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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
SUPREME COURT NO. 20210235

Susan Sproule, Sandra Crary, and Lynnell Stegman,	Plaintiffs and Appellees
v.	
Brian Johnson, Rodger Johnson, Lyle Johnson, New Partnership, and Nor-Agra, Inc.,	Defendants and Appellants
and	
Al Johnson,	Defendant and Appellee

On Appeal from Amended Judgment entered on June 29, 2021
Northeast Central Judicial District, Grand Forks County, North Dakota
Case No. 18-2017-CV-31

The Honorable Donald Hager

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STATEMENT OF ISSUES

[1] Did the District Court (the "Court") err in ordering a partnership and corporate buyout without considering known tax burdens; and in following alleged Canadian law, presented only through hearsay letters, to do so.

[2] Did the Court err in ordering dissolution of a North Dakota partnership contrary to the controlling partnership agreement and the Revised Uniform Partnership Act ("RUPA"), while also ordering the incompatible, dissociation remedy of a buyout?

[3] Did the Court err in following an unsigned and disputed "Agreement in Principal" [sic] (the "AIP") drafted by Plaintiffs' counsel regarding several partnership issues, but not regarding the buyout issues?

[4] Did the Court err by resolving all other partnership issues as of 2017, while giving Plaintiffs the benefit of 2019 appraisals regarding the Canadian farming operations, despite the parties' earlier agreement as to the accuracy of 2017 appraisals?

STATEMENT OF THE CASE

[5] Plaintiffs commenced this action in October, 2016, identifying themselves as dissociated partners. App. 30-31; App. 39-44. They sought dissolution or a "windup of partnership business." App. 43 at ¶ 24.

[6] On October 27, 2017, Plaintiffs filed a Motion for Order Directing Division of Farm Real Property. Doc. 14. Plaintiffs directed the Court to the unsigned AIP (App. 81-88) and stated that the parties had reached an agreement as to how they would divide the real property of the Johnson Farms Partnership ("JFP"). Doc. 17.

[7] Defendants responded that "[a]lthough the parties have negotiated various agreements, not all issues have been resolved…" and no contract has been created. Doc. 23, ¶¶ 4 and 6; see also Docs. 24 and 25. Attorney Sillers, then counsel for the

Defendants, argued that "no agreement has ever been signed, so we don't have a true contract." App. 162 at 31:13-14.

[8] The Court concluded "the question is going to be whether or not it's fair to order the division of land now, based upon an agreement. Not based upon circumstances but the agreement itself." App. 164-165 at 38:24-39:2. The Court granted Plaintiffs' motion on December 1, 2017. App. 32-34.

[9] On December 11, 2017, Defendants submitted a Motion for Relief from Judgment. Doc. 38. Attorney Sillers again argued that Defendants should not be bound by the unsigned AIP. App. 167 at 4:5-19.

[10] The Court ordered the Defendants to follow the AIP and participate in a coin flip that ultimately determined the division of tens of thousands of acres of farm land divided into four packages. App. 36, ¶¶ 3-4. The Court denied Defendants' request for additional time to review recent changes to the four packages. Id.

[11] The case proceeded to a Court trial in July, 2020. See Trial Tr. Vols. I-VII. Defendants contested the economic results of the 2017 North Dakota land division. Doc. 459, § III. The Court made a series of factual and credibility determinations, all favorable to the Plaintiffs, and held the land division had resulted in equal value to both parties. App. 135-136, ¶ 62.

[12] The issue of reconciling the results of JFP's farming operations for 2017 was also presented. Doc. 459, § II. The Court again made a series of factual and credibility determinations, all favorable to the Plaintiffs, and ordered that further payments of $402,791 (USD) be made to each. App. 115-127, ¶¶ 36-50.

[13] The primary issue presented at trial involved the indirect ownership of Shilo Farms LTD ("Shilo"), a Canadian corporation. Doc. 459, § I. The Court rejected the AIP's provisions regarding Shilo by rejecting the initially agreed-upon 2017 appraisals and tax calculations. App. 144-145, ¶¶ 70-71. The Court ordered the dissolution of JFP – an indirect owner of 50 percent of Shilo – triggering two layers of Shilo-related Canadian tax. App. 154, ¶ 94. The Court did not order the dissolution of Nor-Agra, Inc. ("Nor-Agra") which held the other 50 percent ownership interest in Shilo.

[14] The Court also ordered a buyout of Plaintiffs' indirect interest in Shilo held through both JFP and Nor-Agra. App. 154, ¶ 98. The Court chose to ignore the known and triggered tax burdens when setting the buyout price to be paid to each Plaintiff at $5,316,515 – $15,949,545 (USD) in total. App. 141-143, ¶¶ 68-69; App. 154, ¶ 98.

[15] The Court further allowed Plaintiffs the benefit of 2019 appraisals regarding Shilo, although all other issues, as contemplated by the AIP, were resolved as of 2017. App. 135, ¶ 62; App. 144-145, ¶¶ 70-71; App. 81-88. The 2017 Shilo appraisals had been accepted as accurate by both sides. App. 68-80.

STATEMENT OF FACTS

I. THE PARTIES AND ENTITIES.

[16] Plaintiffs, Susan Sproule ("Susan"), Sandra Crary ("Sandra"), and Lynnell Stegman ("Lynnell"), dissociated from JFP in 2014. App. 39-40, ¶¶ 5-6; App. 183 at 110:5-10.

[17] JFP is a North Dakota general partnership now ordered to dissolve. App. 99-156.

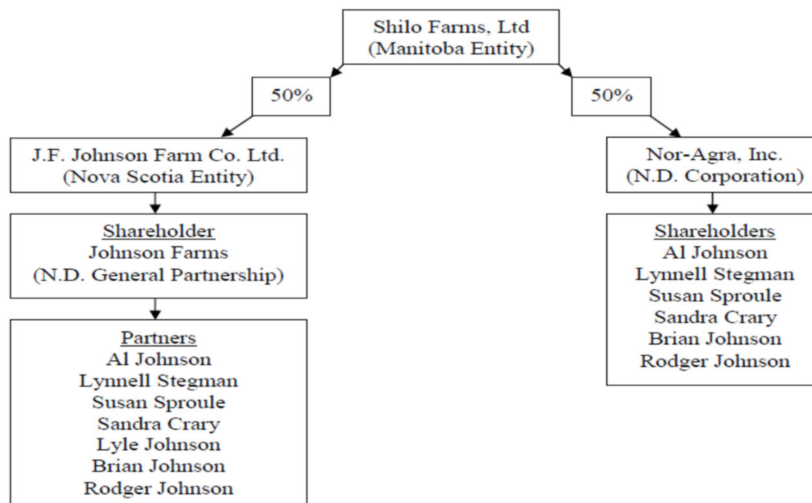
[18] Defendants, Brian Johnson ("Brian"), Rodger Johnson ("Rodger"), Lyle Johnson ("Lyle"), and Al Johnson ("Al"), will remain as JFP partners and seek to preserve the partnership.

[19] Shilo is a Manitoba corporation with its business operations located entirely in Canada. App. 105-106, ¶¶ 22 and 23. Shilo is owned by Nor-Agra and J.F. Johnson Farms Co. LTD ("J.F. Johnson Farms"). Id. ¶ 22.

[20] J.F. Johnson Farms is a Nova Scotia corporation. Id. It owns 50 percent of Shilo. Id. J.F. Johnson Farms is, in turn, wholly owned by JFP. Id.

[21] Nor-Agra is a North Dakota corporation. Id. Nor-Agra owns 50 percent of Shilo. Id. Nor-Agra was not ordered to dissolve, but the ordered buyout encompasses Plaintiffs' indirect ownership of Shilo through Nor-Agra. App. 99-156.

[22] The Shilo ownership is illustrated in the following diagram:



[23] Plaintiffs have a 33.75 percent indirect ownership interest in Shilo through Nor-Agra and JFP combined. App. 106, ¶ 22.

II. THE PARTNERSHIP AND PARTNERSHIP AGREEMENT.

[24] JFP was formed on April 1, 1974, by Lyle and Bert Johnson. See App. 22-29 (the "Partnership Agreement"). Their children were added as partners over time. App. 100-101, ¶¶ 5 and 9.

[25] Bert passed away in July 2014. App. 102, ¶ 12. Bert's children – Lynnell, Al, Sandra, and Susan – inherited his interests. Id. His four children then dissociated from the partnership. App. 39-40, ¶¶ 5-6; App. 183 at 110:5-10. The fact of the dissociation in 2014 was accurately acknowledged at trial. See App. 183 at 110:5-10.

[26] Al later elected to continue being a partner in JFP and shareholder in Nor-Agra. Al largely operated JFP with Rodger. App. 186 at 53:10-21.

[27] Susan, Sandra, and Lynnell commenced this action in 2016. App. 30-31. They identified themselves as the "dissociated partners." App. 39, ¶ 5. They sought dissolution or "winding up of the partnership business." App. 43, ¶ 24. Although using the term dissolution in their Complaint, Plaintiffs sought a buyout of their partnership and shareholder interests related to Shilo. Id. They joined Nor-Agra in this action to accomplish that goal. Doc. 215. They did not seek to have Shilo's operations end, have a distribution of Shilo assets, or otherwise trigger capital gains related to Shilo.

[28] Several provisions of the Partnership Agreement provide for continuity of JFP should a partner leave or die. Paragraph 11, "Withdrawal of Partner," notes "[n]o partner shall withdraw from the partnership during the term of this agreement" except by death, termination of the partnership, or the transfer of a partner's interest to another partner. App. 24, ¶ 11.

[29] Paragraph 12, titled "Death of Partner," states, "[o]n the death of Bert Johnson, Lyle Johnson, or minor children, the operation of the partnership business shall

be continued by the surviving partners and the decedent's legal representatives." Id. ¶ 12 (emphasis added). The paragraph does not provide for termination of JFP unless "all children should die." Id.

[30] Paragraph 13, titled "Sale, Assignment, or Transfer of Interest," prohibits a partner from selling or assigning their interest "without prior written consent of all partners." Id. ¶ 13.

[31] Paragraph 15, titled "Termination," the Partnership Agreement states "[t]he partnership may be terminated by operation of law, by unanimous consent of all partners, or by election of surviving partners after the death of one partner." Id. ¶ 15 (emphasis added). If the partnership is terminated, then "[a]ll assets shall be liquidated on termination, and all obligations shall be discharged," and net proceeds distributed to partners. Id.

[32] Plaintiffs presented no evidence of shareholder/partner oppression by Defendants, their brother Al, or their father Bert. App. 39-44.

III. THE 2017 APPRAISALS AND ACKNOWLEDGED SHILO TAX BURDENS.

[33] The value of Shilo to the indirect, North Dakota owners is reduced by two acknowledged tax burdens. App. 195-207; see also App. 68-80 and App. 93-98.

[34] Shilo's real estate was appraised by Keystone Appraisals as of May 26, 2017. Doc. 440. Shilo's machinery and equipment were appraised by Dennis Biliske in November, 2017. App. 49-59.

[35] The value of those assets, along with other liquid assets, totaled $40,660,802 (CAD). App. 68-80 and App 93-98. Plaintiffs accepted that total value for Shilo assets. App. 68-80. Plaintiffs also asked their Canadian accountant to accept the

$40,660,802 (CAD) as accurate. App. 71-75. The 2017 appraisals coincided with the 2017 AIP. See App. 81-88; App. 49-59; App. 81-88.

[36] By letter dated December 1, 2017, Shilo's longtime Canadian accountants, MNP, also accepted the fair market value of Shilo to be $40,660,802 (CAD). App. 93-98. MNP subtracted Shilo's corporate debt, to obtain what MNP called the "Net Fair Market Value" at $36,213,556 (CAD). App. 95. That value included all assets.

[37] MNP calculated a capital gains tax in the amount of $4,926,751 (CAD) that would be owing upon a sale or liquidation. App. 94. MNP next calculated the dividend taxes that would be paid in delivering the remaining $31,286,805 (CAD) to the North Dakota partners of JFP and shareholders of Nor-Agra. That dividend tax was $7,746,260 (CAD). App. 95. MNP thus calculated that the total amount available to the North Dakota owners would be $23,840,544 (CAD) – the net assets less the taxes. Id.

[38] Plaintiffs have a 33.75 percent interest in Shilo through JFP and Nor-Agra. App. 105-106, ¶ 22. Accordingly, the total actually available to Plaintiffs based upon their indirect ownership in 2017 was $8,046,183.60 (CAD). Considering the exchange rate, the Court awarded them a buyout of well over double that amount – $15,959,545 (USD). App. 142, ¶ 69; App. 154, ¶ 98.

[39] Plaintiffs' Canadian accountant, Grant Thornton, did not dispute the work done by MNP. Rather, Grant Thornton concluded that tax burdens need not be considered because no sale of Shilo was imminent. App. 73. Grant Thornton relied upon a legal opinion regarding Canadian law provided by Taylor McCaffrey. Id. Neither testified at trial.

[40] Harris Widmer, JFP's longtime accountant, further confirmed that Shilo's "built-in" tax burdens would reduce the funds available to the indirect owners in North Dakota. App. 195-207.

[41] The Canadian tax burdens were shared by seven partners/shareholders. Shilo was not liquidated. Rather, Plaintiffs were awarded a cash buyout of their JFP and Nor-Agra interests in U.S. dollars. All of the calculated Shilo tax burdens will now fall to the four remaining partners/shareholders.

[42] In late 2017, around the same time the Shilo equipment appraisal was being completed, Plaintiffs' counsel drafted the AIP. App. 81-88; App. 193-194 at 78:17-79:4; App. 179 at 54:16-19. The document went through several iterations, which Plaintiffs' counsel described as a process by which, "the parties had made an agreement or tried to agree, I guess." App. 176 at 50:1-8; App. 178 at 52:11-13.

[43] Plaintiffs submitted an unsigned version of the document to the Court in late 2017 as an attachment to a reply brief. App. 177 at 51:1-18; App. 179 at 54:3-15. Defendants never signed, and did not agree to the AIP. App. 187-188 at 85:23-86:21; App. 184 at 145:7-11.

[44] What is clear from the AIP is that both parties contemplated a 2017 buyout of the Shilo interests. By letter dated March 7, 2018, Plaintiffs proposed such a buyout based upon the 2017 appraisals and the MNP analysis. App. 68-80. No partner on either side – then or now – wanted to trigger and pay taxes.

[45] Plaintiffs' March 7th letter accepted the gross 2017 value of $40,660,802 (CAD), less $4,447,246 (CAD) of debt, leading to a net fair market value of $36,213,556 (CAD). App. 68. Plaintiffs' total proposed fair value buyout was for $12,222,075 (CAD)

(their 33.75% x $36,213,556). App. 69. Plaintiffs refused to consider the taxes. App. 68-70.

[46] To pay the now ordered $15,949,545 (USD) buyout of the Shilo interests with Shilo assets, the remaining partners would need to liquidate well over $20 million (USD) of those assets, pay capital gains taxes, issue a dividend to JFP and Nor-Agra, and pay the dividend tax in order to generate the needed funds. The exiting partners would get a cash payment and avoid those taxes. App. 93-98.

[47] The net value of Shilo, after adjusting for taxes as calculated by MNP, was $23,840,544 (CAD). App. 95. Accordingly, the appropriate dissociation payment to Plaintiffs in 2017 was as follows, with prejudgment interest to be added:

Shilo Value After Debt and Capital Gains Tax $23,840,544 (CAD)	
Nor-Agra (50%)	Johnson Farms (50%)
$11,920,272	$11,920,272
x	X
Plaintiffs' 30% interest	Plaintiff's 37.5% interest
= $3,576,081.60	= $4,470,102
Total $8,046,183.60 (CAD)	

[48] Plaintiffs later obtained markedly higher appraisals in 2019. Docs. 391 and 392. The 2019 appraisals considered a myriad of events that occurred well after dissociation, the commencement of this action, the AIP, and the agreed upon 2017 appraisals. Id. The 2019 appraisals address new assets, supposed increases in the value of farmland, and new business arrangements that did not exist in 2014 or 2017. Id.

[49] The 2019 appraisals valued the Shilo land at $45,448,000 (CAD), and equipment at $8,900,000 (CAD). Id. Combined with other assets, the total was

$59,072,389 (CAD) – a claimed $18 million (CAD) in just two years. If the 2019 appraisals are accurate and accepted, the two layers of Canadian tax left to the remaining partners is far greater than the $12,373,260 (CAD), as calculated by MNP in 2017. App. 93-98.

[50] The Court adopted the 2019 appraisals and awarded the Plaintiffs a buyout of $15,949,545 (USD), without considering any taxes. App. 154, ¶ 98. With the conversion rate, that is approximately $6.2 million (USD) more than the $12,222,075 (CAD) Plaintiffs agreed was appropriate in 2017, without considering taxes. App. 68-80.

[51] The Court coupled the buyout payment with an order that JFP, but not Nor-Agra be dissolved. App. 154, ¶ 94. As discussed below, that dissolution triggers the capital gains taxes the Court declined to consider.

IV. THE AGREEMENT IN PRINCIPLE.

[52] The AIP was never signed. <u>See</u> App. 81-88. Plaintiffs attempted to enforce its terms to compel a distribution of North Dakota land in 2017. Doc. 14. Defendants repeatedly objected. App. 163-165; App. 167; <u>see also</u> Docs. 23 and 39. The Court chose to proceed under the agreement for purposes of compelling a 2017 land distribution. App. 32-34.

[53] Defendants continued to object to the Court's reliance on the AIP thereafter. App. 169 at 5:4-11; App. 171 at 18:11-23; App. 173 at 25:1-15; App. 187-188 at 85:25-87:20. The Court continued to use the AIP as a basis for resolving crop reconciliation issues and ultimately in ordering the dissolution of JFP. App. 99-156.

[54] Despite using the AIP as the guidepost for the 2017 land distribution and crop reconciliation, the Court refused to use 2017 appraisals and MNP tax calculations from 2017 regarding Shilo. <u>Id.</u> Nothing else existed at that time. App. 81-88.

ARGUMENT

[55] The preliminary rulings and final judgment for dissolution in this case are permeated by several legal errors resulting in a Shilo buyout for Plaintiffs that is unfair and highly prejudicial to the remaining partners. Those errors are as follows:

1) Refusing to consider known, undisputed, multi-million dollar tax burdens related to Shilo now triggered by the Court's order that will be borne solely by the remaining partners.

2) Relying on inadmissible hearsay opinions regarding alleged Canadian law, rather than applying well-established law from throughout the U.S. holding that tax burdens must be considered when ordering ownership buyouts.

3) Ordering a dissolution that triggered the known tax burdens, rather than a dissociation and buyout that would have at least postponed the millions in taxes now borne by the remaining partners.

4) Mixing a dissociation remedy – the $15.9 million (USD) buyout – with an ordered dissolution of JFP that would normally result in the distribution of partnership assets as the entity ceases to exist. Those distinct concepts and remedies are incompatible and mutually exclusive.

5) Ordering a dissolution by relying on waivable and inapposite statutory provisions that were directly contrary to the Partnership Agreement and the RUPA.

6) Relying on the AIP when it favored the Plaintiffs' interests, but not following the AIP regarding Shilo where the parties specifically agreed that 2017, valuations and tax calculations would be controlling.

7) Rejecting 2017 appraisals regarding Shilo, as contemplated by the AIP, as initially accepted and acknowledged as accurate by both parties, and as appropriate under U.S. partnership and corporate law.

8) Relying on early statements of prior counsel regarding dissolution made at status and scheduling conferences, rather than factual findings and case law.

9) Failing to consider Al Johnson's unique status as a remaining partner who is not obligated to make any buyout or reconciliation payments, but is being burdened by the two layers of taxation associated with Shilo; and Lyle's unique status as not being a shareholder in Nor-Agra.

[56] As a result, Plaintiffs are exiting Shilo with an inflated valuation, while leaving the substantial cross-border tax burdens to the remaining partners. Such a result is not in accord with compelling and unanimous U.S. legal authority.

I. STANDARD OF REVIEW.

[57] All of the legal errors set forth above are reviewed *de novo* on appeal. See e.g., Traynor Law Firm, PC v. State, 2020 ND 108, ¶ 4, 943 N.W.2d 320 ("Questions of law are reviewed de novo on the entire record"); see also Bladow v. Bladow, 2005 ND 142, ¶ 9, 701 N.W.2d 903.

II. THE COURT WAS REQUIRED TO CONSIDER TAXES IN SETTING PLAINTIFFS' BUYOUT.

A. American Law Required the Court to Consider Taxes, and the Court Erred by Applying Canadian Law Presented Through a Hearsay Opinion.

[58] This case involved two North Dakota entities and seven North Dakota owners in a North Dakota court. U.S. and North Dakota law should have been controlling. See Nodak Mut. Ins. Co. v. Wamsley, 2004 ND 174, ¶ 9, 687 N.W.2d 226.

[59] The Court, however, ignored without discussion extensive authority from across the U.S. construing the same uniform partnership and corporate acts adopted in North Dakota. The Court chose to apply supposed Canadian law regarding the need to consider known and substantial tax liabilities – presented solely through inadmissible hearsay.

[60] By applying supposed Canadian law as a means to ignore two known and acknowledged layers of tax – capital gains tax and a dividend tax – the Court improperly favored the Plaintiffs to the substantial detriment of all remaining partners. In the real world, none of the North Dakota owners could access Shilo assets or funds without

paying both layers of Canadian tax. The Court's ruling improperly and unfairly changes that reality. Seven owners shared those tax burdens prior to the Court's order – the four remaining parties are left to share them now.

[61] Courts throughout the U.S. consistently and with unanimity consider tax burdens. Failing to do so creates a wholly artificial economic paradigm, necessarily benefiting the departing partners. A simple example makes the point. Assume JFP and Nor-Agra directly held substantially appreciated assets as Shilo did. The value of those entities to their owners is not the market value of the appreciated assets. The value has to take into consideration the taxes that will be paid when those assets are sold.

[62] That very situation was presented in this case when highly appreciated North Dakota farmland was distributed in 2017. Both parties received their distribution of land with the original basis and the corresponding capital gains burden. Neither party could plausibly suggest that they should somehow receive the full value of that land in cash, while leaving the known tax burdens to others. That is, however, the result Plaintiffs obtained regarding Shilo.

[63] Defendants' position is worse yet. The indirect owners living in North Dakota face the obvious capital gains tax burden. Moreover, in order to then get money from Shilo in Canada to the North Dakota owners, a second layer of Canadian dividend tax has to be paid. Thus, for the four remaining JFP and Nor-Agra owners to use Shilo assets to buyout Plaintiffs' Shilo interest – or for other purposes – assets would have to be sold in Canada, triggering capital gains taxes. Then cash would have to be distributed across the border, triggering a dividend tax. Even if Shilo assets are not used, all of the

associated capital gains and dividend taxes are left to the remaining owners to be dealt with at some point, but not the exiting owners.

[64] Worse still, the dissolution of JFP serves to trigger those capital gains. See Canadian Income Tax Act §§ 98(2) and 102(1). Thus, the Court both ignored and triggered substantial taxes in the same order. The triggered taxes cannot possibly be considered too speculative under U.S. law, or even Canadian law.

[65] Every JFP partner and Nor-Agra shareholder would like to obtain the full value of Shilo without paying taxes. The Court provided the exiting partners with that benefit, leaving the entirety of the triggered tax burdens to the remaining partners. The Court's ruling would provide an incentive for North Dakota partners and shareholders to exit entities on a tax-favored basis, while leaving their former co-owners with the full tax burden.

[66] To reach such a counter-intuitive result, the Court first ignored without comment or distinction the law as set forth throughout the U.S. That legal error should not stand as the law in North Dakota, setting it apart from the rest of the country regarding matters of partnership and corporate governance under uniform acts.

[67] Regarding the law in this country, the Iowa Supreme Court has explained, "[d]iscounting capital gains tax liability is an accepted part of an asset-based methodology for valuation and has been approved by numerous federal courts." Daniels v. Holtz, 794 N.W.2d 813, 819 (Iowa 2010). Specifically, the Iowa Supreme Court found that, although, "there was no evidence of an impending sale … a hypothetical buyer of stock would take into account any tax liabilities of the corporation." Id. That legal reasoning is true of Shilo as well. A sale of Shilo's assets will trigger capital gains.

Equally as certain, any buyer of Shilo's stock would discount the purchase price to account for those capital gains. App. 197-205.

[68] In an exhaustive opinion explaining the history of tax issues as it relates to valuation, the 11th Circuit explained that until the mid-1990's, courts generally agreed with the Court – that future capital gains (or other relevant taxes) were too speculative to be considered when determining value. Estate of Jelke v. Comm'r, 507 F.3d 1317, 1325 (11th Cir. 2007).

[69] Beginning in 1998, however, and continuing to the present day, courts have uniformly taken the opposite approach, and find "there is simply no evidence to dispute that a hypothetical willing buyer today would likely pay less for the shares of a corporation because of a buyer's inability to eliminate the contingent tax liability," regardless of whether a liquidation or sale of corporate assets was imminent or contemplated. Id. at 1326 (quoting Eisenberg v. Comm'r, 155 F.3d 50, 57 (2d Cir. 1998)).

[70] Indeed, federal courts of appeal have repeatedly found a failure to discount for baked-in tax liability to be reversable error. See, e.g., Eisenberg v. Comm'r, 155 F.3d at 57; Estate of Welch v. Comm'r, (unpublished) 208 F.3d 213 (6th Cir. 2000); Estate of Jameson v. Comm'r, 267 F.3d 366 (5th Cir. 2001).

[71] Benjamin Franklin's famous statement, "[i]n this world nothing can be said to be certain, except death and taxes"[1] is true here. "The rational economic actor or willing buyer would have to take into account the consequences of the unavoidable,

[1] Letter of Nov. 13, 1789, to Jean Baptiste Le Roy, in 10 The Writings of Benjamin Franklin 69 (A. Smyth ed. 1907).

substantial built-in tax liability on the property. The economic reality [is] that any reasonable willing buyer would consider the company's low basis in the investment property in determining a purchase price." Estate of Jelke, 507 F.3d at 1327-28 (citing Estate of Jameson, 267 F.3d at 371-72) (emphasis in the original).

[72] It is also the clear consensus of U.S. courts that the simplest approach to achieve this logical outcome is to assume "all assets are sold in liquidation on the valuation date, and 100% of the built-in capital gains tax liability is offset against the fair market value of the stock, dollar-for-dollar." Id. at 1332. This approach "settles the issue as a matter of law, and provides certainty that is typically missing in the valuation arena," stopping "grossly inequitable results from occurring," and preventing courts from having to "assum[e] the role of arbitrary business consultants." Id. at 1333.

[73] That appropriate liquidation or sale approach is precisely what MNP accomplished in its December 2017 analysis. MNP assumed all assets would be liquidated as of the 2017, and MNP accepted the appraised values from agreed upon and highly respected appraisal experts. MNP then estimated the tax burden and cash available:

FMV of Assets	$40,660,802
Less Shilo Debt	($4,447,296)
Less Corporate Tax on Sale	($4,926,751)
Combined Canadian and U.S. Tax on Johnson Farms Dividend	($3,337,797)
Combined Canadian and U.S. Tax on Nor-Agra Dividend	($4,108,463)
Cash Available (CAD) After Tax	$23,840,544

[74] Those tax calculations are simply based upon the Canadian Income Tax Act and the convention between Canada and the U.S. with respect to taxes on income and

on capital gains dated September 26, 1980, as amended. Neither Plaintiffs nor their Canadian professionals contested that such taxes – totaling $12,373,011 (CAD) – would have to be paid at some point. App. 68-80. They simply took the position, contrary to the law in this country, that because no sale was imminent, all taxes could be ignored. Id.

[75] Plaintiffs' Canadian professionals did not consider that the Court might order dissolution along with a fair value buyout. That dissolution triggered the very tax consequences they claimed to be too speculative under Canadian law.

[76] The Court's failure to use 2017 appraisals and the MNP tax analysis based upon those appraisals compounded the legal error. The AIP relied upon by the Court for other purposes plainly contemplated that MNP would provide calculations regarding Shilo. Moreover, the 2017 appraisals and the work product from MNP were expressly accepted as accurate by both Plaintiffs and Defendants. App. 68-80. Plaintiffs simply did not want to take into account the tax burdens detailed by MNP. Id. As set forth in Section IV below, the Court also ignored statutory and case law which preclude the use of the 2019 appraisals in setting a buyout level.

B. The Court Erred by Relying on Supposed Canadian Law as Presented in Hearsay Testimony.

[77] Admission of inadmissible evidence is reversible error when, "the incompetent evidence induced the court to make an essential finding which would not otherwise have been made." In re J.S.L., 2009 ND 43, ¶ 25, 763 N.W.2d 783 (internal quote omitted).

[78] The Court explained that it agreed with the view espoused in two letters prepared by Plaintiffs' retained Canadian professionals during the course of litigation. One was written by the accounting firm Grant Thornton, and the other was a legal

opinion on Canadian law prepared by Taylor McCaffrey, a Canadian law firm. App. 68-80; App. 141-142, ¶ 68. At trial, Plaintiffs did not provide expert testimony from either. Defendants properly objected that the letters were inadmissible as hearsay – the Taylor McCaffrey letter as traditional hearsay and the Grant Thornton letter as double hearsay. Plaintiffs argued that the letters should be admitted for "completeness" – which is not a hearsay exception under the North Dakota Rules of Evidence. The Court admitted the exhibit containing the letters anyway. App. 192 at 61:21-22.

[79] Hearsay includes written assertions made by a declarant outside of trial testimony, offered for the truth of the matter asserted. N.D. R. Ev. 801. Expert reports, are generally excluded from admission as hearsay. See Int. of Skorick, 2020 ND 162, ¶ 7, 946 N.W.2d 513 (explaining statutory exceptions for certain expert reports in criminal cases.). Documents prepared for a litigation are inadmissible as business records, and while expert testimony may rely on inadmissible material, that material itself is, by definition, inadmissible. United States v. Melton, 870 F.3d 830, 840 (8th Cir. 2017) (no business record exception); Lamb Eng'g & Const. Co. v. Nebraska Pub. Power Dist., 103 F.3d 1422, 1432 n. 5 (8th Cir. 1997) (same).

[80] The opinions were also not admissible under the residual hearsay exception because there was other, better evidence available on these points. In re J.S.L., 2009 ND 43, ¶ 23, 763 N.W.2d 783. Indeed, there is no exception for either letter.

[81] The hearsay letters provided the only information about Canadian law. The Court followed Canadian law based on the letters. App. 141-144, ¶¶ 68-69. The essential legal ruling could not have been made but for the inadmissible evidence. Its

admission, and the Court's reliance thereon, constitutes reversible error. In re J.S.L., 2009 ND 43, ¶ 25, 763 N.W.2d 783.

[82] Finally, under Rule 44.1 of the North Dakota Rule of Civil Procedure, "[a] party who intends to raise an issue about a foreign country's law must give notice by a pleading or other writing." N.D.R.Civ.P. 44.1. Plaintiffs at no point provided such notice – not in their Complaint, not in their pre-trial statement, and not at trial. "In the absence of sufficient proof to establish with reasonable certainty the substance of the foreign principles of law, the modern view is that the law of the forum should be applied." Malin Int'l Ship Repair & Drydock, Inc. v. Oceanografia, S.A. de C.V., 817 F.3d 241, 247 (5th Cir. 2016) (referring to the identical provision in the Federal Rules of Civil Procedure).

[83] Thus, the Court rejected well-established U.S. law and corresponding tax calculations from MNP and chose instead to apply supposed Canadian law set forth in hearsay letters. That is legal error. Moreover, the Canadian professionals presumably would have conceded that taxes actually triggered are no longer speculative.

III. THE COURT ERRED BY REQUIRING DISSOLUTION, RATHER THAN ALLOWING FOR DISSOCIATION, AND THEN BY COMBINING DISSOLUTION AND DISSOCIATION REMEDIES.

[84] Dissociation contemplates owners exiting a surviving partnership and being paid fair value. Dissolution contemplates the termination of the partnership itself, debts being paid, and the assets being distributed to the owners. The concepts and remedies are fundamentally incompatible. In an effort to proceed with dissolution, but still provide Plaintiffs with a full value buyout, the Court ordered that both remedies be applied here, but only with respect to JFP. Nor-Agra was not ordered to dissolve. The failure to order that Nor-Agra be dissolved, demonstrates there was no need to dissolve JFP.

[85] The conflicting results are legally untenable. Dissolution of JFP serves to trigger the capital gains. When the remaining owners bring Shilo funds across the border to pay the ordered buyout, they will incur a dividend tax. The exiting partners will simply get a payment of over $15.9 million (USD) leaving the remaining owners to face the resulting tax burdens.

[86] Dissolution of JFP, rather than a simple dissociation, also served as the basis for the Court to use the later 2019 appraisals. The mixing of remedies benefited Plaintiffs and harmed Defendants in every possible way. App. 99-156.

[87] By the time of trial, Shilo assets comprised well over 90 percent of the remaining JFP value. Both parties understood that Shilo would continue to operate. Plaintiffs wanted to be paid fair value, but certainly did not want Shilo to be liquidated or to have a distribution of its assets that would trigger taxes. The Court-ordered dissolution allowed it to use 2019 appraisals to markedly enhance the value of Shilo. The Court-ordered buyout or dissociation allowed Plaintiffs to get the highly favored tax treatment they sought. Dissolution was neither required nor proper. Combining remedies was further error.

[88] In that regard, the Court correctly found that the Plaintiffs had dissociated from JFP in 2014. App. 102, ¶ 13. Plaintiffs pleaded that they were dissociated partners. App. 39, ¶ 5. Indeed, at all times from the Plaintiffs' initial dissociation in 2014, they expressed their desire to leave the partnership. App. 39-40, ¶¶ 5-6; App. 183 at 110:5-10.

[89] The Court also accurately noted that numerous paragraphs in the Partnership Agreement require continuation over dissolution of the partnership, even in the face of a partner's death or desire to withdraw. App. 100-101, ¶¶ 6-8.

[90] The Court held that despite that clear intent "the partnership agreement cannot violate the statutory rights of partners to dissolve an existing arrangement." The Court cited to N.D.C.C. §§ 45-18-02(1) and 45-13-03(2)(f). App. 150, ¶ 80. Neither section (nor any other section of North Dakota partnership law) provides a right to force dissolution – much less such a right in the face of a partnership agreement requiring continuation.

[91] The Court appears to have interpreted the statute to mean that because a JFP partner died (and thus dissociated from the partnership), dissolution was required under Section 45-20-01 of the North Dakota Century Code. That default provision, however, does not apply in this case, because the Partnership Agreement specifically provides for the continuation of the partnership in the event of a partner's death. Section 45-20-01 is not one of the nonwaivable provisions set forth in Chapter 15-13. Accordingly, the Partnership Agreement is controlling, not the statutory section upon which the Court relied.

[92] North Dakota case law is in accord. Jones v. Jones, 310 N.W.2d 753 (N.D. 1981) (agreement between parties is controlling as to features of partnership and is "law of the partnership"). Liechty v. Liechty, 231 N.W.2d 729 (N.D. 1975) (the partnership agreement in many respects is the law of partnership).

[93] Moreover, nothing in North Dakota law prevents a partnership from limiting the abilities of partners to dissolve the partnership. Indeed, one of the main principles of RUPA – the basis of North Dakota's partnership law – is to "avoid[] unnecessary dissolutions of partnerships." Warnick v. Warnick, 76 P.3d 316, 321 (Wyo. 2003). See also Robertson v. Jacobs Cattle Co., 830 N.W.2d 191, 200 (Neb. 2013)

(discussing how RUPA, "sought to avoid mandatory dissolution of partnerships by making a partnership a distinct entity from its partners," and that unlike the UPA, RUPA "allows for the partnership to continue even with the departure of a member" because the entity is more than the sum of its parts).

[94] Default statutory provisions apply only as to specific issues and to the extent that the partnership agreement is silent. N.D.C.C. § 45-13-03(1). Indeed Section 45-13-03(2)(f) is one such non-waivable provision. That provision only provides, however, that the "the partnership agreement may not vary the power to dissociate as a partner." Again, the two distinct concepts cannot be mixed. Dissociation allows a partnership to continue with the remaining partners. Dissolution brings the entity to an end, often to the great detriment of the remaining partners as is the case here.

[95] Plaintiffs had a legal right to exit JFP and Nor-Agra and obtain a fair value buyout. Dissociation was the only proper course under the Partnership Agreement and RUPA in order to (1) allow the partnership to continue in operation, (2) avoid immediately triggering known tax burdens, and (3) allow the Plaintiffs to complete their exit at fair value. Indeed, that is exactly what is happening with respect to the Plaintiffs' shareholder interest in Nor-Agra. Ordering dissolution was both legal error and punitive given the tax burdens triggered by the dissolution that are now solely borne by the remaining partners.

IV. THE COURT ERRED IN USING SHILO APPRAISALS FROM 2019 INSTEAD OF 2017.

[96] Because disassociation, not dissolution, was appropriate, the 2017 valuations should have been used. The statutory dissociation provisions set the time of valuation of the partnership at the time of dissociation as follows:

> 1. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 45-20-01, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.
>
> 2. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection 2 of section 45-20-07 if, <u>on the date of dissociation</u>, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.
>
> 5. If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.

N.D.C.C. § 45-19-01 (emphasis added).

[97] By valuing a partner's interest at the time of dissociation, the statute allows an exiting partner to lock in the value of their share of the partnership. They will be protected against future partnership losses, which is equitable, given that they will no longer have any ability to influence partnership decisions. At the same time, the continuing partnership is protected from the dissociated partner obtaining a windfall from partnership gains after dissociation.

[98] North Dakota courts are loathe to award such windfalls. <u>See, e.g., Three Aces Properties LLC v. United Rentals (N. Am.), Inc.</u>, 2020 ND 258, 952 N.W.2d 64 (deviating from the standard damages award when it would result in a windfall to the injured party). There can be no question that if Defendants had mismanaged Shilo, or had a run of bad luck, Plaintiffs would have sought to use the 2017 appraisals. Because

Defendants had success in their management of the farm, Plaintiffs sought to capitalize on Defendants' efforts and reap a windfall.

[99] Courts around the country have routinely concluded that buyouts should be valued as of the time a partner exits (i.e. dissociates from) the partnership. See Purchase of Dissociated Partner's Interest, Rev. Uniform Partnership Act Section § 701 (2020-2021 ed.) ("Fluctuations in the value of partnership assets subsequent to the date of dissociation should not affect the amount of the buyout"); Brennan v. Brennan Assocs., 113 A.3d 957, 966 (Conn. 2015) ("[R]egardless of what happens to the value of the partnership's assets after the partner is dissociated, the amount for which the dissociated partner will be bought out remains unchanged"); R4 Properties v. Riffice, No. 3:09-CV-400 JCH, 2015 WL 3770920, at *2 (D. Conn. June 16, 2015) ("To the extent possible, the court's goal is to find the value that a willing seller and a willing buyer would have agreed to on the date of dissociation, not knowing with any certainty what the coming months would bring. Put simply: the court does its best to avoid hindsight bias").

[100] The same is true in the corporate setting. N.D.C.C. § 10-19.1-115(4)(a). Shareholders and partners are free to exit from their respective entities. Valuation is to be determined at the time of the exit or commencement of a legal action. Exiting owners are not prejudiced if their former co-owners make bad business decisions. They do not benefit if their former co-owners prosper.

[101] Here, Plaintiffs dissociated in 2014 and have, at all times since then, sought to exit the partnership and Nor-Agra. Moreover, they did not want Shilo assets sold or distributed, as that would trigger taxes. They wanted and obtained a cash buyout – a dissociation remedy.

[102] The parties were prepared to proceed with a buyout in 2017. The 2017 appraisals most accurately capture the valuation of Shilo, with appreciation, from the time of dissociation through 2017. Prejudgment interest from May, 2017, would then fully compensate the Plaintiffs going forward. That was and is the appropriate way to exit Plaintiffs from JFP and Nor-Agra.

[103] Moreover, the AIP often relied upon by the Court when it benefited Plaintiffs, plainly contemplated the use of 2017 appraisals and calculations to be provided by MNP. Nothing else existed in 2017 when Plaintiffs advanced the AIP as controlling and the Court accepted it as such. The AIP cannot properly be followed when it favors the Plaintiffs, and then be ignored when Plaintiffs would like enhanced benefits. N.D.C.C. § 9-07-06 ("The whole of a contract is to be taken together so as to give effect to every part if reasonably practical").

V. DISSOLUTION WAS NOT REQUIRED BECAUSE OF THE 2017 LAND DIVISION.

[104] On December 1, 2017, the Court, over Defendants' objection, entered an order directing the division of real property finding that "dissolution has been commenced" for JFP. App. 149, ¶ 78. In that order, the Court provided no explanation of its reasoning for its finding.

[105] The Court also made no findings of fact or explanation of law in its order. Instead, the Court simply stated that dissolution had commenced and that the land should be divided. The North Dakota Supreme Court has explained that, "a district court's findings must be sufficient to enable an appellate court to understand the factual determinations made by the court as a basis for its conclusions of law and judgment." Jelsing v. Peterson, 2007 ND 41, 729 N.W.2d 157, 165. When a district court fails to

include sufficient explanation of fact and law, the Supreme Court can, and does, reverse and/or remand for clarification. See, e.g., Viscito v. Christianson, 2015 ND 97, ¶ 31, 862 N.W.2d 777; State v. Fischer, 2007 ND 22, ¶ 16, 727 N.W.2d 750; State v. Nelson, 2015 ND 301, ¶ 11, 872 N.W.2d 613; Berge v. Berge, 2006 ND 46, ¶ 9, 710 N.W.2d 417; and Palmer v. Gentek Bldg. Prod., Inc., 2019 ND 306, ¶ 30, 936 N.W.2d 552.

[106] The unsigned and sharply disputed AIP was not a proper basis to proceed with dissolution. Moreover, North Dakota law is clear that a dissolution can be stopped at any time. N.D.C.C. § 45-20-02(2) ("before the winding up of the business is complete, all of the partners, including any dissociating partner other than a wrongfully dissociating party, may waive the right to have the partnership's business wound up and the partnership terminated"). Statements of counsel in 2017 did not compel dissolution in 2020.

[107] That is particularly true here as dissolving JFP and distributing JFP's remaining assets – the indirect ownership interests in Shilo– is incompatible with the remedy that Plaintiffs receive a full value buyout of those very same indirect interests.

VI. DISSOLUTION WAS NOT REQUIRED BY THE APRIL 2017 STATUS CONFERENCE OR OTHER STATUS CONFERENCES.

[108] In making its determination that JFP was to be dissolved, the Court also relied heavily on the 2017 Joint Statement of Counsel as to the Status of Litigation. App. 89-92. Courts around the country have explained that "statements of counsel and evidence produced at a pretrial status conference are not substitutes for a trial on the merits and do not permit the court to direct a verdict on its own motion." U.S. Fid. & Guar. Co. v. State Supply Co., 548 So. 2d 893, 893 (Fla. Dist. Ct. App. 1989). "[A] status conference is not an evidentiary hearing." Castrataro v. Urb., No. 99AP-219, 2000 WL

254315, at *4 (Ohio Ct. App. Mar. 7, 2000). Relying on preliminary statements at a status conference was error.

VII. THE COURT'S SELECTIVE RELIANCE ON THE UNSIGNED AND DISPUTED AIP WAS IMPROPER.

[109] The Court's heavy reliance on the AIP as a means to compel specific results with respect to Shilo and other issues was misplaced. App. 107-109, ¶¶ 24-27.

A. The Agreement was Not Enforceable.

[110] "The plaintiff, as the party bringing the action, has the burden of proof that there was a contract between the parties." Stewart Equip. Co. v. Hilling Const. Co., 175 N.W.2d 692, 696 (N.D. 1970). An agreement to negotiate or work something out in the future is not a binding contract. Bergquist-Walker Real Estate, Inc. v. William Clairmont, Inc., 353 N.W.2d 766, 772 (N.D. 1984).

[111] "Generally, an agreement to agree is unenforceable because its terms are so indefinite it fails to show a mutual intent to create an enforceable obligation." Stout v. Fisher Industries, Inc., 1999 ND 218, ¶ 12, 603 N.W.2d 52; see also § 70:95 Agreements to agree, 27 Williston on Contracts § 70:95 (4th ed.).

[112] Here, Plaintiffs' counsel drafted the AIP for the dissolution of JFP. App. 81-88; App. 193-194 at 78:17-79:4, App. 179 at 54:16-19. Ultimately, the Defendants chose to end negotiations. App. 187-189 at 85:25-87-20. Defendants never signed, and did not agree in principle to the document. App. 187-188 at 85:23-86:21.

[113] Neither Attorneys Turman nor Sillers, as counsel, could have accepted the agreement as they lacked the necessary authority to do so. N.D.C.C. § 27-13-02(2); Tostenson v. Ihland, 147 N.W.2d 104 (N.D. 1966). Mr. Turman also specifically advised

the Court again at the May 11, 2018, motion hearing that there was no agreement. App. 169 at 5:11.

B. Applying the Agreement Selectively Compounded the Error.

[114] The AIP provided as follows regarding Shilo:

> Johnson Farms owns all of JF Johnson Farms Co., a Nova Scotia unlimited liability entity, issued and outstanding common stock. JF Johnson Farms Co. owns fifty percent (50%) of the issued and outstanding Shilo Farms Ltd. Common stock and the other fifty percent (50%) of Shilo Farms Ltd. Common stock is owned by NorAgra, Inc. The Families agree that each Family will receive one-half of JF Johnson Farms Co. common stock.
>
> <u>The fair value of JF Johnson Farms Co. and Shilo Farms, Ltd. Has been determined by MNP, LLP without any discounts</u>.
>
> The Families have agreed that one Family should own all of the JF Johnson Farms Co. common stock and all of the Shilo Farms Ltd. Common stock.
>
> The Families further agree after the Families have agreed upon the fair value of the JF Johnson Farms Co. common stock and the fair value of the Shilo Farms Co. common stock (hereafter collectively "Stock"), one Family may purchase all of the Stock owned by the other Family. The decision to buy or sell the Stock will be made by the Bert Johnson Family.
>
> The amount to be paid by the purchaser of the Stock shall be based upon the exchange rate of the Canadian dollar as compared to the U.S. dollar.

App. 84 (emphasis added).

[115] Plainly, the AIP contemplated the use of 2017 appraisals and calculations to be presented by MNP, "without discounts." Nothing else existed in 2017 when Plaintiffs advanced the AIP as controlling.

[116] Plaintiffs later suggested, and the Court held, that the two-word phrase "without discounts" was meant to allow a tax-free exit. App. 144, ¶ 70. That does not follow from the plain language of the AIP, as a matter of economic reality, or as a matter of record evidence.

[117] Not a single word in the AIP references taxes or suggests that the Plaintiffs should obtain a tax-free buyout. No evidence suggests that such a remarkable result was even discussed. No evidence suggests that the Defendants ever agreed to ignore the Shilo tax burdens. Such a multi-million dollar concession would certainly require more than the phrase "without discounts."

[118] That phrase, at most, would suggest that there would be no discount for the Plaintiffs' minority interest. Indeed, MNP's calculations make it clear that no such discount was applied. Using the unsigned AIP and the phrase "without discounts" to conclude that the parties chose to ignore the millions in taxes outlined by MNP is a further legal error. That error is compounded by then rejecting the 2017 appraisals and the MNP calculations referenced in the AIP. Selectively following the AIP only at times is not permissible under North Dakota law. N.D.C.C. § 9-07-06.

VIII. THE COURT ERRED IN RESOLVING THE NORTH DAKOTA LAND DIVISION AND CROP RECONCILIATION BASED ON 2017 INFORMATION; BUT THEN GIVING PLAINTIFFS THE BENEFIT OF 2019 SHILO APPRAISALS.

[119] Defendants believe that the Court erred in requiring a 2017 distribution of the farmland based on a coin flip. The purported legal basis to compel such a process without delay was again the AIP. The Court similarly resolved crop reconciliation issues through year-end 2017, based on financial information for that year. Defendants strenuously disagree with the Court's findings, each of which favored Plaintiffs, but will not dispute those factual findings on appeal.

[120] Both of those major issues were resolved based on information related to 2017, as contemplated by the 2017 AIP. The Court, however, rejected agreed-upon 2017 appraisals and agreed-upon 2017 tax calculations for Shilo.

[121] The inconsistency is striking and constitutes legal error. When the AIP benefited the Plaintiffs, it was applied. When it did not, specifically when it came to issues regarding Shilo, the AIP was ignored.

[122] Moreover, the Court's stated reason for allowing the later appraisals finds no legal support. The Court concluded that because Shilo's retained earnings had increased from 2017 through 2019, the later appraisals were appropriate. That allows for the very hedging that other courts have consistently and appropriately rejected.

[123] The appropriate result, again under case law in the U.S. as cited above, was to use the 2017 appraisals and to award prejudgment interest based on those amounts. North Dakota should not stand alone regarding corporate and partnership matters governed by uniform laws.

IX. THE COURT ERRED IN ITS APPROACH TO DEFENDANTS AL AND LYLE JOHNSON.

[124] Al originally wanted to separate from JFP and Nor-Agra. He later decided to retain his ownership interest in both. As a remaining partner however, he was not required to pay his pro-rata share to the Plaintiffs regarding the 2017 crop reconciliation. He was not required to pay any portion of the Plaintiffs' buyout from Shilo and Nor-Agra. On the other hand, he will be severely and unfairly penalized by the taxes to be paid by all remaining partners relating to Shilo. Lyle is not a Nor-Agra shareholder, but is required to buyout interests in Shilo held through Nor-Agra. The Court's failure to consider and address both the benefits and burdens related to Al and Lyle is further error in arriving at an appropriate resolution.

CONCLUSION

[125] Appellants respectfully request that paragraphs 2, 6, 8, and 12(A)-(C) of the District Court's amended judgment be reversed, allowing for dissociation of the Plaintiffs from JFP and their exit from Nor-Agra, based on the 2017 appraisals of Shilo, considering the tax burdens. Given the complexity of this case and the issues presented on appeal, Appellants believe oral argument would be helpful to the Court.

CERTIFICATE OF COMPLIANCE

[126] The undersigned attorney certifies, pursuant to N.D.R.App.P. 32(e), that the Brief of Appellants Brian Johnson, Rodger Johnson, Lyle Johnson, New Partnership and Nor-Agra, Inc., consisting of thirty-seven (37) pages (counting this page) complies with the page limitation imposed by N.D.R.App.P. 32(a)(8)(A) for principal briefs.

Dated: November 9, 2021

/s/ Todd E. Zimmerman

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA
SUPREME COURT NO. 20210235

Susan Sproule, Sandra Crary, and Lynnell Stegman, Plaintiffs/Appellees, v. Brian Johnson, Rodger Johnson, Lyle Johnson, Al Johnson, New Partnership, and Nor-Agra, Inc., Defendants/Appellants.	)	**CERTIFICATE OF SERVICE**

[1] I certify that on November 15, 2021, the following documents:

Brief of Appellants (Oral Argument Requested)

Appendix of Appellants

were electronically filed with the North Dakota Supreme Court and served on the following:

Douglas A. Christensen
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[2] The same was also served via U.S. Mail on the following:

Al Johnson
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[3] The above was duly served in accordance with the provisions of the Rules of Civil Procedure.

Dated: November 15, 2021

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