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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Susan Sproule, Sandra Crary, and Lynnell Stegman, Plaintiffs/Appellees -vs- Brian Johnson, Rodger Johnson, Lyle Johnson, New Partnership, and Nor-Agra, Inc., Defendants/Appellants and Al Johnson, Defendant.	**SUPREME COURT NO. 20210235** GRAND FORKS COUNTY DISTRICT COURT No. 18-2017-CV-00031

APPEAL FROM AMENDED JUDGMENT ENTERED ON JUNE 29, 2021

THE HONORABLE DONALD HAGER
NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA

BRIEF OF PLAINTIFFS/APPELLEES

ORAL ARGUMENT REQUESTED

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STANDARD OF REVIEW

[¶1] Defendants erroneously seek to frame each alleged appellate issue as a legal error to justify the use of the *de novo* standard of review because this standard is generally more favorable to appellants. App. Br. [1], ¶ 57; see Travelers Indem. Co. v. Dingwell, 884 F.2d 629, 634 (1st Cir. 1989). However, the issues presented by Defendants are mixed issues of both law and fact.

[¶2] Therefore, while legal errors are reviewed *de novo* on appeal, "a clearly erroneous standard of review [is utilized] for questions of fact, [including a district court's findings on valuation of property], and an abuse of discretion standard of review for discretionary matters," including a district court's decision to admit evidence. Bertsch v. Bertsch, 2006 ND 31, ¶ 6, 710 N.W.2d 113; see also Puklich v. Puklich, 2019 ND 154, ¶ 8, 930 N.W.2d 593; Krueger v. Krueger, 2013 ND 245, ¶ 22, 840 N.W.2d 613.

STATEMENT OF THE CASE

[¶3] On October 3, 2016, Plaintiffs commenced this action for the dissolution of Johnson Farms and later filed two amended complaints to join additional defendants to allow for complete relief. D App[2] 36-41. Defendants timely filed an answer to the original and second amended complaint in which Defendants concede they "received notice of dissociation." D App 42-45. "No reference or counterclaim were made for dissociation pursuant to N.D.C.C. Section 45-19-01 rather than for dissolution. . . ." D App 103-104.

[¶4] Prior to a scheduled status conference the parties filed a Joint Statement of Counsel as to Status of Litigation in which the parties agreed "Johnson Farms, a North Dakota general partnership, should be dissolved, its activities wound-up, its debts and obligations

[1] App. Br. Refers to "Appellants' Brief."
[2] Reference to "P App' is to Plaintiffs' Appendix and "D App" is to Defendants' Appendix.

discharged and remaining assets should be distributed to the members of the Bert Johnson Family and the Lyle Johnson Family." D App 89. The parties specifically stated "Johnson Farms, a North Dakota general partnership, should be dissolved." Id.; D App 92 ("there is no dispute as to whether or not Johnson Farms should be dissolved"); P App 4, 3:6-11[3].

[¶5] On November 14, 2017, in support of a motion for the division of farm real property, Plaintiffs filed a document entitled "Agreement in Principal for the Dissolution of Johnson Farms" which further outlined the Joint Statement of Counsel agreed to for the dissolution of Johnson Farms. D App 81-87.

[¶6] On November 16, 2017, at the hearing on Plaintiffs' motion for the division of the Johnson Farms farm real property, counsel for Defendants argued there was no agreement because "no agreement has ever been signed, so [the parties] don't have a true contract." P App 6, 31:12-14. After further questing by the district court, counsel for Defendants admitted to the existence of the "Agreement in Principal, and [that the parties] are sticking to it." P App 6-7, 31:9-32:15. As the hearing concluded, counsel for Defendants asked the district court to give the Agreement in Principal "an opportunity to work the way it was intended." P App 8, 39:3-5.

[¶7] On December 1, 2017, the district court granted Plaintiffs' motion for the distribution of the Johnson Farms farm real property. D App 32-34. In doing so, the district court held this was a proceeding for the dissolution of Johnson Farms, brought by Plaintiffs as dissociated partners, pursuant to N.D.C.C. ch. 45-20. D App 32. The district court further held the "parties have agreed, through their attorneys, to a Joint Statement of

[3] Reference to the relevant transcripts will be identified by the page in the appendix followed by reference to the text of the transcript in the following format: page: line.

Counsel as to the Status of Litigation" which would control the dissolution of Johnson Farms. D App 32-33. Defendants filed a motion for relief from the order which the district court treated as "a request for an extension of time" for the division of the farm real property. D App 36. Ultimately, the district court's decision was "to move the parties towards dissolution, without granting Lyle [Johnson] the added leverage he sought to negotiate a more favorable division of Shilo for his benefit by using Johnson Farms land as barter on Shilo." D App 110-111.

[¶8] The district court determined "[t]he protracted delay in the litigation by the Defendants appears to be planned to build up Shilo at the Plaintiffs' expense." D App 145-146. After extensive motion practice, the remaining matters were tried before the Honorable District Court Judge Donald Hager over the course of six days. Following the trial, the parties were permitted to file post-trial briefs and responses to the opposing parties' post-trial brief. See Court Doc. 454, 457, 461, 464.

[¶9] On April 1, 2021, the district court issued its Finding of Fact, Conclusions of Law, and Order for Judgment. D App 96-153.

STATEMENT OF FACTS

[¶10] Johnson Farms, a North Dakota general partnership, began operation on January 1, 1959. D App 100. On April 1, 1974, Bert Johnson and Lyle Johnson executed a partnership agreement wherein a percentage interest was transferred to Bert's children, being Susan Sproule, Sandra Crary, Lynnell Stegman, and Al Johnson, and to Lyle's children, being Brian Johnson and Rodger Johnson. Id. Prior to Bert's death, a number of addendums were executed effecting the transfer of additional percent interest to the children of Bert and Lyle. D App 100-101.

[¶11] On July 6, 2014, Bert died and his children inherited his percent interest in Johnson Farms. D App 102.

[¶12] On September 8, 2014, pursuant to N.D.C.C. § 45-18-01(1), Bert's children, four (4) of the seven (7) remaining partners of Johnson Farms gave written notice of dissociation to the three (3) remaining partners of Johnson Farms. D App 102-103.

[¶13] In January 2016, without filing a claim in Bert's estate, a demand was made that Bert's children pay Lyle a sum of $1.2 million which was agreed to as part of the Agreement in Principal. Id. While there was no factual or legal support for this demand, Plaintiffs did not "contest its validity or ransom nature" of the demand. Id.

[¶14] In their answer to the second amended complaint, Defendants admit they received "notice of dissociation, and further admitted the personal Defendants and Al were operating the New Partnership as a continuation of Johnson Farms Partnership." D App 104-105 (emphasis added).

[¶15] Johnson Farms and the individual parties are involved in a number of related entities. D App 105-107. The district court identified the parties' ownership interests and the related nature of these entities, with the most significant being Shilo. Id. Shilo is a successful farming operation in Canada, located within 25 minutes of Brandon, Manitoba. D App 106. Shilo owns 76 parcels of land totaling 11,184.31 acres of farmland, of which approximately 10,500 acres are cultivated, with 8,770 acres being irrigated. Id. The farmland owned by Shilo is conveniently located within five (5) miles of Shilo's building site and within twenty-five (25) to seventy-five (75) miles of processing plants. Id. Al Johnson and Rodger Johnson were paid combined management fees from Shilo of

$1,578,000 (Canadian dollars "CAD") for 2017, 2018 and 2019, despite Shilo having an identified manager that was not Al Johnson or Rodger Johnson. Id.

[¶16] In determining the value of Shilo, the district court made the factual findings that Defendants "used Plaintiffs' income shares [attributed to Shilo], after Plaintiffs paid tax on them, to greatly increase the Defendants' own equity in Shilo" because Plaintiffs "were kept on as indirect owners [of Shilo], to their detriment, rather than the Defendants buying their shares earlier and discontinue allocating Shilo's income to the Plaintiffs." D App 145-146. Defendants' "protracted delay [in the purchase of Plaintiffs' interest in Shilo] . . . appears to be planned to build up Shilo at the Plaintiffs' expense, but [then] paying the Plaintiffs based on an earlier, less profitable and less valuable timeline which would have reflected a loss from the operations." Id. "Defendants refused to cooperate with the Johnson Farms land division . . . in order to strengthen their position . . ., much like Lyle's $1,200,000 demand for an undefined claim" from Bert's estate. Id. The district court used the 2019 valuation of Shilo because "Plaintiffs continued to contribute, and pay tax, on undistributed income that resulted in the growth and increased productivity of Shilo." Id.

[¶17] The district court concluded "Shilo's total value is $59,072,389 (CAD), and . . . converted to the United States exchange rate of 80% as of April 1, 2021, for a conversion to $47,257,911 (USD)." D App 147. "The $59,072,389 CAD total is comprised of $45,448,000 for real estate, $8,900,000 for machinery, equipment, pivots and irrigation equipment, and $4,724,389 of current liquidity of current assets exceeding current liabilities and no long-term debt." Id. Of this amount, Plaintiffs are entitled to an overall 33.75% blended interest on the $47,257,911 (USD), or a total of $15,949,544, with each Plaintiff being entitled to $5,316,515. Id.

[¶18] As it relates to the distribution of the Johnson Farms farm real property, "[D]efendants made no reasonable attempt at discussions to divide the . . . assets, until the Plaintiffs filed and served their action for dissolution." D App 127-128. Initially the farm real property was divided based upon the 2014 appraisals performed for Bert's estate proceeding, but Lyle requested new appraisals with a 2017 valuation because the 2014 appraisals were "outdated." D App 128-129; see also D App 82-83. After the farm real property was divided, pursuant to the district court's order, Defendants sought to have the farm real property reappraised in 2019. See Court Doc. 142. Following the bench trial, Defendants argued the district court should use the 2014 appraisals for the farm real property realizing these appraisals were to their benefit. D App 129, 134 ("Defendants now request, post-trial, the court should use the 2014 valuations from Bert's estate, despite Lyle's earlier objection [and] his demand to have the land re-appraised and the agreement to have AgCountry perform the appraisals").

LAW AND ARGUMENT

I. INTRODUCTION.

[¶19] Defendants seeks reversal of the district court's well-reasoned decision which was guided by the Joint Statement of Counsel and the Agreement in Principal both of which were memorialized in writing, placed on the record before the district court, and reaffirmed by Defendants on at least three occasion. D App 32-34; Court Doc. 211; P App 7, 32:14-15. Defendants continue to argue there was no agreement to guide the dissolution of Johnson Farms and that the district court erroneously relied on inadmissible hearsay to reach its legal conclusions. As will be further outlined, Defendants want to repudiate the Agreement in Principal after taking actions consistent with its terms after "Plaintiffs . . . changed their financial and litigation positions in dependence on enforcement of the

agreement." D App 108. Defendants waived their current hearsay objection because they relied on the evidence they want excluded. D App 137. Even if this Court determines the district court erred as to the admission of this evidence, any error was harmless.

II. OBJECTIONS TO DEFENDANTS' STATEMENT OF FACTS.

[¶20] Defendants Statement of Fact contains a number of factual statements unsupported by the record and legal conclusions characterized as facts. Defendants assert "[t]he Court rejected the AIP's provisions regarding Shilo by rejecting the initially agreed-upon 2017 appraisal and tax calculations." App. Br., ¶ 13. To be clear, there was no agreement on the calculation contained within the MNP Letter dated December 1, 2017 (hereinafter "MNP Letter"), which relied on the 2017 appraisals of the Shilo real property, machinery and equipment. The district court held the valuation of Shilo real property, machinery and equipment determined in April 2019 was "more accurate and fair" than what was proffered by Defendants because Defendants ignore their actions which resulted in Plaintiffs continued indirect ownership in Shilo which resulted in Plaintiffs continued receipt of IRS K-1 forms and payment of tax on their share of the earnings retained by Shilo, without making any distributions to Plaintiffs. In the meantime, Defendants used the retained earnings to purchase more equipment, machinery, land, and to pay debt. D App 144-145. Defendants further assert the ordered dissolution "trigger[s] two layers of Shilo-related Canadian tax" but failed to provide any evidence to support this allegation. App. Br., ¶ 13.

[¶21] Defendants acknowledge Plaintiffs and Al Johnson provided notice of dissociation in 2014 but allege "Al later elected to continue being a partner in JFP and shareholder in Nor-Agra." App. Br., ¶ 26. Al never testified at trial and there is no evidence in the record that Al elected to withdraw his dissociation. Rather, Defendants rely on the testimony of

Rodger Johnson that Al Johnson is in a management position in the "New Partnership" as referenced in the caption. Id.

[¶22] To have this Court convert this action for dissolution to a dissociation, Defendants allege "Plaintiffs sought a buyout of their partnership and shareholder interests related to Shilo." App. Br., ¶ 27. What Defendants fail to acknowledge is, pursuant to the Agreement in Principal, Plaintiffs agreed to sell their indirect interest in Shilo by sale of their Nor-Agra stock and their remaining partnership interest in Johnson Farms as an option to avoid various potential adverse tax consequences for both parties. See D App 108-109 (If the Agreement in Principal are not enforced, "it would impose a significant injustice on all parties since an order for liquidation would have significant adverse tax consequences as well as disruption of a going concern farming operation"); see also Court Doc. 377.

[¶23] Defendants argue "Plaintiffs presented no evidence of shareholder/partner oppression by Defendants, their brother Al, or their father Bert[4]" as plead in the second amended complaint. App. Br., ¶ 32; see also D App 36-41. This is simply not true. Evidence at trial revealed Rodger Johnson and Al Johnson, paid themselves management fees in the amount of $1,578,000 (CAD), total, for the years 2017, 2018, and 2019 for the management of Shilo, even though Shilo employed a manager, without any distributions to Plaintiffs, and yet Plaintiffs received income on their K-1's for those years and had to pay taxes on those amounts. P App 27-31, 34; 26:18-27:17; 28:8-14; 30:7-31:14; 39:17-21; P App 51-54, 6:14-9:13; Court Doc. 336, p. 18; Court Doc. 399, p. 16; Court Doc. 403, p. 15. Plaintiffs testified they had no relationship with Defendants, Defendants were not transparent, and Defendants did not fulfill their fiduciary responsibilities because they

[4] Bert Johnson was deceased and not named in the complaint or amended complaints.

failed to provide requested information to Plaintiffs. P App 26-29, 25:7-28:17. Plaintiffs further testified Rodger told them in 2017 he "will never answer to [Plaintiffs], nor will [he] look to [Plaintiffs], nor will [he] need [Plaintiffs'] approval for anything [Defendants] do on this farm, and [he] will never attend another meeting." P App 35, 40:4-9.

[¶24] Defendants next argue the Shilo 2017 appraisals of the land and machinery, and the 2017 financial statement should have formed the basis of the district court's finding and conclusion for the value of Shilo with a discount based on the speculative tax burdens. App. Br., ¶¶ 33-51. To support their position regarding the valuation of Shilo, Defendants rely on the MNP Letter and contend Plaintiffs accepted the MNP calculations based on a letter from Plaintiffs counsel dated March 7, 2018, but ignore the attachments to the letter which supported Plaintiffs rejection of the discounts for pending litigation and speculative Canadian and US taxes based on a liquidation analysis with future dividends. See App. Br., ¶¶ 35-38, 45-47; D App 65-77, 90-95. At trial there was no testimony from John Guthrie of MNP, Jack Waterman of Grant Thornton, or Darrell Kreel of Taylor McCaffrey LLP. Defendants rely on Plaintiffs counsel's March 7, 2018, letter to support their position that the MNP Letter was a reliable valuation of Shilo. App. Br. ¶ 39. Yet, Defendants argue the district court should not have reviewed Plaintiffs counsel's March 7, 2018 letter because the attachments to the same constitute inadmissible hearsay. App. Br. 78-82.

[¶25] In holding the 2019 valuation of Shilo is a "more accurate and fair determination of Shilo," the district court noted Plaintiffs continued their indirect ownership in Shilo, retained earnings were used "to greatly increase the Defendants' own equity in Shilo," and this was done to the detriment of Plaintiffs. D App 144-146. In fact, the district court found Defendants "protracted delay in the litigation . . . appears to be planned to build up

Shilo at the Plaintiffs' expense," while arguing Plaintiffs buyout should be "based on an earlier, less profitable and less valuable timeline." D App 145-146. The district court properly relied on the 2019 appraisals of Shilo real property and the machinery and equipment, "and Shilo's financial statements as of April 30, 2019 [were] the fair barometer of Shilo's value because the Plaintiffs continued to contribute, and pay tax, on undistributed income that resulted in the growth and increased productivity of Shilo." Id.

[¶26] Defendants next present an analysis of the Canadian tax burden Defendants assert were required to be considered by the district court to reduce the value of Shilo and the amount Plaintiffs are entitled to receive for their interest. App. Br., ¶¶ 36-37. Defendants rely on the MNP Letter from "Shilo's longtime Canadian accountants" that "calculated a capital gains tax" and a "dividend taxes." App. Br., ¶¶ 36-37. The district court rejected this argument because the MNP Letter was a liquidation analysis when there was no plan to liquidate Shilo in the next ten years based on the testimony of Rodger Johnson. D App 139-140.

[¶27] Defendants assert they "would need to liquidate well over $20 million (USD) of those [Shilo] 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," there was absolutely no evidence, testimony or otherwise, Defendants would have to sell Canadian assets to purchase Plaintiffs' interest. App. Br., ¶ 46. Rather, the evidence supports the conclusion Defendants have sufficient non-Canadian assets, including at least $58,648,548 of farmland, to purchase Plaintiffs Shilo interest and any speculative tax liability would be based solely on the choice of Defendants. See D App 135, 153.

[¶28] The remaining alleged facts asserted by Defendants related to Shilo were properly rejected by the district court. Compare App. Br., ¶¶ 47-51 with D App 144-147.

[¶29] Defendants objected to the district court's reliance on the Agreement in Principal because the district court used the same to compel the distribution of land in 2017 and as a basis for resolving crop reconciliation issues, so Defendants argue the district court should have used the 2017 appraisals and MNP tax calculations when determining the value of Shilo. App. Br., ¶¶ 52-54. Defendants ignore the district court held counsel for Defendants admitted the validity of the "Agreement in Principal, and [that the parties] are sticking to it." P App 7, 32:14-15. The district court noted the parties and their counsel proceeded with the dissolution of Johnson Farms pursuant to the provisions of the Agreement in Principal and Defendants were estopped from asserting the Agreement in Principal should not have been relied upon by Plaintiffs and the district court. D App 107-109, 152 ("The Agreement in Principal is a valid and enforceable contract" based upon the actions, inactions, and agreements of the parties, as set forth in the Findings of Fact). "Plaintiffs have proven the elements of promissory estoppel to enforce the Agreement in Principal" because they detrimentally, but justifiably, changed their financial and litigation positions in dependence on the Agreement in Principal. D App 108-109. "Many of the assets were distributed, and debts allocated, following the mechanisms in the agreement," and the parties tried this matter using the terms "as guideposts to present evidence [and argument] to the court." Id. If the Agreement in Principal is not enforced, "as the Defendants have waived or conceded at trial, it would impose a significant injustice on all parties." Id.

III. RESPONSE TO DEFENDANTS' LIST OF ARGUMENTS.

[¶30] Defendants argue "[t]he preliminary rulings and final judgment for dissolution . . . are permeated by several legal errors" which result in an unfair buyout of Shilo. App. Br.,

¶ 55. These arguments are based on speculation, unreasonable and unreliable facts, and/or unsupported legal conclusions.

1. **Defendants' Argument:** 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.

   Plaintiffs' Response: The only future tax burden Defendants will have will be based upon their own actions. When Plaintiffs sell their indirect interest in Shilo, they will be subject to personal tax consequences.

2. **Defendants' Argument:** 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.

   Plaintiffs' Response: Defendants argue the district court relied on inadmissible hearsay, but they rely on the same category of evidence to establish their position. The district court relied on the testimony and exhibits of the parties to determine the value of Shilo. The parties' discussions regarding the value of Shilo prior to trial were admissible to support the parties' position on valuation.

3. **Defendants' Argument:** 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.

   Plaintiffs' Response: At no time prior to trial did Defendants request a dissociation. The ordered dissolution does not automatically trigger any tax consequences. The Agreement in Principal was created to limit tax liability.

4. **Defendants' Argument:** 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.

   Plaintiffs' Response: There was no mixing of a dissociation and dissolution remedy. Rather dissolution was accomplished through distribution of assets to avoid significant adverse tax consequences. This is evidenced by the distribution of the farm real property, the machinery, equipment, farm structures, and other assets; and, the parties each receiving one half of the Johnson Farms debts, liens, mortgages, and encumbrances. Defendants first raised an argument for dissociation at trial to support their argument as to when the value of Shilo should be determined.

5. **Defendants' Argument:** Ordering a dissolution by relying on waivable and inapposite statutory provisions that were directly contrary to the Partnership Agreement and the RUPA.

Plaintiffs' Response: Plaintiffs had the right to seek dissolution of Johnson Farms pursuant to N.D.C.C. § 45-20-01(2)(a), (5)(b), 5(c).

6. **Defendants' Argument:** Relying on the Agreement in Principal when it favored the Plaintiffs' interests, but not following it regarding Shilo where the parties specifically agreed that 2017, valuations and tax calculations would be controlling.

   Plaintiffs' Response: The parties never agreed to a liquidation valuation of Shilo which included payment of Canadian taxes and combined Canadian and U.S. tax on liquidation dividends. After rejection of the MNP liquidation valuation, Defendants took advantage of Plaintiffs, as found by the district court, to increase the value of Shilo to the detriment of Plaintiffs.

7. **Defendants' Argument:** Rejecting 2017 appraisals regarding Shilo, as contemplated by the Agreement in Principal, as initially accepted and acknowledged as accurate by both parties, and as appropriate under U.S. partnership and corporate law.

   Plaintiffs' Response: See Plaintiffs' Response to Defendants' Argument # 6.

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

   Plaintiffs' Response: The district court properly relied on statements of counsel concerning the Agreement in Principal. None of Defendants' counsel, past or current, filed for injunctive relief or for a writ of prohibition to stop the dissolution process or an amended answer to plead for relief under N.D.C.C. § 45-19-01.

9. **Defendants' Argument:** 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.

   Plaintiffs' Response: This is not material, nor was it raise at trial. Defendants have no standing to proffer arguments on behalf Al Johnson.

App. Br., ¶ 55. Although Defendants allege the district court ruling was "permeated by several legal errors," in consideration of the standard of review and the deference afforded to the district court's decision, the district court did not error in reaching its conclusions in this litigation. See Command Ctr., Inc. v. Renewable Res., LLC, 2021 ND 59, ¶ 37, 956 N.W.2d 755; Schmidt v. City of Minot, 2016 ND 175, ¶ 21, 883 N.W.2d 909; Marchand v. Murray, 541 N.E.2d 371, 374 (Mass. 1989).

IV. THE DISTRICT COURT PROPERLY REQUIRED DISSOLUTION, AS DISSOCIATION WAS NEVER PLEAD BY DEFENDANTS.

[¶31] In arguing dissociation, not dissolution, as the proper remedy, Defendants ignore they never made a request for dissociation to the district court. Plaintiffs filed a complaint and two amended complaints which alleged the Johnson Farms partnership was terminated by operation of law pursuant to N.D.C.C. ch. 45-20 and operation of the partnership agreement, requesting a judicial dissolution pursuant to the provisions of N.D.C.C. § 45-20-01(5). Court Doc. 2, 123; D App 39-44. Defendants never filed any pleading to assert N.D.C.C. § 45-19-01 governed the litigation. See Court Doc. 6; D App 45-48.

[¶32] Furthermore, Defendants never complied with the requirements of N.D.C.C. § 45-19-01(5), (6) and/or (7) which requires specific actions a partnership must take pursuant to a statutory timeframe to effectuate a dissociation. See D App 150-152. Rather, Defendants reconstituted a New Partnership without Plaintiffs. See D App 47-48 (Defendants requested the Court award the "New Partnership" all sums owed). As such, Defendants have acknowledged and consented to dissolution.

[¶33] Defendants agreed to the division of the farm real property and did not "seek any injunctive relief or writ to prohibit the dissolution process" because it was the most practical means of division and limited potential tax liability. D App 149; see also Court Doc. 94, ¶ 7 (Counsel agreed land should be divided with the valuation difference addressed at a later time).

[¶34] The Joint Statement of Counsel provides "[t]he Parties have agreed that Johnson Farms, a North Dakota general partnership, should be dissolved, its activities wound-up, it debts and obligations discharged and remaining assets should be distributed to the members of the Bert Johnson Family and the Lyle Johnson Family." D App 89; see also D App 81

("each partner agrees Johnson Farms should be dissolved"). Based on these representations the district court properly concluded "dissolution has been commenced for Johnson Farms, a general partnership, pursuant to N.D.C.C., Section 45-20-01." D App 33. This was confirmed by Defendants answer to the second amendment complaint. D App 45-48. This is further supported by Puklich v. Puklich, 2019 ND 154, 930 N.W.2d 593, where this Court held district courts "[w]hen supervising dissolution of a partnership," "acts as a court of equity, giving it the discretion to determine what is fair and equitable under the circumstances." Puklich, 2019 ND 154, ¶ 24.

[¶35] N.D.C.C. § 45-18-02, provides a "partner has the power to dissociate at any time, rightfully or wrongfully, by express will" pursuant to N.D.C.C. § 45-18-01. "A partner's dissociation is wrongful only if . . . [i]n the case of a partnership for a definite term or particular undertaking, . . . [t]he partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death. . . ." N.D.C.C. § 45-18-02(2)(b)(1) (emphasis added). N.D.C.C. § 45-20-01(2)(a) provides "[a] partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:"

> Within ninety days after a partner's dissociation by death or otherwise under subsections 6 through 10 of section 45-18-01 or wrongful dissociation under subsection 2 of section 45-18-02, the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation under paragraph 1 of subdivision b of subsection 2 of section 45-18-02 constitutes the expression of that partner's will to wind up the partnership business.

Comments to the Revised Uniform Partnership Act recognized § 801(2)(A), the equivalent of N.D.C.C. § 45-20-01(2)(a), makes a partnership susceptible to dissolution after the death of a partner if within 90 days of the death at least half of the remaining partners express a

will to dissolve. Unif.Partnership Act 2013 § 801, cmt. Paragraph 2(A). That is what occurred here.

[¶36] The evidence established, and Defendants admit, Bert Johnson died on July 10, 2014, and on September 9, 2014, within 90 days of his death, four of the remaining partners, namely his children Susan Sproule, Sandra Crary, Lynnell Stegman, and Al Johnson provided written notice of their dissociation as required by N.D.C.C. § 45-20-01(2)(a). Court Doc. 464, ¶¶ 12-13; App. Br., ¶ 88; D App, 174, 26:8-11; D App 183, 110:5-10. The right to dissolution is further outlined in the complaint and the amended complaints because the economic purposes of Johnson Farms were unreasonably frustrated, and another partner, Rodger Johnson, engaged in conduct related to the business of Johnson Farms that makes it not practicable to carry on the business with that partner, and that it is not otherwise reasonably practical to carry on the business of Johnson Farms in conformity with the Partnership Agreement. D App 36-41; see N.D.C.C. § 45-20-01(5).

[¶37] Ignoring the forgoing and the Partnership Agreement, and relying on their own interpretation of state law, Defendants assert "nothing in North Dakota law prevents a partnership from limiting the abilities of partners to dissolve the partnership," because the agreement "provides for the continuation of the partnership in the event of a partner's death." App. Br., ¶¶ 91, 93. The Partnership Agreement states the partnership may be terminated by operation of law which occurred when Plaintiffs provided notice under N.D.C.C. § 45-20-01(2)(a). See D App 24. Further, the Partnership Agreement "may not . . . [v]ary the power to dissociate as a partner under subsection 1 of section 45-18-02." N.D.C.C. § 45-13-03(2)(f).

[¶38] Defendants assert "[d]issociation 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." App. Br., ¶ 95. Yet, the first time Defendants cited N.D.C.C. § 45-19-01, was in support of a motion in limine, one week before trial and in their post-trial briefs. Court Doc. 258, 457, 464.

[¶39] There is both a factual and a statutory basis for dissolution of Johnson Farms because the requirements of N.D.C.C. §§ 45-18-02(2)(b)(1) and 45-20-01(2)(a) have been satisfied. This litigation is governed by the terms of N.D.C.C. ch. 45-20. As such, the district court did not err by requiring dissolution of Johnson Farms and distribution of its assets.

V. THE DISTRICT COURT WAS NOT REQUIRED TO CONSIDER TAXES IN SETTING PLAINTIFFS' BUYOUT.

A. American Law Does Not Require the Consideration of Speculative Taxes, and the District Court Did Not Rely on Inadmissible Hearsay.

[¶40] Throughout this section, Defendants make a number of factual and legal conclusions without citation to the record or legal authority. App. Br. ¶¶ 58-76. Defendants argue the district court "ignored without discussion extensive authority from across the U.S. construing the same uniform partnership [act] and [uniform] corporate act[] adopted in North Dakota" and "chose to apply supposed Canadian law regarding the need to consider known and substantial tax liabilities—presented through inadmissible hearsay." App. Br., ¶ 59. Defendants ignore the only support for their valuation of Shilo relied on the liquidation analysis contained in the MNP Letter. App. Br., ¶¶ 61-66; 73-76; see also D App 93-98.

[¶41] Defendants allege "[c]ourts throughout the U.S. consistently and with unanimity consider tax burdens," with citation to Daniels v. Holtz, 794 N.W.2d 813 (Iowa 2010); Estate of Jelke v. Comm'r, 507 F.3d 1317 (11th Cir. 2007); 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); Eisenberg v. Comm'r, 155 F.3d 50 (2d Cir. 1998). App. Br., ¶¶ 67-71. These few cases are not persuasive, are from outside jurisdictions, are limited in scope with no application to the facts presented here, and cannot be used to reduce the value of Shilo by the amount of speculative tax the entity may incur if its assets are sold.

[¶42] Defendants cite Daniels for the premise "[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." App. Br., ¶ 67 (quoting Daniels, 794 N.W.2d at 819). The Daniels court did not "hold appraisals of corporate assets must, as a matter of law, discount any capital gains tax liability," refraining from "establishing a blanket rule imposing a particular appraisal methodology." Daniels, 794 N.W.2d at 819 (emphasis added).

[¶43] The remaining decisions cited by Defendants deal with appeals of various U.S. Tax Courts decisions, none of which have been adopted by the Eighth Circuit. App. Br., ¶¶ 68-71; see also 26 U.S.C. § 7482(b)(2)(A). As U.S. Tax Courts must apply the laws of the Circuit in which the party resides, these decision are inapplicable. Furthermore, these decisions recognize their limited application outside the realm of estate tax determinations. Defendants argue courts have uniformly taken the approach "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 was imminent or contemplated. App. Br., ¶ 69 (citing Jelke, 507 F.3d at 1326; Eisenberg, 155 F.3d at 57).

However, the Jelke decision recognized this theory was for purposes of estate tax determination, which the district court found could "be a totally different approach" with "special use valuation" or "discounted interest valuations." P App 12, 115:14-17; D App 134-135.

[¶44] The Jelke decision quoted dicta from Dunn v. Comm'r, 301 F.3d 339 (5th Cir. 2002) which acknowledged criticism of the method being advanced by Defendants:

> As the methodology we employ today may well be viewed by some (valuation) professionals as unsophisticated, dogmatic, overly simplistic, or just plain wrong, we consciously assume the risk of incurring such criticism from the business appraisal community . . . . In this regard, we observe that on the end of the methodology spectrum opposite *oversimplification* lies *over-engineering*.

Jelke, 507 F.3d at 1333 (quoting Dunn, 301 F.3d at 358 (emphasis in original)). Consideration of built-in capital gains tax, or the alleged tax burdens proffered by Defendants, was considered as "one of the components of the marketability discount." Id. at 1325. The Jelke decision concludes this method provides aids in the "valuation arena" of estate tax determination by "preventing . . . the federal judiciary from assuming the role of arbitrary consultants." Id. at 1333.

[¶45] Defendants posit that "failure to discount for baked-in tax liability [is] reversible error." App. Br., ¶ 70. However, again, Defendants cite no controlling case law, but rather rely on estate tax proceedings from other jurisdictions to support their position.

[¶46] Again, relying on Jelke, Defendants argue the "clear consensus of U.S. courts that the simplest approach to achieve [a] logical outcome is to assume 'all assets are sold in liquidation on the valuation date, and 100% of the built-in capital gains liability is offset against the fair market value of the stock, dollar-for-dollar.'" App. Br., ¶ 72 (quoting Jelke, 507 F.3d at 1332). Defendants ignore that this simple approach was based upon the

"arbitrary assumption that all assets are sold" to "bypass the unnecessary expenditure of judicial recourses being used to wade through a myriad of divergent expert witnesses testimony" and to provide a "practical and theoretically sound foundation as to how to address the discount issue" for estate tax purposes. Jelke, 507 F.3d at 1333. The dissent in Jelke identifies the problem with Defendants' position, outside the context of estate tax determination, as it completely disregards the time value of money because Defendants want to discount the entire amount of a speculative and potential future tax liability as though it were due immediately, when that liability, if at all realized, will not come due until future years. Id. at 1336 (dissent); see also D App 139-140.

[¶47] This approach imports into a North Dakota partnership dissolution proceeding arbitrary assumptions used to discount a decedent's estate tax liability for lack of marketability. The Agreement in Principal states the value of Shilo Farms is to be determine "without any discount." D App 84. North Dakota law makes clear that discounts for a minority interest and lack of marketability are not automatic in a dissolution pursuant to N.D.C.C. ch. 45-20. See Puklich, 2019 ND 154, ¶¶ 12, 17.

[¶48] Defendants rely on the MNP Letter to support the position the district court was required to follow the liquidation or sales approach which assumed "all assets would be liquidated," reduced by the estimated tax burden 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." App. Br., ¶¶ 73-74. Defendants fail to cite to anything in the record to support such a position.

[¶49] The district court went to great lengths to explain why Defendants position was rejected. D App 144-147. The district court noted the Agreement in Principal "called for

valuation without a discount." D App 144-145. The district court reviewed the 2017 appraisals of Shilo, the farm land, machinery and equipment, the 2019 appraisal of the same provided by Plaintiffs, and the Shilo financial statements as of April 30, 2019, concluding Plaintiffs' appraisals and the financial statement were a "fair barometer of Shilo's value because the Plaintiffs continued to contribute, and pay tax, on undistributed income that resulted in the growth and increased productivity of Shilo." D App 145-147.

[¶50] The district court noted "[e]ven to date, the Plaintiffs continue[d] their indirect ownership in Shilo." D App 144-145. Plaintiffs "continue[d] to receive IRS K-1 forms and pay tax on their share of the earnings which Shilo retained, without making any distributions" to Plaintiffs and "with the strength of the retained earnings attributable in part to the Plaintiffs, Shilo purchased more equipment, machinery and land, as well as paid its debt." Id. Defendants' position "do[es] not consider the equity those earnings contributed to, which [was] not included in the earlier appraisals" or that "Shilo's financial condition since MNP's letter . . . was significantly enhanced as a result the Plaintiffs' ownership and [Shilo's] use of retained earnings to leverage its operations." Id.

[¶51] The district court did not rely on inadmissible hearsay evidence to determine the value of Shilo and the proper value of Plaintiffs' interest. The district court considered the evidence presented at trial which lead to the conclusion Plaintiffs position on the value of Shilo was correct. Based on the actions of Defendants, Plaintiffs were kept on as indirect owners in Shilo through 2019 which greatly increased equity in Shilo to the financial detriment of Plaintiffs. D App 144-147. The district court's findings and conclusion of law were a "fair barometer of Shilo's value because the Plaintiffs continued to contribute,

and pay tax, on undistributed income that resulted in the growth and increased productivity of Shilo." D App 145-146.

B. The District Court Did Not Rely on Supposed Canadian Law as Presented in Hearsay Testimony.

[¶52] Defendants argue the district court erred in its determination of the value of Shilo because the district court agreed with the observations of a Canadian CPA, who relied on an interpretation of Canadian law from a Canadian attorney, who reviewed the MNP Letter. App. Br. ¶¶ 77-83. It should be noted there was no testimony from John Gutherie who authored the MNP Letter, as such this letter is hearsay. Although Plaintiffs dispute the district court opinion's was based on inadmissible hearsay evidence, solely for the sake of argument even if inadmissible hearsay evidence was admitted, it is unconscionable for Defendants to rely on the same category of evidence they alleged was erroneously utilized by the district court as evidence to support their challenge of the district court's decision.

[¶53] Defendants allege "[a]dmission of inadmissible evidence is reversible error," and rely on a partial quote from In re J.S.L., 2009 ND 43, 763 N.W.2d 783. App. Br., ¶ 77. However, the entire quote provides "introduction of allegedly inadmissible evidence in a non-jury case is rarely reversible error, and [this Court] would only reverse such a holding if all the competent evidence is insufficient to support the judgment or unless it affirmatively appears that 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 (internal quote omitted) (emphasis added to identify portion excluded by Defendants). A review of the evidence presented at trial establishes the admissible evidence was sufficient to support the district court's judgment and any arguably incompetent evidence did not

induce the district court to make an essential finding which it would not have otherwise made. Id.

[¶54] Defendants identify two letters, one prepared by the Canadian accounting firm Grant Thornton and one by the Canadian law firm of Taylor McCaffery, which were attached to Plaintiffs counsel's March 7, 2018 letter and sent to Defendants counsel to explain why Plaintiffs rejected the MNP Letter, as the inadmissible hearsay relied on by the district court because "Plaintiffs did not provide expert testimony from either." App. Br., ¶ 78. Initially, at trial Defendants objected to the March 7 letter, and two letter attachments, pursuant to N.D.R. Evid. 408 which was overruled by the district court. P App 14-25, 6:15-17:12; see also Court Doc. 247, p. 8; Court Doc. 289; D App 68-80. Later, Defendants renewed their Rule 408 objection and included an objection for hearsay which was also overruled by the district court. P App 38-40, 59:4-61:22.

[¶55] In making their argument, Defendants ignore there was witness testimony presented by Plaintiffs to establish Plaintiffs opinion as to the value of Shilo based on the 2019 appraisals without reduction of the speculative Canadian and US tax set forth in the MNP Letter. P App 32-33, 36, 40; 35:16-36:4, 56:4-57:18, 61:24-68:5. There was no objection to this testimony. Furthermore, this Court has held no rule exists "which disqualifies an owner from testifying to the value of his own property merely because of some reliance upon information from another." Pfliger v. Peavey Co., 310 N.W.2d 742, 748 (N.D. 1981).

[¶56] Defendants assert "[t]he hearsay letters provided the only information about Canadian law" and the district court "followed Canadian law based on the letters" to make an "essential legal ruling [which] could not have been made but for the inadmissible

evidence." App. Br., ¶ 81. This statement is not accurate. The MNP Letter, so heavily relied on by Defendants, contains deductions in the value of Shilo, and Plaintiffs corresponding interest, based on Canadian tax law. See D App 93-98. Although, Defendants objected to the March 7 letter pursuant to Rule 408, and the attachments to the letter for hearsay, the letter was admissible as part of discussions intended to further the winding up of the affairs of the partnership. See Dyer v. Inv'rs Servs., Inc., 409 S.E.2d 249, 251 (Ga. 1991) ("the overriding purpose of the document was . . . to settle the ongoing differences between Dyer and Paffenroth and to wind up the affairs of their partnership following the sale of its major asset"); see also Moon Express, Inc. v. Intuitive Machines, LLC, 788 F. App'x 117, 121 (3d Cir. 2019); Marchand, 541 N.E.2d 371; Berliner v. Greenberg, 223 P.2d 598 (Wash. 1950); see also P App 14-25, 38-40; 6:15-17:12; 59:4-61:22; see also Court Doc. 247, p. 8; Court Doc. 289; D App 68-80.

[¶57] Defendants assert it was error for the district court to not accept the "tax calculations from MNP," even though the district court held the MNP Letter, which included deductions for "Canadian built-in tax consequences" and "income tax or repatriation consequences . . . for both Canada and the United States," was "contrary to the Agreement in Principal's discount-free valuation directive and to Rodger's testimony that Shilo was not going to be liquidated." App. Br., ¶ 83; D App 139-140. Defendants argument on appeal, compared to their argument at trial[5], makes clear Defendants objection is not to the alleged hearsay evidence, but the district court's rejection of the deductions

[5] Defendants position on Shilo throughout this litigation repeatedly changed arguing first the district court lacked jurisdiction to resolve the issue of Shilo, then that the district court should distribute the stock to the parties, and finally the district court should value Shilo based on the MNP letter. Court Doc. 273, ¶ 11; Court Doc. 459, ¶¶ 142-146; Court Doc. 464, ¶¶ 18-21; P App 20, 12:5-19.

for the future Canadian and US taxes Defendants might incur if Shilo was liquidated or if dividends were distributed to the shareholders of Shilo.

[¶58] To be clear, the district court rejected Defendants opinion value of Shilo for two reasons: the 2017 appraisals were not a fair determination of value and discounts for speculative tax liabilities were not justified. The district court's determination was not based on impermissible hearsay, but rather it was based on the rejection of Defendants discounted value of Shilo based on a liquidation analysis contained within the MNP Letter. See D App 144-147; P App 32-33, 36-37, 40-47; 35:16-36:4; 56:4-57:18; 61:24-68:5.

[¶59] Any reference to the evidence objected to by Defendants constitutes harmless error since the reference made by the district court to this evidence was done solely for the purpose of outlining the position of Plaintiffs as testified to at trial. See N.D. R. Civ. P. 61. This Court has warned district courts "that, in bench trials, exclusion of potentially relevant evidence was not good procedure" because "entry of incompetent evidence will rarely be reversible error while exclusion of competent evidence will cause reversal." Red River Commodities, Inc. v. Eidsness, 459 N.W.2d 805, 811 (N.D. 1990). Defendants fail to recognize it was Defendants actions throughout this litigation, not the alleged hearsay evidence, which induced the district court's decision. D App 145-146 (Defendants' "protracted delay . . . appears to be planned to build up Shilo at the Plaintiffs' expense, but [then] paying the Plaintiffs based on an earlier, less profitable and less valuable timeline").

[¶60] Simply put, the district court made a conclusion of law based on the facts and testimony surrounding the valuation of Shilo that a reduction in value based upon speculative potential tax liability was not warranted. D App 136-148. Reversal of the district court's decision as to the value of Shilo is not warranted because Defendants cannot

establish "all the competent evidence is insufficient to support" the district court's decision and that "it affirmatively appears that the incompetent evidence induced the [district] court to make an essential finding which would not otherwise have been made." In re H.K., 2010 ND 27, ¶ 17, 778 N.W.2d 764; In re J.S.L., 2009 ND 43, ¶ 25.

VI. THE DISTRICT COURT DID NOT ERR BY USING THE SHILO APPRAISALS FROM 2019 INSTEAD OF 2017.

[¶61] Defendants allege the 2017 valuations of Shilo should have been used because dissociation, not dissolution, was appropriate. App. Br., ¶ 96. However, as previously noted, Defendants never raise this issue with the district court, nor did Defendants satisfy, or even attempt to satisfy, the requirements of N.D.C.C. ch. 45-19. Rather, Defendants only seek application of N.D.C.C. § 45-19-01 to gain a financial windfall by "use[] [of] Plaintiffs' income shares, after Plaintiffs paid tax on them, to greatly increase the Defendants' own equity in Shilo," and then pay Plaintiffs based on an earlier valuation. D App 145-146. Defendants claim Plaintiffs partnership interest was required to be valued at the time of their dissociation, however, as noted by the district court, Defendants did not "secure[] such Shilo appraisal in September 2014 when the Plaintiffs gave notice, or in October 2016 when litigation began" and "Plaintiffs continue their indirect ownership in Shilo" throughout the four years of this litigation. D App 144-145.

[¶62] Defendants ignore the status of this case is one for dissolution, not dissociation, and the procedural history of the case is the assets of Johnson Farms were divided with values having been determined prior to the date of the division, not on the date of dissociation being September 2014. See D App 113-114, 125-129, 135-136 (division of farm real property, machinery, 2017 profits and expenses, irrigation pivots and beet stock); see also

Puklich, 2019 ND 154, ¶ 20 (the valuation of a partnership interest should be determined as of the date of dissolution, not the date the petition seeking dissolution was initiated).

[¶63] Defendants allege the "2017 appraisals most accurately capture the valuation of Shilo, with appreciation, from the time of dissociation [September 2014] through 2017," but this position does not consider appreciation through 2019 and the retained earnings of Shilo used to purchase machinery, equipment and to reduce the debt, for which Plaintiffs paid income tax on $1,660,000 in 2019. App. Br., ¶ 102 (emphasis added); P App 48-49; 123:18-124:10; P-2070, p. 4-13. Defendants' position is inconsistent and unsupported by existing law. Puklich, 2019 ND 154, ¶ 24. Yet, Defendants assert the 2017 appraisals and MNP Letter should have been accepted by the district court because the Agreement in Principal "plainly contemplates the use of the 2017 appraisals and calculations to be provided by MNP." App. Br. ¶ 103. As previously discussed, the district court reviewed the MNP Letter and rejected the same because it was a liquidation analysis, it discounted the value of Shilo for built-in and future tax consequences which were speculative. D App 139-140; see also Puklich, 2019 ND 154, ¶ 12 (a district court properly rejects application of discounts when a proceeding is for dissolution); Jelke, 507 F.3d at 1325 (deductions related to alleged tax burden are "one of the components of the marketability discount"). The district court further held the 2017 appraisals failed to place any value on real estate owned by J.F. Johnson Farms when valuing Shilo. D App 138-139.

[¶64] The district court properly held the 2019 valuation was a "more accurate and fair determination of Shilo," because Plaintiffs continued their indirect ownership, retained earnings were used "to greatly increase the Defendants' own equity," to the detriment of Plaintiffs. D App 144-146. Specifically, Defendants planned "[t]he protracted delay in the

litigation" for this purpose to seek a buyout "based on an earlier, less profitable and less valuable timeline." D App 145-146. The district court properly found the 2019 valuation was the "fair barometer of Shilo's value" because Plaintiffs "continued to contribute, and pay tax, on undistributed income that resulted in the growth and increased productivity of Shilo." Id.

VII. AN ORDER FOR DISSOLUTION WAS PROPER.

A. 2017 Land Division

[¶65] Defendants allege, the district court order entered December 1, 2017, "directing the division of real property finding that 'dissolution has been commenced," is erroneous because "no explanation of it reasoning" and "no findings of facts or explanation of law" were stated in the order. App. Br., ¶¶ 104-105. Defendants never objected to the district court's finding a dissolution has been commenced, likely because Defendants prior counsel admitted in the Joint Statement the partnership "should be dissolved." D App 89.

[¶66] The district court's order directing the division of farm real property contains the district court's finding of facts, positions of the parties, the status of the proceeding, namely "dissolution has been commenced for Johnson Farms [by Plaintiffs as dissociated partners] pursuant to N.D.C.C., Section 45-20-01," and the district court's conclusion of law, namely N.D.C.C. ch. 45-20 "does not prohibit distribution of the land and allocation of its mortgages in accordance with the parties stipulated terms," which were set forth in the Joint Statement of Counsel. D App 30, ¶ 5. This order is sufficient to enable this Court to "understand the factual determinations made by the trial court as the basis for its conclusions of law and the judgment entered." Gonzalez v. Gonzalez, 2005 ND 131, ¶ 4, 700 N.W.2d 711; see App. Br., ¶ 105.

B. April 2017 Status Conference

[¶67] Defendants next argue it was err for the district court to rely on the Joint Statement of Counsel and representations of counsel made during hearings, on the record, before the district court. App. Br., ¶ 108. Defendants again cite to cases from other jurisdictions to support this supplication without consideration of the effect of such a position. Id.

[¶68] District courts routinely rely on the statements from counsel to govern the procedural nature of litigation which is what occurred here. Prior to the status conference held on August 7, 2017, the parties filed a Joint Statement of Counsel as to how the dissolution of Johnson Farms would proceed and throughout this litigation Defendants prior counsel affirmed this matter was proceeding as a dissolution. D App 89-92; P App 4, 3:6-11; P App 6-7; 31:12-32:15. The district court relied on the Joint Statement of Counsel, which acknowledged after discussions between representatives of Plaintiff and Defendants, the parties had come to the agreement Johnson Farms should be dissolved, its activities wound up, its debts and obligations discharged, and its remaining assets distributed to the parties. The Joint Statement of Counsel then outlined various maters which were addressed as part of the dissolution of Johnson Farms.

[¶69] Following the Joint Statement of Counsel, an Agreement in Principal was prepared to outline, in greater detail, how the various matters referred to in the Joint Statement of Counsel would be addressed.

[¶70] On December 15, 2017, when the district court explained to Defendants prior counsel that if the Joint Statement and Agreement in Principal, which both stated this matter was proceeding as a dissolution, was being objected to, the matter would be set for trial, Defendants prior counsel then stated "We do have an Agreement in Principal." P App 10-11, 4:24-5:9.

[¶71] It is untenable for Defendants to argue their prior counsel's affirmation the parties had reached an agreement that outlined the dissolution process and procedure to prevent the district court from "reposition[ing] this case and set[ting] it for trial," could not be relied on by the district court to proceed with the dissolution as agreed. Under this theory, it would be reversible error for a district court to dismiss any litigation based upon a stipulation to dismiss pursuant to a settlement.

VIII. RELIANCE ON THE AGREEMENT IN PRINCIPAL WAS PROPER.

A. The Agreement in Principal was Enforceable.

[¶72] Defendants take the position the Agreement in Principal is nothing more than "[a]n agreement to negotiate or work something out in the future" and is not enforceable as "an agreement to agree . . . because its terms are so indefinite it fails to show mutual intent to create an enforceable obligation." App. Br., ¶¶ 110-111. Defendants assert they "never signed, and did not agree in principle to the document." App. Br., ¶ 112 (citing testimony from Rodger Johnson). Prior to the division of the farm real property pursuant to the Joint Statement and the Agreement in Principal, there was no objection by Defendants. Only after the division was ordered and the division of farm real property was made, did Defendants object. Defendants asserted the Agreement in Principal was not binding after the division of over $153,000,000 of farm real property, but Defendants initially admitted to the district court there was an agreement. D App 89-92; P App 4, 3:6-11; P App 6-7, 31:12-32:15; P App 10-11, 4:24-5:9.

[¶73] Based on Defendants prior counsel's statement that Johnson Farms was to be dissolved and representations to the district court the parties had an Agreement in Principal, Plaintiffs, and the district court, justifiably relied on the representations of Defendants counsel made on the record that the parties had an agreement for the dissolution of Johnson

Farms. See Rolfstad, Winkjer, Suess, McKennett & Kaiser, P. C. v. Hanson, 221 N.W.2d 734 (N.D. 1974); N.D.C.C. § 27-13-02(2). "The elements of promissory estoppel are (1) a promise which the promisor should reasonably expect will cause a change of position by the promisee; (2) a substantial change in the promisee's position through action or forbearance; (3) justifiable reliance on the promise; and (4) injustice which can only be avoided by enforcing the promise." Knorr v. Norberg, 2015 ND 284, ¶ 10, 872 N.W.2d 323. Plaintiffs, and the Agreement in Principal, satisfy these elements.

[¶74] The Agreement in Principal, and the representation to the district court and Plaintiffs by Defendants counsel that it would control the dissolution of Johnson Farms, is a promise Defendants should have expected would cause Plaintiffs to change their position. Plaintiffs did, in fact, substantially changed their position following Defendants assertion the Agreement in Principal would control the dissolution when joint appraisals were conducted, the Farm Real Property was divided, machinery and equipment was divided, debts were divided, and other assets were divided pursuant to the terms of the agreement. Further, Plaintiffs did not request the district court appoint a master to accomplish the dissolution. Simply, Plaintiffs justifiable reliance on the Agreement in Principal was reasonable and the only means to avoid injustice is to continue to enforce the terms of the Agreement in Principal. D App 108-109; see D App 32-34, 35-38; Court Doc. 94.

B. The Agreement in Principal was Applied Properly and Equitably.

[¶75] Defendants quote a portion of the Agreement in Principal to argue, alternatively, the district court applied the Agreement in Principal inconsistently as applied to the valuation of Shilo. App. Br., ¶¶ 114-118. Defendants singular objection appears to be the district court's review of the MNP Letter value of Shilo which improperly considered

discounts related to speculative tax deductions related to corporate and personal tax. App. Br., ¶ 116; D App 139-144.

[¶76] A review of the district court's decision reveals the district court properly concluded the MNP Letter "valuation [was] contrary to the Agreement in Principal's discount-free valuation directive [in light of] Rodger's testimony that Shilo was not going to be liquidated" in the next ten years and any future tax on cash paid to Shilo shareholders was a personal tax. D App 139-140; see Jelke, 507 F.3d at 1325 (reduction in value based on alleged tax burdens is "one of the components of the marketability discount").

[¶77] Furthermore, Defendants conceded in post-trial argument the "Agreement in Principal has been a guidepost for several steps in the process of addressing and distributing partnership assets" but the "Agreement in Principal does not provide substantive guidance regarding the complicated issue involving the Shilo ownership" and "does not set a price." Court Doc. 457, ¶ 81. In short, the district court properly and equitably applied the Agreement in Principal considering the evidence presented at trial and the conduct of the parties throughout the dissolution process.

IX. THE DISTRICT COURT PROPERLY RESOLVED THE LAND DIVISION AND CROP RECONCILIATION BASED ON 2017 INFORMATION, WHILE USING 2019 INFORMATION FOR SHILO.

[¶78] Defendants concede there is no challenge on appeal to the distribution of the farm real property in 2017 based on a coin flip or the "crop reconciliation issues through year-end 2017, based on financial information for that year" as agreed to in the Agreement in Principal. App. Br., ¶ 119. This is significant for this position precludes the relief requested by Defendants, that this matter be converted from a dissolution to a dissociation because such relief would require a complete reset of this entire action, including the

reversal of farm real property distribution, and a payment "in cash" to Plaintiffs pursuant to N.D.C.C. § 45-19-01(5).

[¶79] Defendants argue the district court's exercise of its equitable authority to determine the fair value of Plaintiffs' interest in Shilo based on the information received at trial constitutes legal error because it "allows for the very hedging that other courts have consistently and appropriately rejected." App. Br., ¶ 122. Plaintiff were not "hedging" the value of Shilo. Rather, the district court found Defendants "used Plaintiffs . . . to greatly increase the Defendants' own equity" because Defendants "kept [Plaintiffs] on as indirect owners [of Shilo], to their detriment, rather than the Defendants buying their shares earlier and discontinue allocating Shilo's income to the Plaintiffs." D App 145-146. In fact, that allocation of income resulted in a tax burden to Plaintiffs on "their portion of retained and undistributed earnings [in the amount] of $1,660,000." D App 144-145. The district court further found Defendants' "protracted delay . . . appears to be planned to build up Shilo at the Plaintiffs' expense, but [then] paying the Plaintiffs based on an earlier, less profitable and less valuable timeline which would have reflected a loss from the operations." D App 145-146. "Defendants refused to cooperate with the Johnson Farms land division . . . in order to strengthen their position . . ., much like Lyle's $1,200,000 demand for an undefined claim" from Bert's estate. Id. The district court properly used the 2019 valuation of Shilo because "Plaintiffs continued to contribute, and pay tax, on undistributed income that resulted in the growth and increased productivity of Shilo." Id.

[¶80] Simply, the district court properly exercised its discretion to determine the value of Shilo based upon the testimony and evidence presented at trial.

X. TREATMENT OF AL JOHNSON OR LYLE JOHNSON WAS PROPER.

[¶81] Defendants allege the district 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." App. Br., ¶ 124. Not only was this not raised at trial, or in the post-trial briefs, to the extent Defendants seeks to assert an argument on behalf of Al Johnson, Defendants lack standing. Albrecht v. Albrecht, 2020 ND 105, ¶ 10, 942 N.W.2d 875. Furthermore, this argument has no bearing on the judgment awarded to Plaintiffs, rather it presents only a question if Al Johnson is responsible to Plaintiffs for the payment of the judgment.

[¶82] The district court's order directed Defendants Rodger Johnson, Brian Johnson, and Lyle Johnson were jointly and severally responsible for the judgment entered in this litigation. These Defendants and Al Johnson are now engaged in a "New Partnership." D App 46, ¶ 11. The district court's decision pertained to the winding-up and dissolution of Johnson Farms. The partners of the New Partnership will have to resolve their future in-direct ownership of Shilo, including the ownership of J.F. Johnson Farms and Nor-Agra, when the same are purchased by the above named Defendants from Plaintiffs for these future issues were not before the district court.

[¶83] Ultimately, the district court properly held Defendants, the non-dissociating partners, were liable to Plaintiffs, dissociating partners, for the value of their interest.

CONCLUSION

[¶84] For the forgoing reasons, Plaintiffs request this Court affirmed, in total, the district court's order and amended judgment.

ORAL ARGUMENT REQUESTED

[¶85] Oral argument will be helpful as this litigation is factually and legally complex which results in a multifaceted legal analysis.

CERTIFICATE OF COMPLIANCE

[¶86] This Brief contains 38 pages, excluding any addendum. I certify this Brief complies with the typeface requirements of N.D.R. App. P. 32 and the type style requirements of that rule, because it has been prepared in a proportionally-spaced typeface using a Microsoft Word, Times New Roman, 12 point font.

[¶87] Dated this 8th day of December, 2021.

/s/ Douglas A. Christensen
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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Susan Sproule, Sandra Crary, and Lynnell Stegman, Plaintiffs/Appellees -vs- Brian Johnson, Rodger Johnson, Lyle Johnson, New Partnership, and Nor-Agra, Inc., Defendants/Appellants and Al Johnson, Defendant.	**SUPREME COURT NO. 20210235** GRAND FORKS COUNTY DISTRICT COURT No. 18-2017-CV-00031 **CERTIFICATE OF SERVICE**

[¶1] Raquel Lindseth, being first duly sworn on oath, deposes and says that she is of legal age and is a resident of Grand Forks, North Dakota; that on the 8th day of December, 2021, she served a copy of the following documents in the above-entitled matter:

1. **Brief of Plaintiffs/Appellees; and**
2. **Appendix of Plaintiffs/Appellees.**

[¶2] in this case, the following individuals were served electronically at the email address listed below via electronic mail:

Todd E. Zimmernan: tzimmerman@fredlaw.com
Abigale R. Griffen: agriffen@fredlaw.com
Joseph A. Turman: jturman@turmanlaw.com

[¶3] In this case, the following individuals were served by depositing in the United States mails, in the City of Grand Forks, North Dakota, a true and correct copy of the above noted documents addressed as follows:

Al Johnson
P.O. Box 114
Walhalla, ND 58282

Raquel Lindseth

[¶4] Subscribed and sworn to before me this 8th day of December, 2021, in Grand Forks County, North Dakota.

ELLA BRAATEN
Notary Public
State of North Dakota
My Commission Expires Oct. 24, 2023

Notary Public