IN THE CHANCERY COURT, STATE OF WYOMING
2023 WYCH 5

WY Chancery Court
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CH-2023-0000008
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Flying Phoenix Corporation, and
J&R Landis Enterprises, LLC,

Plaintiffs,

v.

Randall Sinclair, Carmen Sinclair,
and Six Flags Fireworks, LLC,

Defendants.

Case No. CH-2023-0000008

Order Denying Cross Motions for Summary Judgment

[¶ 1] Before the court are the parties' cross-motions for summary judgment. Both motions are fully briefed and ripe for review. For the reasons which follow, the court denies both motions.

BACKGROUND

[¶ 2] The parties are in the firework business. Plaintiffs Flying Phoenix Corporation and J&R Landis Enterprises, LLC (together, Flying Phoenix) acquire fireworks wholesale and defendants Randall and Carmen Sinclair and Six Flag Fireworks, LLC (collectively, Sinclairs) sell the fireworks retail in Campbell County, Wyoming.

[¶ 3] For the first decade of what would become a three-decade relationship, the Sinclairs sold the fireworks from a stand situated on leased land. Flying Phoenix provided the fireworks and stand and both sides shared the leasing costs. The parties did so under a 1992 "consignment/jobber/contractor agreement."

[¶ 4] After ten years, the parties moved the retail firework sales from a temporary location to a more a permanent one. The Sinclairs acquired real property in 2002. And Flying Phoenix provided a trailer to serve as a temporary store on the newly acquired lot. Flying Phoenix later purchased a shell building, repaired the building, and moved it onto the property purchased by the Sinclairs. The Sinclairs sold fireworks from this location until a recent falling out between the parties.

[¶ 5] The parties dispute the character of their business relationship. Flying Phoenix asserts the parties converted their relationship into a partnership when the parties jointly developed a permanent location with a larger building to increase profits. The Sinclairs respond that though locations and structures changed over the 30 years the parties conducted business together, the relationship never changed—Sinclairs paid Flying Phoenix 60% of net profits as interest for the

consigned fireworks, the parties never intended to act as partners, and the parties never shared control or decision making.

[¶ 6] The parties further disagree about their falling out. Flying Phoenix shares a story of failed buyout discussions between partners and unlawful conversion of partnership property by the Sinclairs. The Sinclairs tell a different tale. One of Flying Phoenix stating it would no longer distribute fireworks but refusing to remove the building or sell it to the Sinclairs. The parties find themselves in the uncomfortable position of one side owning property, the other side owning a structure on the property, and both sides finding it difficult to continue working together.

[¶ 7] This dilemma led to this suit. Flying Phoenix alleges six claims for relief: (1) dissolution of partnership, (2) breach of duty of loyalty, (3) breach of covenant of good faith and fair dealing, (4) breach of contract, (5) conversion, (6) unjust enrichment. (FSX No. 69852374).

[¶ 8] In response, Sinclairs moved for judgment on the pleadings, or in the alternative, summary judgment. (FSX No. 70100361). The court treats this motion as one for summary judgment. (FSX No. 70193006). Flying Phoenix followed with its own motion for partial summary judgment. (FSX No. 70317060). Both motions are fully briefed, with the last reply brief filed on August 9, 2023. (FSX Nos. 70256449, 70494354, 70600463).

LAW

[¶ 9] The court follows Wyoming's established framework for resolving summary judgment disputes about the existence of a partnership.

[¶ 10] Summary judgment is proper if there is no genuine dispute of material fact, and the moving party is entitled to judgment as a matter of law. W.R.C.P.Ch.C. 56(a). A fact is material if it would establish or refute an essential element of the cause of action or defense asserted by the parties. *Woodward v. Valvoda*, 2021 WY 5, ¶ 12, 478 P.3d 1189, 1196 (Wyo. 2021).

[¶ 11] The parties' respective summary judgment burdens are well established. *Wilcox v. Sec. State Bank,* 2023 WY 2, ¶ 26, 523 P.3d 277, 284 (Wyo. 2023), *reh'g denied* (Feb. 14, 2023). The moving party must establish a prima facie case and show there is no genuine issue of material fact and it is entitled to judgment as a matter of law. *Id.* If the moving party meets this burden, the nonmoving party must respond with materials beyond the pleadings showing a genuine issue of material fact. *Id.*

[¶ 12] The court's viewpoint is also well established. *Kudar v. Morgan*, 2022 WY 159, ¶ 11, 521 P.3d 988, 992 (Wyo. 2022). In considering a motion for summary judgment, the court views the evidence and reasonable inferences in the light most favorable to the nonmoving party. *Id.* Notably, the foregoing framework does not change where there are cross-motions for summary judgment. *White v. Wheeler,* 2017 WY 146, ¶ 67, 406 P.3d 1241, 1256. The court views the facts in the light most favorable to the non-moving party on each motion. *Id.*

[¶ 13] Summary judgment has been called "a useful tool to cut short litigation for which there is no useful purpose." *Jackson Hole Racquet Club Resort v. Teton Pines Ltd. P'ship*, 839 P.2d 951,

958 (Wyo. 1992). But there is no shortcut or "automatic solution to the question of the existence of a partnership." *Murphy v. Stevens*, 645 P.2d 82, 85 (Wyo. 1982). This question is best left to the fact finder. *Norris v. Besel*, 2019 WY 58, 442 P.3d 60 (Wyo. 2019). *See also, e.g., Redland v. Redland*, 2012 WY 148, ¶ 177, 288 P.3d 1173, 1213 (Wyo. 2012) ("On conflicting evidence, the question of whether a partnership exists is one for the trier of fact.") (cleaned up).

[¶ 14] A partnership is formed when "two or more persons" associate "to carry on as co-owners a business for profit," "whether or not the persons intended to form a partnership." Wyo. Stat. § 17-21-202(a). An essential element of partnership is profit and loss sharing. *Redland v. Redland*, 2012 WY 148, ¶ 177, 288 P.3d 1173, 1213 (Wyo. 2012). This is but one element. An equally essential element is shared control of the business. *Norris*, ¶¶ 20-23, 442 P.3d at 67-68. And yet another essential element is intent to jointly carry on a business for profit. *See id.* A written partnership agreement is the best evidence of intent but is not determinative. *Barton v. Barton*, 996 P.2d 1, 3 (Wyo. 2000). Intent "can be derived from the actions of the parties." *Ziegler v. Dahl*, 2005 ND 10, ¶ 15, 691 N.W.2d 271, 276 (N.D. 2005). In the end, the existence of a partnership "turns upon the facts and circumstances of association between the parties." *P & M Cattle Co. v. Holler,* 559 P.2d 1019, 1022–23 (Wyo. 1977).

[¶ 15] This partnership formation framework comes from the Uniform Partnership Act, which Wyoming adopted effective 1994. Wyoming Session Laws 1993, Ch. 194, §§ 1-3 (S.F. 126). The act makes receiving shared profits prima facie evidence of partnership unless the shared profits serve as payment for debt, employee or independent-contractor services, rent, annuity or retirement benefits owed to a deceased or retired partner, interest or other charges on a loan, or the sale of goodwill. Wyo. Stat. § 17-21-202(c)(iii). The official comment to this uniform provision counsels "[w]hether a relationship is more properly characterized as that of borrower and lender, employer and employee, or landlord and tenant is left to the trier of fact." Uniform Partnership Act § 202 Cmt. (1994).

ANALYSIS

[¶ 16] The existence or nonexistence of a partnership is the core of the summary judgment dispute and the heart of this case. In their motion, Sinclairs argue the claims requires the existence of a partnership and there is no genuine issue of material fact that none existed. Flying Phoenix responds by showing factual disputes and invoking the rule that whether a partnership exists is a question for the trier of fact.

[¶ 17] Yet, at the same time, Flying Phoenix seeks partial summary judgment, including on the issue of partnership. Flying Phoenix insists the parties shared profits, this profit sharing is prima facie evidence of a partnership, and the Sinclairs have not overcome this prima facie showing with specific facts demonstrating a genuine issue of material fact. In response, Sinclairs now acknowledge genuine disputes of material fact on partnership formation issues like whether the parties shared profits and losses and whether payments should be characterized as interest or profit sharing.

[¶ 18] The court agrees with the parties' responses to each other's motions. Conflicting evidence on the issue of partnership precludes entry of either summary judgment. *Murphy*, 645 P.2d at 85.

[¶ 19] Sinclair's motion fails because Flying Phoenix raises conflicting evidence on essential elements of partnerships. Take, as but one example, the element of shared control over the business. *Norris,* ¶¶ 20-23, 442 P.3d at 67-68. Sinclairs assert Flying Phoenix exercised sole control because it set prices, selected products, and arranged for product delivery. *Defs Mem.,* pg. 11., Ex. B – Aff. RS, ¶¶ 7-8, 12-14. But Flying Phoenix contends that, as is typical in partnerships, the parties shared control. *Plfs. Rsp.,* pg. 16, Ex. 1 – Aff. JL, 21-22. Flying Phoenix acquired fireworks and offered suggested retail prices, but Sinclairs marked the products for sale, made final decisions on sales prices, and sold the products. *Id.* at Ex. 1 – Aff. JL, ¶¶ 21-22, Ex. 2 – RL, ¶¶ 10-12. Viewed in the light most favorable to Flying Phoenix as the non-moving party, these material facts and others raise genuine issues of dispute.

[¶ 20] Flying Phoenix's motion fails because properly characterizing the parties' relationship and labeling the payments exchanged between the parties is best left to the trier of fact. Uniform Partnership Act § 202 Cmt. (1994). While Flying Phoenix views the payments as profit sharing, the Sinclairs see the payments as interest payment for the consignment of fireworks. The Sinclairs note the consignment agreement providing for the interest payment and referring to the Sinclairs as consignees or customers, not partners. *Defs. Rsp.* pg. 11-13. The Sinclairs also highlight the absence of any agreement converting the parties' relationship into a partnership. *Id.* at pg. 10-13. Additionally, the Sinclairs raise conflicting evidence on the essential partnership element of shared control over the business. *Id.* at 12,. *See also Defs Mem.,* pg. 11., Ex. B – Aff. RS, ¶¶ 7-8, 12-14.

[¶ 21] Recognizing the Uniform Partnership Act's counsel to leave the issue of defining payment types to the fact finder, acknowledging Wyoming's established rule that partnership existence is ill-suited to summary judgment disposition, and viewing the facts in the light most favorable to the Sinclairs as the non-moving party, the court concludes summary judgment disposition is inappropriate.

[¶ 22] Lastly, the court address Flying Phoenix's argument that Sinclairs' statement of material facts in dispute does not comply with Rule 56.1. *See Plfs' Rpy* (FSX No. 70600463). While Sinclairs' statement is irregular, imprecise, and less than helpful, these deficiencies do not impact this court's ultimate decision under well-established law that questions about partnership existence are inappropriate for summary judgment disposition. *See* W.R.C.P.Ch.C. 56(e)(providing that the court "may" (not "shall") take certain actions like considering facts undisputed when a party falls to comply with Rule 56(c)).

CONCLUSION

[¶ 23] For all these reasons, the parties' cross motions for summary judgment are both **DENIED**.

IT IS SO ORDERED.

Dated: 9/5/2023 /s/ Steven K Sharpe
CHANCERY COURT JUDGE