties' representations, conduct and a course of dealing with respect to the Property.

D. WHETHER THE DISTRICT COURT ERRED IN HOLDING THE MATTSON APPELLEES WERE ENTITLED TO RECOVER UNDER A THEORY OF UNJUST ENRICHMENT FOR THE PURCHASE PRICE PAID TO THE NELSON/MATTSON APPELLANTS FOR THEIR INTEREST IN THE SURFACE OF THE SUBJECT PROPERTY AND THE OIL AND GAS LEASE BONUS PAYMENTS RECEIVED BY THE NELSON/MATTSON APPELLANTS FROM A THIRD PARTY.

1. The purchase price paid by Steven Mattson to Nelson/Mattson Appellants for the surface of the Property is not recoverable by a claim for unjust enrichment.

[¶52] Unjust enrichment is an equitable doctrine "which rests upon quasi or constructive contracts implied by law to prevent a person from unjustly enriching himself at the expense of another." Smestad v. Harris, 2012 ND 166, ¶ 16, 820 N.W.2d 363. A determination of unjust enrichment is a question of law. Broten v. Broten, 890 N.W.2d 847, 849 (N.D. 2017). It is applied in the absence of an express or implied contract. Zuger v. North Dakota Insurance Guaranty Association, 494 N.W.2d 135, 136 (N.D. 1992).

[¶53] A claim for unjust enrichment requires a showing of: (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) absence of a justification for the enrichment and impoverishment; and (5) an absence of a remedy provided by law. Estate of Hill, 492 N.W.2d 288, 295 (N.D. 1992). However, the existence of a contract precludes a claim for unjust enrichment. First National Bank of Bellfield v. Burich, 367 N.W.2d 148, 154 (N.D.1985).

[¶54] In the case of Steven Mattson's payment to Nelson/Mattson Appellants of the purchase price for the surface of the Property, a contract existed between the parties. The district court erred in awarding damages under a theory of unjust enrichment. The contract provided for a payment of $75,000 by Steven Mattson in exchange for a quitclaim deed from Nelson/Mattson

Appellants for the surface only to the Property. Nelson/Mattson Appellants were not required to warrant and defend any ownership to the Property under the agreement between the parties. Steven Mattson did not seek to rescind the contract; he only sought to recover for unjust enrichment for the purchase price paid.

[¶55] Here, where a contract existed and no warranty was provided, there is a clear justification for the alleged impoverishment, the terms of the agreement. Further, there was an adequate remedy provided for by law, rescission of the contract. Steven Mattson's claim for unjust enrichment claim for this payment must fail as a matter of law. The district court erred in holding to the contrary.

2. The Lease bonus Payments to Nelson/Mattson Appellants were made under valid contractual agreements with a third party; the payments cannot be recovered under unjust enrichment under these circumstances where there was no impoverishment to the Mattson Appellees, there was no inequitable benefit and a valid justification for the any alleged enrichment existed.

[¶56] Under a claim for unjust enrichment, where the impoverishment results from a valid contractual arrangement made by a party, the result is not contrary to equity and there has been no unjust enrichment." BTA Oil Producers v. MDU Resources Group, Inc., 2002 ND 55, ¶ 23, 642 N.W.2d 873.

[¶57] The district court erred in awarding damages to the Mattson Appellees for the lease bonus payments received by the Nelson/Mattson Appellants under a theory of unjust enrichment. The impoverishment alleged by the Mattson Appellees is a result of a valid contractual agreement between the oil and gas lessee and the Nelson/Mattson Appellants. The payment to the Nelson/Mattson Appellants did not impoverish the Mattson Appellees. There is a reasonable justification for the alleged enrichment, that is the Mattson Appellees never attempted to lease more than a 1/3 undivided mineral interest in the Property. The essential elements of

unjust enrichment were not satisfied and the alleged unjust enrichment was the result of a valid contractual agreement with a third party. The recovery of the lease bonus payments received by the Nelson/Mattson Appellants by the Mattson Appellees was in error as the claim fails as a matter of law.

E. WHETHER THE DISTRICT COURT ERRED IN FAILING TO APPLY APPELLANTS' VOLUNTARY PAYMENT DOCTRINE AFFIRMATIVE DEFENSE TO APPELLEES CLAIMS FOR CONVERSION AND UNJUST ENRICHMENT, WHERE THE PAYMENTS WERE VOLUNTARILY MADE, AND IF MADE UNDER A MISTAKE, THE MISTAKE WAS THAT OF LAW AND NOT FACT

[¶58] The voluntary payment doctrine provides a bar against an action to recover a voluntarily payment made with knowledge of the facts, and regardless of a payor's ignorance or mistake of the law absent special circumstances, such as undue influence, misrepresentation, or misplaced confidence is shown". Jacobson v. Mohall Telephone Co., 157 N.W. 1033, 1036 (N.D. 1916).

[¶59] The damages the Mattson Appellees seek for unjust enrichment and conversion, the purchase price paid by Steven Mattson and the land rental payments paid to Nelson/Mattson Appellants by the partnership for the Property, are premised on voluntary payments. Their claims of unjust enrichment and conversion are an independent action to recover voluntary payments made to Nelson/Mattson Appellants. In making the voluntary payments, the Mattson Appellees were aware of all factual circumstances surrounding these payments, including the content of the Alvstad Deeds. *See* N.D.C.C. § 47-19-19 (all persons are charged with notice of the contents of recorded instruments); *see also* N.D.C.C. § 45-13-02 (providing that knowledge of facts are imputed on partners when they have reason to know that the fact exists). Their ignorance or mistake of law as to the legal effect of the Alvstad Deeds does not preclude the application of the voluntary payment doctrine.

[¶60] Thus, the voluntary payment document affirmative defense asserted by Nelson/Mattson Appellants should have barred the Mattson Appellees' claims for unjust enrichment and conversion. The district court erred in failing to apply the voluntary payment doctrine affirmative defense of the Nelson/Mattson Appellants.

V. CONCLUSION

[¶61] Based on the foregoing, the Nelson/Mattson Appellants respectfully request this Court reverse the district court's Judgment, enter judgment in Appellants favor, remand with proper instructions on the question of partnership property and severance of the joint tenancy, or alternatively, vacate the money damages award portion of the Judgment.

DATED this 20th of November, 2017.

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CERTIFICATE OF ELECTRONIC SERVICE – APPELLATE BRIEF AND APPENDIX

I hereby certify that on November 20, 2017, Appellants' Appellate Brief, Appendix and this Certificate of Electronic Service were filed with the Clerk of the Supreme Court, and that true and correct copies of the same were sent to the following parties, each of whom the undersigned understands to have consented to electronic service, via email:

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DATED this 20th of November, 2017.

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