IN THE CHANCERY COURT, STATE OF WYOMING
2024 WYCH 3

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 FOLLOWING BENCH TRIAL

[¶ 1] Before the court is a case best described as a business divorce. As sometimes happens in divorces, the parties could not come to agreement despite multiple attempts at settlement. This case progressed beyond settlement conferences, discovery, and dispositive motions to a three-day bench trial held from January 30 to February 1, 2024. Having considered the witness testimony and exhibits presented at trial, as well as the entire case record, pertinent legal authority, and the parties' proposed findings of fact and conclusions of law, the court finds and concludes as set forth below.

INTRODUCTION

[¶ 2] The parties worked in the firework business together for over 30 years. Plaintiffs Flying Phoenix Corporation and J&R Landis Enterprises, LLC acquired fireworks and defendants Randall and Carmen Sinclair and Six Flag Fireworks, LLC sold the fireworks retail in Campbell County, Wyoming.[1] At the end of each

[1] For ease of reference, the court will generally refer to the parties as plaintiffs and defendants, although there may be times when only a particular entity or individual applies. Testimony showed that J&R Landis Enterprises took over Flying Phoenix's business that is involved in this lawsuit and that the Sinclairs control Six Flags Fireworks, LLC.

firework season, the parties would split the gross sales 60/40. Flying Phoenix (or J&R Landis Enterprises) received 60% of gross sales and the Sinclairs received 40%.

[¶ 3] Firework sales boomed, exceeding hundreds of thousands of dollars most summers. The parties benefited from these sales and their relationship for more than three decades. Sadly, the proverb, "all good things must come to an end" proved true. The parties' lucrative relationship fractured when defendants declined to sell plaintiffs' fireworks, opting to sell fireworks from third parties. This development disappointed plaintiffs, who had purchased, improved, and installed a building on the Sinclairs' land for seasonal firework sales.

[¶ 4] For the first ten years of their business relationship, the Sinclairs sold Flying Phoenix's fireworks from a trailer placed on leased land within county limits. Flying Phoenix provided the trailer and the Sinclairs located and arranged the land for lease. At first, the sales location moved every few years due to the City of Gillette annexing the land and prohibiting the sale of fireworks on annexed land.

[¶ 5] In 2002, the Sinclairs purchased an island of county land surrounded by the City of Gillette. The Sinclairs initially sold fireworks on this new land from the same Flying Phoenix trailer used in past locations. But sales soon outgrew the trailer, which had fallen into disrepair. In 2007, Flying Phoenix purchased a moveable building to be fitted for firework sales. Over the next year or so, Flying Phoenix relocated and attached the building to a skid foundation on the Sinclairs' property.

[¶ 6] From this new building, the Sinclairs exclusively sold plaintiffs**'** fireworks until the New Years' 2020-2021 season. During that season, and all New Year's seasons to follow, the Sinclairs sold both plaintiffs' fireworks and third-party fireworks. The Sinclairs did the same during the 2022 summer season. But during the 2023 summer season the Sinclairs refused to sell plaintiffs' fireworks and instead sold third-party fireworks only. Defendants never requested permission to use Flying Phoenix's building or paid Flying Phoenix rent to use the building.

[¶ 7] The parties dispute the character of their business relationship and their responsibilities to one another. 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. Compl. (FSX No. 69852374). In response, the Sinclairs assert four

counterclaims: (1) declaratory judgment as to ownership of the property, (2) declaratory judgment as to the nature of the parties' business dealings, (3) breach of contract, and (4) ejectment. Ans. & CC (FSX No. 70903854).

[¶ 8] These pleadings, and the bench trial, highlight the parties' differing views on their relationship and responsibilities to each other. To hear plaintiffs tell it, the parties converted their relationship into a partnership when the parties jointly developed a permanent location. They believe that defendants breached their duties of loyalty to the partnership and the covenant of good faith and fair dealing by selling third-party fireworks and refusing to sell plaintiffs' fireworks, converted partnership property for personal use, or, alternatively, breached an oral or implied-in fact contract to exclusively sell plaintiffs' fireworks (seemingly in perpetuity) even though plaintiffs distributed fireworks to other retailers in the region.

[¶ 9] To hear defendants tell it, the parties are in a consignment relationship, not a partnership. While the retail sales location changed, the underlying consignment relationship never changed—the parties continued to split the gross sales 60/40, and the division of responsibilities remained largely the same with plaintiffs retaining ultimate control over the fireworks. Under defendants' logic, plaintiffs must pay defendants $500 per day to store Flying Phoenix's building on the Sinclairs' property (but defendants need not pay plaintiffs for using Flying Phoenix's building to sell competitor fireworks). And, according to defendants, Flying Phoenix's failure to remove the building (substantially affixed to the Sinclairs' property with the Sinclairs' consent and involvement), has deprived defendants possession of their real property even though defendants continue to use the building to sell fireworks.

[¶ 10] Neither side's view is wholly accurate. The parties never formed a partnership or an exclusive sales contract. Even absent a partnership and exclusive sales contract, defendants cannot use Flying Phoenix's building without payment while at the same time demanding plaintiffs pay $500 per day to maintain a substantially affixed building on the Sinclairs' property. For the reasons explained below, the court denies all claims for relief, save for plaintiffs' claim for unjust enrichment.

JURISDICTION

[¶ 11] The parties do not dispute, and the court finds it has, jurisdiction over this matter under Wyo. Stat. § 5-13-115.

[¶ 12] Plaintiffs seek equitable and declaratory relief and damages for causes of action subject to the jurisdiction of the chancery court, including breach of contract (Wyo. Stat. § 5-13-115(b)(i)); breach of fiduciary duty (§ 115(b)(ii)); statutory or common-law violation involving a partnership, joint venture, or other business agreement (§ 115(b)(v)(C)); dispute concerning the internal affairs of business organizations (§ 115(b)(x)); and dissolution of partnership (§ 115(b)(xiii)).

[¶ 13] Defendants seek equitable and declaratory relief and damages for causes of actions subject to the jurisdiction of the chancery court, including breach of contract (§ 115(b)(i)); and declaratory judgment as to the nature of the business relationship between the parties (§ 5-13-115(b)(x)).

PROCEDURAL HISTORY

[¶ 14] Plaintiffs filed their complaint on April 19, 2023. (FSX No. 6985237). In response, defendants moved for judgment on the pleadings, or in the alternative, summary judgment. (FSX No. 70100361). The court treated this motion as one for summary judgment. (FSX No. 70193006) and denied the motion along with a summary judgment motion by plaintiffs (FSX No. 70783912).

[¶ 15] After resolving the cross-summary judgment motions, the court entered a scheduling order on September 19, 2023. (FSX No. 70903151). Defendants filed their answer and counterclaims on that same day. (FSX No. 70903854). Plaintiffs filed their answer to the counterclaims on October 5, 2023. (FSX No. 71032524).

[¶ 16] Defendants renewed their motion for summary judgment on December 23, 2023. (FSX No. 71686003). Plaintiffs responded on January 10, 2024 (FSX No. 717777895), and the court denied the motion on January 25, 2024 (FSX No. 71880646).

[¶ 17] The parties submitted a joint pretrial memorandum on January 6, 2024 (FSX No. 71755379) and the court convened a pretrial conference on January 12, 2024.

[¶ 18] The court commenced the bench trial on January 30, 2024. Before the trial, the parties cooperated in the admission of exhibits and stipulation of facts. Specifically, the parties stipulated to, and the court admitted, plaintiffs' exhibits 1 through 57 and 59 through 83 and defendants' exhibits A, P, Q, R, S, T, and U. The parties also stipulated to, and the Court admitted, factual stipulations submitted to the court as Exhibit 1 to the Pretrial Memorandum. Stip., (FSX No. 71755379); Jan. 30, 2024, 46:02-24; 159:03-07; Feb. 1, 2024, 218:07-220:11; CMSO, 5(d)(ii) (FSX No. 70903151).

[¶ 19] Trial to the court lasted three days, featuring seven witnesses: Jim and Rebecca Landis, Rob, Carmen, and Randall Sinclair, Dustin McLaughlin, and Jesse Scott Crosby. The Sinclairs and Landises are described below, but Messrs. McLaughlin and Crosby are introduced here. Mr. McLaughlin described himself as "a long-time employee of Jim Landis and Flying Phoenix" who "delivered all of the fireworks to Randy over the years." D. McLaughlin, Feb. 1, 2024, 22:20-24. Mr. Crosby testified as an expert witness on the valuation of the property and of the property improvement at issue here. J. S. Crosby, Feb. 1, 2024, 25:16-42:21.

[¶ 20] In its scheduling order, the court required that the parties submit proposed findings of fact and conclusions of law. CMSO, ¶ 5(g). At trial, the court agreed to receive those written findings and conclusions in lieu of closing arguments and requested that the parties specify their positions regarding the alleged partnership as well as what damages were claimed in the case. Feb. 1, 2024, 220:12—221:25. The parties agreed to do so. *Id.* at 222:1-3. The court accordingly accepts as final the positions, arguments, and objections raised therein. *See In re Adoption of SDL*, 2012 WY 78, ¶ 18, 278 P.3d 242, 247 (Wyo. 2012) (citing *Zaloudek v. Zaloudek*, 2009 WY 140, ¶ 22, 220 P.3d 498, 504 (Wyo. 2009) (A "court may require both parties to submit proposed findings, conclusions, and orders so that the court will be 'reminded or made aware of the positions, arguments, and objections of both parties.'")).

PLAINTIFFS' PARTNERSHIP CLAIMS

[¶ 21] The existence of a partnership is central to this case and forms the basis of plaintiffs' first three claims: dissolution of partnership, breach of loyalty, and breach of the covenant of good faith and fair dealing. Plaintiffs allege the parties

formed a partnership to operate a firework business from a permanent location in Campbell County, Wyoming. Compl., ¶ 32.

Facts

[¶ 22] The operative facts, which are most relevant to the partnership claims at the heart of the case but are also common to other claims, immediately follow. Select factual findings relevant to non-partnership claims will be repeated or made for the first time in the specific sections for those claims below. All factual findings are taken from the witness testimony, the stipulated exhibits, and factual stipulations.

The Parties and Key Players

Plaintiffs

[¶ 23] Plaintiffs are two Wyoming entities owned by James (Jim) and Rebecca Landis. Stip., ¶¶ 1-2. Plaintiff Flying Phoenix Corporation was formed under Wyoming law in 1991. *Id.* at ¶ 1. J&R Landis Enterprises, LLC was organized under Wyoming law in 2016. *Id.* at ¶ 2. Both are in good standing. *Id.* at ¶¶ 1-2. Jim and Rebecca Landis are not parties to this suit.

[¶ 24] Flying Phoenix and J&R Enterprise played different roles at different times in this dispute. Initially, from 1991 to 2016, Flying Phoenix obtained fireworks and delivered them to be sold by defendants from structures provided by Flying Phoenix. *See id.* at ¶¶ 10-14, 50-51.

[¶ 25] In 2016, Jim and Rebecca Landis sold a division of Flying Phoenix and formed J&R Enterprises, LLC. Stip., ¶ 50; J. Landis, Jan. 30, 2024, 87: 14-15, 116:16-17, 117:7-8; J. Landis, Feb. 1, 2024, 147:1-18. Ex. 60, pg. 2. J&R Enterprises took over Flying Phoenix's operations, obtaining fireworks from international manufacturers and loading trailers with the fireworks for distribution. Stip., at ¶¶ 50, 51. Having converted to a fireworks transportation company, Flying Phoenix delivered the fireworks obtained by J&R Enterprises to the Campbell County fireworks location at issue here. *Id.* ¶¶ 52, 99; J. Landis, Jan. 30, 2023, 87:10-25. Jim and Rebecca Landis reacquired the previously sold business of Flying Phoenix in 2017. J. Landis, Jan. 30, 2023, 119:4-7.

Defendants

[¶ 26] There are three defendants. Defendants Carmen and Randall Sinclair reside in Campbell County Wyoming and own defendant Six Flags Fireworks, LLC, which was organized in 2012 and is in good standing. Stip. at ¶¶ 3-5. Before organizing Six Flags Fireworks, Randall and Carmen operated a partnership. *Id.* at ¶ 47. *See also* Ex. 72, pg. 2 (changing sales tax reporting from partnership to LLC in 2016); C. Sinclair, Feb. 1, 2024, 12:22-13:12; 70:19-22.

[¶ 27] The two sides' entities are separate. Neither Randall Sinclair, Carmen Sinclair, nor Six Flags Fireworks is or was an owner or member of Flying Phoenix or J&R Enterprises. Stip., ¶ 6. And neither Jim Landis, Rebecca Landis, Flying Phoenix, nor J&R Enterprise is or was an owner or member of Six Flags LLC. *Id.* at ¶ 7.

[¶ 28] Not a party to this suit, but a major player, is Rob Sinclair, the son of Carmen and Randall Sinclair. Stip., ¶¶ 1, 2, 5; T.R. Sinclair, Jan 31, 2024, 85:23-25, 86:17-21, 121:9-12. Rob grew up in the fireworks business, working for his parents, gradually taking on more responsibility, and aspiring to take over the family business. T.R. Sinclair, Jan. 31, 2024, 86:1-16; Ex. 57, pg. 10.

Sinclairs and Flying Phoenix began their business relationship in 1991 without a written agreement.

[¶ 29] The business relationship at dispute has its genesis in hunting trips with a mutual friend of Randall Sinclair and Jim Landis. Stip., ¶ 10. J. Landis, Jan. 30, 2024, 36:7-20; R. Sinclair, Jan. 30, 2024, 161:9-164:13. Through this mutual friendship, Randall Sinclair learned that Flying Phoenix sold fireworks. Stip. ¶ 10. And through his work policing firework stands for the Campbell County Sherriff's Office, Randall Sinclair learned that a fireworks operator in the county wanted to exit the business and sell her sales trailer. R. Sinclair, Jan. 30, 2024,162:3-21. Randall Sinclair notified Jim Landis, who agreed to purchase the other operator's trailer. Stip., ¶¶ 10, 11; J. Landis, Jan. 30, 2024, 37:13-23.

[¶ 30] Randall and Carmen Sinclair and Flying Phoenix together agreed to sell fireworks from the stand. Stip., ¶¶ 10, 11; C. Sinclair, Feb. 1, 2024, 89:12-18. The parties describe this agreement as a "handshake relationship" and acknowledge they had no written agreement. J. Landis, Jan. 30, 2024, 88:23-89:19; R. Sinclair, Jan. 30, 2024, 212:11-213:4; R. Sinclair, Jan. 31, 2024, 64:14-64:21.

[¶ 31] Under this unwritten arrangement, Flying Phoenix provided the above-referenced trailer and the fireworks. Stip. ¶ 11. The Sinclairs identified and leased property on which to place the trailer. They also maintained the trailer, secured the trailer and fireworks, and sold the fireworks. J. Landis, Jan. 30, 2024, 37:13-23, 114:10-14; Stip., ¶¶ 9, 11.

[¶ 32] At the end of the fireworks season, Flying Phoenix and the Sinclairs split the gross sales of fireworks 60/40. Stip. ¶ 11. The Sinclairs sent Flying Phoenix 60% of the gross sales and the Sinclairs retained 40%. *Id.*

Firework sales are seasonal and risky.

[¶ 33] Campbell County prohibits firework sales. But, weather permitting, county commissioners lift the ban for two holiday seasons, Independence Day and New Year's Eve. Stip., ¶¶ 8,9. J. Landis, Jan. 30, 2024, 38:22–39:17. Independence Day sales generally run from mid-June through July 4 and are known as the "Summer Season" or "July 4th Season." *Id.* at ¶ 8. The New Years' Eve season is much shorter, and less profitable, running from Christmas to New Year. *Id.* at ¶ 8; T. R. Sinclair, Feb. 1, 2024,139:19-140:7; J. Landis, Jan. 30, 2024, 102:16-25.

[¶ 34] Lifting the ban for the full season (or at all) is not a given. The 2012 and 2016 seasons ended early, and in 2002 and 2021, the county never lifted the ban due to drought conditions. Stip., ¶ 9. Carmen and Randall Sinclair attended county commission meetings when the commission considered lifting the temporary fireworks ban. *Id.* Flying Phoenix has attended a few commission meetings as well. *Id.*

[¶ 35] Some fireworks require extensive lead time when ordering from manufacturers. *Id.* at ¶ 79. Plaintiffs place orders with manufacturers from the end of July into August and the first of September for the next summer season's sales. *Id.* at ¶ 79; R. Landis, Jan. 31, 2024, 144:04-144:16; R. Sinclair, Jan. 31, 2024, 54:05-16; T. R. Sinclair, Jan. 31, 2024, 106:08-106:16. Together, this lead time and the relatively unpredictable risk of shortened or banned sales seasons make purchasing fireworks in bulk at high interest rates risky.

[¶ 36] Plaintiffs alone bore the most significant risk of actual loss. Plaintiffs purchased the fireworks through high-interest financing. J. Landis, Jan. 30, 2024, 80:17-81:12. Plaintiffs owned all fireworks until sold to consumers and retained

ownership over all unsold fireworks with the right to retrieve fireworks provided to defendants at any time. *See* Ex. U, pg. 2; R. Sinclair, Jan. 30, 2024, 217: 12-14; R. Sinclair, Jan. 31, 2024, 29: 1-4, 7-10; 73:1-6; R. Landis, Jan. 31, 2024, 179:14-17, 180:7-12; C. Sinclair, Feb. 1, 2024,101:4-6; J. Landis, Feb. 1, 2024, 180: 4-10 182: 21-23. Plaintiffs retrieved and returned unsold fireworks to Riverton when they could not be stored in the trailer during the off-season at the end of each season. Ex. U, pg. 2; Ex. 3, pg. 2 -4; R. Landis, Jan. 31, 2024, 151:11-152:8. If defendants could not sell fireworks, or sold fewer fireworks than anticipated, plaintiffs were responsible for satisfying the high-interest loans, while defendants were responsible for "little things" like electricity and paying employees to re-box fireworks. *See* J. Landis, Jan. 30, 2024, 80:18 – 81:16, 81:25-82:5; R. Sinclair, Jan. 31, 2024,18: 5-14. Defendants mostly risked losing out on potential sales, whereas plaintiffs risked incurring actual losses by making payments on loans taken out to finance the purchase of unsold fireworks. *See* C. Sinclair, Feb. 1, 2024,10:20-11:7; J. Landis, Jan. 30, 2024, 80:18-81:16, 81:25-82:5.

[¶ 37] In short, plaintiffs assumed the risk of actual loss because they purchased the fireworks in bulk with high-interest-rate financing, retained ownership over the fireworks, and retained ownership over all unsold fireworks. Defendants did not assume the risk of actual loss: they never owned the fireworks.

The parties moved from leased location to leased location until 2002 when the Sinclairs purchased a permanent location well suited for firework sales.

[¶ 38] For the first decade or so, the Sinclairs sold fireworks from Flying Phoenix's trailer on leased land within county limits. *See* J. Landis, Jan. 30, 2024, 39:18-40:3; Stip., ¶¶ 11-13. The sales location moved every few years due, in part, to annexation of land by the City of Gillette, which prohibits firework sales. Stip., ¶ 12. If the City annexed the land where fireworks had been sold, Randall and Carmen Sinclair would identify a new location on county land. *Id.*; J. Landis, Jan. 30, 2024, 39:18 - 42:15.

[¶ 39] In the late 1990's, Carmen and Randall Sinclair identified a new location for the sale of fireworks at 804 Carlisle Street, Gillette, Wyoming (Carlisle property or Sinclairs' property). Stip., ¶ 13. The parties leased the land until Carmen and Randall Sinclair, as husband and wife, purchased the property. *Id.* at ¶¶ 13, 16; J. Landis, Jan. 30, 2024, 39:18-40:3, 40:24-41:2. The Sinclairs purchased the property

for $59,000. Stip., ¶ 17. The Sinclairs made all necessary mortgage payments, and the mortgage was released on December 9, 2023. *Id.* at ¶ 16.

[¶ 40] The Carlisle Street property is well suited to firework sales because it is an island of county land surrounded by the City of Gillette. *Id.* at ¶ 20. R. Sinclair, Jan. 30, 2024, 179:8-179:16. This makes the location favorable for firework sales which are generally allowed within the county during summer and New Year's season, but which are not allowed within city limits at any time. But this same lack of city jurisdiction that makes the property valuable for firework sales makes the property undesirable for other commercial efforts that need city services. *See* Ex. 73, pg. 33.

[¶ 41] Flying Phoenix and the Sinclairs had previously discussed purchasing a permanent location instead of jumping around from leased location to leased location. Stip., ¶ 19.

[¶ 42] Though the Sinclairs purchased the property to sell fireworks, that was not the only reason for the purchase. The Sinclairs purchased the land as an investment property to supplement their retirement income. R. Sinclair, Jan. 30, 2024, 172:12-18; C. Sinclair, Feb. 1, 2024, 89:7-11, 90:4-23. The Sinclairs generated income from the property by leasing part of the property to Larry's Tools for $500 per month for approximately five months each year starting in 2007 and ending in 2010. Stip., ¶ 41. They also leased space on the property to Target Signs for digital advertising. *Id.* at ¶ 46.

[¶ 43] In 2005, three years after purchasing the property for $59,000, the Sinclairs offered the property to Flying Phoenix for $175,000, nearly triple their initial purchase price. *Id.* at ¶ 22. One year later, the Sinclairs tried to sell the property to Flying Phoenix for nearly six times their purchase price, $350,000. *Id.* at ¶ 23.

[¶ 44] The Sinclairs' 2005 offer came with the following conditions:

- The Sinclairs would continue to sell Flying Phoenix's fireworks as the sole operators at the Carlisle Property with the original 60%-40% split.
- Flying Phoenix would put a more permanent structure on the site.
- Sinclairs would pay rent of $100 a month for storage and other ventures.

- If fireworks were permanently banned from Campbell County, the Sinclairs would purchase the land from Flying Phoenix for the sum of $175,000 plus the cost of any structure on the property and an additional 6% for land and property appreciation.

- The transaction would cancel any debt Flying Phoenix believed was owed by the Sinclairs.

Id. at ¶ 22.

[¶ 45] Flying Phoenix did not respond to the offers. J. Landis, Jan. 30, 2024, 47:10-19.

[¶ 46] No documentary evidence showed that ownership of the property changed. Accordingly, the court finds Carmen and Randall Sinclair owned the property at all times relevant to this dispute and continue to own the property. Stip., ¶¶ 16-17.

[¶ 47] The record lacks any convincing evidence that the parties discussed changing their business relationship, or acted like that relationship changed, when the Sinclairs purchased the property.

Flying Phoenix purchased and placed a sales building on the Sinclairs' property in 2007.

[¶ 48] Initially, the Sinclairs sold fireworks from the Flying Phoenix trailer used at previous locations. Stip., ¶ 13, 14. At the end of the 2007 summer sales season, the Sinclairs reported to Flying Phoenix, "It was a great year – but we really need a bigger trailer – maybe with air conditioning? We'll be keeping an eye out for one." *Id.* at ¶ 26. The trailer was in poor condition and the parties wanted more sales space. J. Landis, Jan. 30, 2024, 48:16-24; C. Sinclair, Jan. 31, 2024, 218:3-7; J. Landis, Feb. 1, 2024, 197:11-197:17.

[¶ 49] Randall Sinclair learned of three buildings for sale. R. Sinclair, Jan. 30, 2024, 180:4-22; Stip., ¶ 27. Mr. Sinclair notified Flying Phoenix, who agreed to purchase the largest of the three buildings, a stick-built building on skids measuring 30 x 60 feet. Stip., ¶¶ 27 - 29; J. Landis, Jan. 30, 2024, 51:1-17. Flying Phoenix purchased the largest building to increase firework sales. J. Landis, Jan. 30, 2024, 51:7-24, 53:20-53:22.

[¶ 50] The purchase price was $14,000 with moving costs of $720.13; as agreed by the parties, both were paid by Flying Phoenix. Stip., ¶¶ 27, 30, 37. Ex. 24, pg. 1-2. Jim Landis "thought it was fair" that Flying Phoenix purchase the building because the Sinclairs "had the land." J. Landis, Jan. 30, 2024, 53:1-14, 58:1-9.

[¶ 51] The bill of sale for the building is dated November 19, 2007 and provides:

> Flying Phoenix Corporation, A.K.A. Jim and Becky Landis, hereby purchase a 30 foot by 60 foot wood-frame building on 12 inch steel skids, vinyl sided. This building has one man door and one 12 foot by 14 foot overhead door.
>
> The building is being purchased from Larry Schirado for the sum of $14,000.00. Flying Phoenix Corporation is securing this building with an $8,000 deposit with the additional $6,000 and moving costs to be paid on the day it is moved and placed on the lot owned by Randall A. and Carmen K. Sinclair (Six Flags Fireworks).
>
> This building will be moved by February 9, 2008 by the seller, Larry Schirado, for an additional $500 moving fee.
>
> Flying Phoenix Corporation, buyer
> (Randall A. Sinclair signing for the corporation)
>
> /s/ Randall A. Sinclair
>
> /s/ Larry Schirado
>
> Larry Schirado, seller

Stip., ¶ 28; Ex. 24.

[¶ 52] The building was purchased and is assessed in the name of Flying Phoenix. Stip., ¶¶ 28 & 97. Plaintiffs' expert-witness appraiser's report opined that Flying Phoenix owns the building. *See* Ex. 73, pg. 9. Jim Landis testified on the first day of trial that Flying Phoenix did not own the building, but then testified on the third day of trial that Flying Phoenix did own the building. J. Landis, Jan. 30, 2024, 117:2-25; J. Landis, Feb 1, 2024, 144:14-24. No documentary evidence showed that ownership of the building changed from Flying Phoenix Corporation after the

execution of the bill of sale. Accordingly, the court finds Flying Phoenix owned the building at all times relevant to this dispute.

[¶ 53] The building required major improvements to make it suitable for firework sales. Flying Phoenix paid most of these costs. J. Landis, Jan. 30, 2024, 58:1-2; R. Sinclair, Jan. 30, 2024, 194:10-194:18. Flying Phoenix paid approximately $52,000 for improvements and repairs to the building to make and keep it ready for the parties' business. Stip., ¶ 37.

[¶ 54] The parties understood regulations required the building to be a temporary structure. R. Sinclair, Jan. 31, 2024, 66:19-67:2; C. Sinclair, Jan. 31, 2024, 219:20-24. To meet this regulatory understanding, Flying Phoenix incurred cost to affix the building to the land in a secured but technically temporary fashion. The building is securely attached to the business property with seven 12-foot helical soil anchors connected to an I-beam with welded eyes to anchor with ½ inch cable and with turnbuckles at seven locations. Stip., ¶ 31; Ex. 11, pg. 1. The welded eyes are 3-inch squares of ½ -inch plate with a ¾ inch hole welded around to existing the I-beam. Stip., ¶ 31; Ex. 11, pg. 1. The anchors have a minimum of 10K resistance to pull out following installation. Stip., ¶ 31; Ex. 11, pg. 1. The helical anchors were driven to a total depth of 15 to 22 feet from the surface. Stip., ¶ 31; Ex. 11, pg. 1; J. Landis, Jan. 30, 2024, 57:7-9. As part of the building placement, the property was leveled, and 15 ton of road base were applied. Stip., ¶ 32.

[¶ 55] While removable, the building is not meant to be removed. Flying Phoenix never intended to move the building. J. Landis, Jan. 30, 2024, 55:10-12. And removal is cost prohibitive. The parties acknowledge it would cost $250,000 to move the "temporary" building from property. Stip., ¶ 101; R. Sinclair, Jan. 31, 2024, 54:17-54:19. This is more than three times the value of the building, which is appraised at a value of $76,500. Ex. 73, pg. 34.

[¶ 56] Though Flying Phoenix bore the financial burden in purchasing, improving, and installing the building, Randall Sinclair did much of the groundwork. He identified necessary improvements, sought out contractors, obtained bids, and oversaw the work that was performed. Stip., ¶ 33.

[¶ 57] The estimates and bills for work on improving the building, the certificate of occupancy, and the firework department inspection application are in a varied combination of names, including those listed below:

- Randy Sinclair
- Randy Sinclair – Fireworks stand
- Flying Phoenix Corp ATTN Jim Landis
- Six Flags Fire Works c/o Flying Phoenix Corp
- Randy Sinclair Flying Phoenix Corporation
- Owner: Randy Sinclair
- Jim Landis, Gillette Fireworks Stand
- Jim Landis Fireworks Building
- Randy Sinclair of Flying Phoenix Corporation
- Flyng Phoenix Corporation
- Randy Sinclair c/o Flying Phoenix Corporation
- 6 Flags Fireworks
- Phoenix Corp. Jim Landis
- Sinclair Modular Detail Plan/Sinclair Building
- Six Flags Fireworks Randy Sinclair

Id. at ¶¶ 34-35. These names are too varied, and at times too vague, to establish the parties consistently held themselves out as a partnership, joint venture, or other business organization.

[¶ 58] Neither Randall Sinclair nor Jim Landis was paid for his time when performing tasks connected with improving or maintaining the building. *Id.* at ¶ 33.

[¶ 59] When the sales building was placed on the property, the parties did not discuss what would happen with the property and improvements if they stopped selling fireworks. *Id.* at ¶ 25.

The property purchase and building installation complicated, but did not change, the parties' underlying business relationship.

[¶ 60] Undoubtedly, the property purchase and building installation complicated the parties' relationship and mutually benefited both sides in the form of increased sales and earnings. But neither the property purchase nor the property improvements transformed the parties' business relationship into a partnership.

The parties' 60/40 split never changed.

[¶ 61] The parties and witnesses appear to agree, and the court finds, that the property purchase and building installation did not alter the parties' fundamental financial arrangement—a 60/40 split with plaintiffs covering acquisition and delivery costs and defendants paying retail-related costs. Defs.' FFCL, ¶¶ 29-30; Plfs.' FFCL, ¶ 38; C. Sinclair, Feb. 1, 2024, 94:24-95:10; J. Landis, Jan. 30, 2024, 45:1-13, 114: 3-9; R. Sinclair, Jan. 30, 2024, 174:7-18; R. Sinclair, Jan. 31, 2024, 69:25-71:8; T. R. Sinclair, Jan. 31, 2024, 126:12-17; C. Sinclair, Feb. 1, 2024, 94:24-95:02.

[¶ 62] At the end of each fireworks season, the parties calculated the 60/40 split as follows:

- The parties inventoried unsold inventory and then deducted unsold inventory from the starting inventory to determine plaintiffs' 60% share. Stip. ¶ 87.
- The parties accounted for separate and shared bills at the end of each season. *Id.* This reconciliation of expenses was captured by season summaries each year. *Id.* at ¶¶ 87-88.
- In addition to the season summaries, the parties handled shared costs informally. *Id.* at ¶ 89. After some back and forth, the parties would mutually agree about how to share costs. R. Landis, Feb. 1, 2024, 128:5-9, 134:15-20, 135:16-136:1.
- Any unsold fireworks were stored in Flying Phoenix's sales buildings or returned to Riverton. J. Landis, Jan. 30, 2024,114: 2-9.

[¶ 63] For the most part, the parties divided costs on retail and acquisition and delivery lines, with plaintiffs absorbing acquisition and delivery costs and defendants handling retail costs. Most costs were separate, not shared.

[¶ 64] Defendants' separate costs related to retail sales, including hiring and paying retail staff to stock the shelves and conduct retail sales, paying for propane and electricity, purchasing forklift, paying property taxes, and carrying liability insurance with respect to the land, and paying for portable sanitation facilities. Stip., ¶¶ 39, 42, 77; Ex. N, pg.3; J. Landis, Jan. 30, 2024, 78:4-9; R. Sinclair, Jan. 30, 2024, 215:11-12, 216:17-22; R. Sinclair, Jan. 31, 2024, 3:14-4:06; C. Sinclair, Feb. 1, 2024, 121:6-9.

[¶ 65] Plaintiffs' separate costs mostly related to acquiring and delivering the fireworks, including purchasing the fireworks from foreign manufacturers, shipping the fireworks, paying staff to load fireworks onto trailers for delivery to Gillette, providing freight from the manufacturers to the sales building, insuring the fireworks and building and paying taxes on the building. Stip., ¶¶ 78, 99; J. Landis, Jan. 30, 2024, 78:10-16, 82:20-1; C. Sinclair, Feb. 1, 2024, 121:10-14.

[¶ 66] Though most costs were separate, the parties shared some costs. These shared costs were limited and included maintenance of the improvements like paint and roof repair, credit card expenses, cameras, and computers, advertising as necessary, and donations. Stip., ¶¶ 43, 44, 77, 78; J. Landis, Jan. 30, 2024, 85:14-18; R. Sinclair, Jan. 31, 2024, 9:5-15, 10:9-19; R. Landis, Jan. 31, 2024, 140:14-24.

The parties' division of duties stayed mostly the same.

[¶ 67] The parties and witnesses also appear to agree, and the court finds, that the property purchase and building installation modified the parties' duties and responsibilities only slightly. Defs.' FFCL, ¶ 28; Plfs.' FFCL, ¶ 32; C. Sinclair, Feb. 1, 2024, 9:18-9:25, 96:5-8; J. Landis, Jan. 30, 2024,152:7-10. Duties remained divided between the parties on retail and acquisition and distribution lines. Stip., ¶¶ 77-78. R. Landis, Jan. 31, 2024, 132:5-13, 143:13-144:13; C. Sinclair, Feb. 1, 2024, 99:22-100:10, 121:22-122:8.

[¶ 68] Defendants' duties continued to relate to consignee activities—selling plaintiffs' fireworks to end consumers. They stocked shelves, displayed product, employed retail staff to sell the fireworks, inventoried fireworks at the start and

end of each season, operated computers and cash registers, advertised fireworks for sale, set retail sales hours, provided portable sanitation facilities, and provided security. Stip., ¶ 77; J. Landis, Jan. 30, 2024, 114:10-115:5, 131:3-12; C. Sinclair, Feb. 1, 2024, 76:1-5. These duties mirror those performed before they purchased the property and Flying Phoenix installed the sale building. Stip., ¶ 77.

[¶ 69] Plaintiffs' duties continued to relate to consignor activities—providing fireworks for sale by defendants. They selected fireworks for purchase, purchased fireworks from manufacturers, hired and paid staff to pull fireworks and load them onto trailers, delivered them to defendants for retail sale, and set minimum prices. Stip., ¶ 78; R. Sinclair, Jan. 30, 2024, 164:14-18, 210:25-212:6; J. Landis, Jan. 30, 2024, 79:22-80:5, 119:22-24; R. Sinclair, Jan. 31, 2024, 80:13-16; R. Landis, Jan. 31, 2024, 143:13-25; J. Landis, Feb. 1, 2024, 177:15-17. These duties parallel those from before the property and building purchase. Stip., ¶ 78.

[¶ 70] The larger sales building and permanent location increased sales and workload. But they did not alter the types of duties or the parties' control. Plaintiffs continued to control the acquisition and distribution activities, determining which fireworks to purchase (with point-of-sale input from defendants), delivering fireworks, and setting a minimum sales price. And defendants continued to control the retail sales activities, hiring retail staff, setting the hours of operation, advertising fireworks, and adjusting sales prices above the sales floor set by plaintiffs. The parties shared input but refrained from encroaching on the other's area of expertise and responsibility. *See, e.g.,* R. Landis, Jan. 31, 2024, 148:17-149:4.

[¶ 71] In the end, the property acquisition and development did not alter the core arrangement where plaintiffs provided the fireworks and sales building, and defendants sold the fireworks and provided the land where the fireworks were sold.

The parties' documents did not change to reflect a partnership.

[¶ 72] The record lacks any convincing evidence that the parties discussed changing their relationship, or acted like the relationship changed, when Flying Phoenix purchased, improved, and affixed the sales building.

[¶ 73] The financial and tax records do not suggest a change in the business relationship after the property purchase and building installation. The parties never jointly filed partnership tax returns, and never shared bank accounts. Stip. ¶

90, C. Sinclair, Feb. 1, 2024, 98:10-15. Campbell County taxed the parties separately, assessing property taxes to the Sinclairs and improvement taxes to "Jim Landis, Attn Flying Phoenix Corp." Stip., ¶¶ 96 & 97; Ex. 60, pgs. 1-2.

[¶ 74] The parties never executed a partnership agreement. The lack of partnership agreement is not attributable to lack of business or legal acumen. The Sinclairs showed they knew how to change business structure when they organized Six Flag Fireworks, LLC, transforming their relationship from partners to a limited liability company. Stip. ¶ 43. C. Sinclair, Feb. 1, 2024, 12:22-13:12; Ex. 72, pgs. 1-2. And Jim and Rebecca Landis have significant business experience forming and operating at least two business entities, Flying Phoenix Corporation and J&R Landis Enterprises, LLC.

[¶ 75] The parties also never updated their day-to-day documents to reflect a change in relationship. Tellingly, the form used by the parties to document the number and type of fireworks provided to the defendants continued to bear the term "consignment." Stip., ¶ 98; Ex. 68; R. Landis, Jan. 31, 2024, 156:18-158:01; J. Landis, Feb. 1, 2024, 160:16-161:10. Based on documentation and testimony, plaintiffs continued to own all fireworks until sold to consumers, retaining ownership over all unsold fireworks with the right to retrieve fireworks provided to defendants for sale at any time. Ex. U, p. 2; Ex. 68; R. Sinclair, Jan. 30, 2024, 217:12-217:14; R. Sinclair, Jan. 31, 2024, 73:1-73:6, 80:19-80:21; R. Landis, Jan. 31, 2024, 179:14-179:17; R. Landis, Feb. 1, 2024, 101:4-101:6; J. Landis, Feb. 1, 2024, 180:4-180:10, 182:21-182:23.

The parties did not show each other the loyalty characteristic of partners.

[¶ 76] The parties did not act like partners, they functioned as separate and independent entities without duties of loyalty to one another.

[¶ 77] A prime illustration of this absence of loyalty is the lack of exclusivity. Before and after the property acquisition and building installation, plaintiffs delivered fireworks to other stands in Campbell County that competed with defendants. J. Landis, Jan. 30, 2024, 147:12-149:8. Specifically, plaintiffs provided fireworks to the Bowling Alley Stand from approximately 2007 to 2014 and to the Tanner Stand from 1990s through 2001. Stip., ¶83. Randall Sinclair testified that

Jim Landis also gave the Bowling Alley "a stand and a Conex to sell fireworks from." R. Sinclair, Jan. 31, 2024, 23:9-20.

[¶ 78] Defendants were no more loyal. They sold non-party fireworks from Flying Phoenix's building without plaintiffs' knowledge or permission. Stip., ¶¶ 58-62. J. Landis, Jan. 30, 2024, 92:6-15. R. Landis, Jan. 31, 2024, 162:18-22. Specifically, defendants ordered fireworks from two vendors, Lew's Fireworks and Western Pyro. Stip., ¶¶ 67, 94, 95. Defendants placed these orders from November 2020 to August 2023. Stip., at ¶ 67.

[¶ 79] Starting with the New Years' 2020-2021 season, and continuing with each New Year's season to follow, defendants sold both plaintiffs' fireworks and third-party fireworks. Stip., ¶¶ 58, 59. The defendants did the same during the 2022 summer season. *Id.* Defendants altogether refused to sell plaintiffs' fireworks during the 2023 season, opting instead to sell third-party fireworks only. R. Sinclair, Jan. 31, 2024, 50:18-25.

[¶ 80] This refusal is not attributable to plaintiffs' inability to provide fireworks. *See* Stip., ¶ 63. R. Sinclair, Jan. 31, 2024, 49:5-50:17. R. Landis, Jan. 31, 2024, 162:11-162:17. Plaintiffs notified defendants on March 2, 2023, that plaintiffs were ready and willing to provide fireworks for the 2023 summer season, had product available, and insurance in place. Stip., ¶ 73. A few weeks later, plaintiffs notified defendants that plaintiffs had pulled product for the Gillette Store and were loading the trailer. Stip., ¶ 74. Defendants responded through counsel, who notified plaintiffs' counsel that defendants would not accept delivery of fireworks from plaintiffs loaded for delivery. Stip., ¶ 75.

[¶ 81] Before the 2023 summer season, defendants did not notify plaintiffs in advance about the sales of third-party fireworks from the Flying Phoenix's building. Stip., ¶ 61. Defendants never received plaintiffs' permission to sell third-party fireworks from the building. Stip., ¶ 62. Defendants never paid rent to use the building for third-party sales. R. Sinclair, Jan. 31, 2024, 58:21-59:8.

[¶ 82] The Sinclairs did not believe plaintiffs should benefit from third-party sales made from the building purchased and installed by Flying Phoenix. T. R. Sinclair, Jan. 31, 2024, 96:09-96:13; C. Sinclair, Feb. 1, 2024, 45:6-12; R. Sinclair, Jan. 31, 2024, 44:2 - 44:10, 45:19-46:9; 59:6-8; 55:18- 56:5; 84:1-84:5.

[¶ 83] Defendants also used Flying Phoenix's building for non-fireworks business purposes without plaintiffs' permission, and believed they had a right to such use. C. Sinclair, Feb. 1, 2024, 67:20-68:4, 110:11-110:19. In 2017, the defendants used the sale building for a graduation party. Stip., ¶ 53. In 2019, defendants used the building for a wedding. Stip. at ¶ 54. Defendants also used the building to store personal and miscellaneous items like a motorcycle and a 1965 Mustang. *Id.* at ¶ 86.

[¶ 84] While the Sinclairs believe that they can use Flying Phoenix's building rent and permission free for personal purposes and for the sales of competitor fireworks, they also insist that plaintiffs pay them a $500-per day storage fee to keep the substantially affixed building on the property.

[¶ 85] In October 2022, defendants demanded that plaintiffs remove the building or pay a storage fee beginning October 16, 2022 in the amount of $500 per day. Ex. 62, pg. 1. C. Sinclair, Feb. 1, 2024, 73:22-74:12. On February 28, 2023, defendants sent plaintiffs an invoice for $68,000. Ex. 62, pg. 1. This dollar amount reflects daily storage fees of $500 for 136 days. *Id*.

[¶ 86] This "storage fee" is substantially higher than the Sinclairs charged Larry Tools ($500 per month) and the amount the Sinclairs offered to pay plaintiffs in rent ($100 per month) if plaintiffs purchased the property. Stip., ¶¶ 22, 41.

The parties acted as distinct and self-interested entities, not as partners cooperating to advance their mutual interests.

[¶ 87] Testimony underscored how the parties viewed themselves as distinct entities. C. Sinclair, Feb. 1, 2024, 98:7-100:11, 102:25-103:4. Rebecca Landis testified that she handled shipping and acquisition while defendants operated "all the stuff that goes along with selling retail" and that she had little input in retail because the defendants "know how to operate . . . . I'm not up there operating." R. Landis, Jan. 31, 2024, 148:3-21, 198:21-200:16.

[¶ 88] Both Jim and Rebecca Landis highlighted the distinct nature of plaintiffs' operations by openly discussing the size of plaintiffs' operations. (Jim: "We're all over the United States." Feb. 1, 2024, 203:18) (Rebecca: testifying plaintiffs had five stands located in Alpine, Riverton, Cheyenne, Lander, Gillette. Jan. 31, 2024, 188:6-13, 191:5-19). They described their substantial and high-risk financing

arrangements for obtaining fireworks from China each season as well as the different facets of their business operation, which they broke down into different "divisions"—including wholesale and display product and a standalone trucking division. J. Landis, Jan. 30, 2024, 34:16-35:10, 61:3-7, 80:6-81:12; J. Landis, Feb. 1, 2024, 151:11-152:10, & 180:4-10; R. Landis, Jan. 31, 2024, 198:21—199:21. They noted their customers included display companies and municipalities. J. Landis, Jan. 30, 2024, 34:25-35:02.

[¶ 89] Perhaps most indicative of the separation between plaintiffs and defendants is that plaintiffs sold their fireworks elsewhere without regard for defendants when Campbell County banned firework sales. Take for example the year 2021, when, in response to a ban on selling fireworks in Campbell County, plaintiffs collected their fireworks from the Sinclairs' property and shipped them to Cheyenne for resale at a store owned by J&R Landis Enterprises. R. Landis, Jan. 31, 2024, 183:6-186:11. Plaintiffs showed no concern about (or willingness to help) defendants survive such years, however.

[¶ 90] Rebecca Landis testified that "when the Sinclairs got shut down" and "couldn't sell [fireworks], we reallocated this stuff down to Cheyenne." R. Landis, Jan. 31, 2024, 185:21-186:3. She explained "that since [the] Sinclairs couldn't sell it, we would drop it off down there [in Cheyenne] because [our store there] needed extra product." *Id.* at 188:19-189:3. Jim Landis testified that when sales at the Sinclairs' property were shut down, the defendants' "obligation" to plaintiffs "was over because the county commissioners had shut them down." J. Landis, Jan. 30, 2024, 146:15-147:4. He also testified that he did not share with defendants any profits from the other Gillette fireworks stands plaintiffs supplied, stating, "Why would I? . . . This is commerce." *Id.*

[¶ 91] While plaintiffs did not share income from firework sales in other locations with defendants, there is no evidence defendants shared income generated from leasing the property for tools sales and sign displays or from selling non-party fireworks.

The parties are in the uncomfortable position of one side owning the property and the other side owning a structure on that property, with neither side willing to yield to the demands of the other to untangle the relationship.

[¶ 92] The parties started discussing unwinding their business relationship in 2021 when Jim Landis notified the Sinclairs that he was considering exiting the fireworks business due to health concerns. Stip., ¶ 64; J. Landis, Jan. 30, 2024, 89:20-90:05; T. R. Sinclair, Jan. 31, 2024, 100:4-100:14; J. Landis, Feb. 1, 2024, 161:20-163:04. Jim Landis thought one of the sides should buy out the other for a price of $200,000. J. Landis, Jan. 30, 2024, 90:06-90:13; R. Sinclair, Jan. 30, 2024, 185:14-185:25. Defendants rejected the offer and made a counteroffer of either $30,000 or $48,000. J. Landis, Jan. 30, 2024, 91:09-91:12; R. Sinclair, Jan. 30, 2024, 185:14-185:25; C. Sinclair, Feb. 1, 2024, 54:01-54:12.

[¶ 93] By the summer of 2022, the parties remained unable to reach an agreement on how to dissolve their business relationship. *See* J. Landis, Jan. 30, 2024, 95:09-95:14, Ex. 57, pg. 10. On August 10, 2022, Rob Sinclair emailed Becky Landis inquiring about plaintiffs' plans for transitioning out of the fireworks business, indicating his interest in continuing the business with his parents, and asking about product for the New Year's Season of 2022-2023 and the plaintiffs' position about the building:

> My folks let me know today that you guys are not planning on distributing fireworks anymore (as per my dad's conversation with Jim). I'm curious where that leaves us (I tried calling a little earlier). I certainly want to continue selling with my parents and beyond their years and am very invested in the future of the business. Is there any hope of having product for New Year's? And what are your thoughts on the building itself? I'm relatively in the dark about these things and just don't want to get caught behind the 8-Ball in not having product when our seasons begin.

Ex. 57, pg. 10.

[¶ 94] Becky Landis responded on August 11, 2022, stating that one option was for the defendants to "buy the building" because Randall Sinclair did "not want to sell the land." *Id.*

[¶ 95] The parties never reached a resolution on the sale of the property or building. Instead, they incurred considerable expense to bring this dispute to trial.

Law

Partnership formation, whether inadvertent or intentional, requires: (1) two or more persons, (2) co-ownership, and (3) a business for profit.

[¶ 96] 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). The determinative intent is not the parties' subjective intent to be characterized (or not characterized) as partners, but their "intent to do things that constitute a partnership." *Norris v. Besel*, 2019 WY 58, ¶ 13, 442 P.3d 60, 65 (Wyo. 2019) (quoting *Redland v. Redland*, 2012 WY 148, ¶ 177, 228 P.3d 1172, 1213 (Wyo. 2012)). This means that absent a partnership agreement, or even when the parties express their subjective intent not to form a partnership, the parties may inadvertently create a partnership through their conduct. *Murphy v. Stevens*, 645 P.2d 82, 85 (Wyo. 1982); Uniform Partnership Act § 202, cmt. 1 (1997) (Parties "may inadvertently create a partnership despite their expressed subjective intention not to do so.").

[¶ 97] There is no single test for partnership that applies in every situation. *Norris*, ¶ 9, 442 P.3d at 64. Neither is there a shortcut or "automatic solution to the question of the existence of a partnership." *Murphy*, 645 P.2d at 85. Instead, determining the existence of a partnership requires a totality-of-the-circumstances analysis based on the parties' conduct. *P & M Cattle Co. v. Holler*, 559 P.2d 1019, 1022–23 (Wyo. 1977) (The existence of a partnership "turns upon the facts and circumstances of association between the parties."). Accordingly, the question of partnership formation is reserved for the fact finder. *Norris*, ¶ 14, 442 P.3d at 65.

Partnerships: Shared Community of Interests

[¶ 98] When determining whether a partnership exists based on the totality of the circumstances, courts look for "a community of interests." *See e.g., Norris*, ¶ 19, 442 P.3d at 66. A community of interests can be characterized as sharing control, profits, and losses. *See Ziegler Dahl*, 2005 ND 10, ¶ 24, 691 N.W.2d 271, 277–78 (N.D. 2005) ("There must be a "community of interest in the profits of the business, and an agreement or right to share profits, and, generally, an obligation to share losses as well.") (citing 59A Am. Jur. 2d Partnership § 149 (2003)).

> ***Sharing a community of interest means sharing ultimate control of the business.***

[¶ 99] "A community of interests entails co-ownership of management and control of the business entity." *Norris*, ¶ 19, 442 P.3d at 66. This shared management and control must "enable each member to make contracts, manage the business, and dispose of the property as to third persons." *Id.* (quoting 59 A Am. Jur. 2d Partnership § 144). Put more concisely, partners "must have the joint power to control" the business. *Norris*, ¶ 19, 442 P.3d at 66. Routine tasks do not "evidence the type of co-ownership or control of the business that is essential to partnership formation." *Norris*, ¶ 20, 442 P.3d at 67. The type of control that evidences a partnership is "ultimate control." *Ziegler*, ¶ 21, 691 N.W.2d at 277 ("If partners are co-owners of a business, they each have the power of ultimate control."); Uniform Partnership Act § 202, cmt. 1 (1997).

A community of interests includes an agreement or right to share profits.

[¶ 100] Profit sharing is a basic and essential element of partnership. *Norris*, ¶ 13, 442 P.3d at 65 (citing *Redlands*, ¶ 177, 288 P.3d at 1213). Profits are "the excess of revenues over expenditures in business transactions." *Ingram v. Deere,* 288 S.W.3d 886, 899 (Tex.2009) (quoting Black's Law Dictionary 1246 (8th ed.2004)). Or, stated another way, profits are the "amount remaining after the expenses of the partnership are paid." *Ziegler*, ¶ 25, 691 N.W.2d at 278.

[¶ 101] Some forms of payment do not by themselves establish a partnership. For instance, "sharing of gross returns does not by itself establish a partnership." Wyo. Stat. § 17-21-202(c)(ii). And payment received for "services as an independent contractor or of wages or other compensation to an employee" do not give rise to the inference of a partnership. Wyo. Stat. § 17-21-202(c)(iii)(b).

Sharing a community of interests not only encompasses sharing profits but also involves sharing actual losses.

[¶ 102] Loss sharing is a central tenet of co-ownership and a defining characteristic of partnership. *Norris*, ¶ 13, 442 P.3d at 65 (citing *Redlands*, ¶ 177, 288 P.3d at 1213). *See also* William Callison & Maureen Sullivan, *Partnership Law and Practice* § 5:14 (2023-2024) (stressing that sharing business risks, including the risk of loss, is an important element of co-ownership).

[¶ 103] Loss sharing refers to sharing actual or negative amounts, not sharing the loss of potential sales. When a party "is not required to make good on negative

amounts, losses are shared in only the broadest sense" and "[s]uch an expansive interpretation of losses renders meaningless the distinction between 'sharing profits' and 'sharing losses.'" *DeCristofaro v. Nest Seekers E. End, LLC*, 54 Misc. 3d 1209(A), 52 N.Y.S.3d 246 (N.Y. Sup. 2017). Because the sharing of actual or negative losses is an indispensable element of a partnership, no partnership lies where a party receives a commission irrespective of profitability. *Williams v. Obstfeld*, 314 F.3d 1270, 1276 (11th Cir. 2002).

[¶ 104] The absence of an agreement to share losses is fatal to a partnership formation claim. *See DeCristofaro*, 52 N.Y.S.3d 246; *Winslow v. Nolan*, 319 S.W.3d 497, 501–03 (Mo. App. 2010) (agreement that alleged partner had nothing to lose should the business fail was fatal to partnership claim. *See also Alan* R. Bromberg & Larry E. Ribstein, *Bromberg & Ribstein on Partnership*, §2.06 (1998). ("Loss sharing is an important consequence of partnership").

Partners with shared community of interests view themselves as members of a single business rather than separate businesses.

[¶ 105] Tying together the mirrored concepts of profit and loss sharing under the co-ownership element of partnership, one court described co-ownership as whether the parties "share the benefits, risks, and management" of the business such that they "subjectively view themselves as members of the business rather than as outsiders contracting with it." *In re KeyTronics*, 274 Neb. 936, 958, 744 N.W.2d 425, 441 (NE 2008).

[¶ 106] The American Jurisprudence volume on partnership, oft cited by the Wyoming Supreme Court,[2] elaborates:

> Co-ownership required for a partnership generally addresses whether the parties share the benefits, risks, and management of the enterprise such that (1) they subjectively view themselves as members of the business rather than as outsiders contracting with it, and (2) they are in a better position than others dealing with the firm to monitor and obtain information about the business. The co-ownership characteristic of partnership anticipates a single business enterprise and not the conduct of two separate and independent businesses, each

[2] *See Norris v. Besel*, 2019 WY 58, 442 P.3d 60 (Wyo. 2019) (citing American Jurisprudence volume on partnership 10 times).

> owned by one party to the association. It does not necessarily require joint title to all assets, since one may be considered a co-owner of the business without any title to specific property, but it does require the right to participate in the control of the business.

59A Am. Jur. 2d *Partnership* § 140.

> ***Sharing a community of interests requires more than joint property ownership; it requires joint control of the business and profit and loss sharing.***

[¶ 107] Partnership formation's co-ownership element pertains not to the ownership of property, but rather to the ownership of the business, which is characterized by a shared community of interests, including sharing ultimate control, profits, and actual losses. *In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441 ("Being 'co-owners' of a business for profit, as required for a partnership, does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits.").

[¶ 108] As a leading treatise on partnership law explains, the Uniform Partnership Act "distinguishes property co-ownership from carrying on a business as co-owners, even where the co-owners share profits from the use of the property." Callison & Sullivan, *Partnership Law and Practice* § 5:9. Wyoming's partnership statute, which comes from the uniform act,[3] reflects this distinction. Wyo. Stat. § 17-21-202(c)(i) ("Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.").

[¶ 109] The co-ownership element of partnership "requires more than joint property ownership and is usually evidenced by joint control of the business and by profit and loss sharing." Callison & Sullivan, *Partnership Law and Practice* § 5:9. Accordingly, "[m]ere shared ownership in property or profits from the property does not create a partnership." *Holeman v. Neils*, 803 F.Supp. 237, 241 (D. Ariz. 1992). *See also Barton v. Barton*, 996 P.2d 1, 3–4 (Wyo. 2000) (no partnership existed between husband and wife who shared rental properties); *In re Belle Isle Farm*, 76 B.R. 85, 88 (Bankr. E.D. Va. 1987) (joint ownership of property and the splitting of

[3] Wyoming adopted the Uniform Partnership Act, effective 1994. Wyoming Session Laws 1993, Ch. 194, §§ 1-3 (S.F. 126).

proceeds and expenses did not establish a partnership where the parties did not jointly hold partnership funds, did not file partnership tax returns, and did not apply jointly for a loan).

A consignment relationship does not bear the shared community interests typical of a partnership.

[¶ 110] As discussed above, a partnership is characterized by a shared community of interests, where partners jointly manage the business and share both risks and rewards. In contrast, a consignment is a trade relationship where the consignor retains ownership of the goods, sets a minimum sales price, and assumes the risks, while the consignee receives a commission and has limited control. This trade relationship lacks the shared community interests in control, profits, and losses that are fundamental to partnerships.

Partners share ownership over goods; consignees do not.

[¶ 111] In a consignment, one party retains ownership over goods until the other party sells the goods to the end consumer. *United Agri-Prod. Fin. Servs., Inc. v. O's Gold Seed Co.*, 733 P.2d 252, 255–56 (Wyo. 1987) (describing a relationship as "clearly a consignment" where a seed company retained ownership over the seeds until the retailer delivered the seeds to the end customer). Courts have long found consignments (not partnerships) when one party owns and can take possession of the goods at any time. *See, e.g., Belden v. Read*, 27 La. Ann. 103 (La. 1875) (finding no partnership because there was no community of goods, no shared proprietary interest in the goods, and the consignor retained ownership over the goods).

Partners share comparable risks; consignors and consignees do not.

[¶ 112] Because the consignor retains ownership until the goods are sold, the risk of actual or negative loss remains with the consignor. 1 Am. Jur. Proof of Facts 2d 223 § 2. If the goods do not sell, the consignee owes the consignor nothing, while the consignor absorbs actual losses from the purchase or production of the goods. Indeed, "[o]ne the most significant attributes of consignments is that all risk of loss is placed on the consignor until a sale of the goods is made to a third party, unless the agreement contains a provision to the contrary." *Id.*

Partners share profits; consignees receive commissions.

[¶ 113] Consignees receive commissions. *See United Agri-Prod. Fin. Servs., Inc.,* 733 P.2d at 254-56 (Agreement whereby retailer would pay selling corporation at the end of each season for product sold, "receive a commission" for amounts sold, and return to selling corporation any product "which remained unsold" was "a true consignment."). Again, no partnership lies where a party receives a commission irrespective of profitability. *Williams v. Obstfeld*, 314 F.3d 1270, 1276 (11th Cir. 2002).

[¶ 114] In sum, a consignment relationship is not a partnership.

Analysis

Here, the existence of a partnership hinges on co-ownership, which has not been demonstrated.

[¶ 115] As detailed above, partnership formation requires (1) two or more persons, (2) co-ownership, and (3) a business for profit. Wyo. Stat. § 17-21-202(a). There is no doubt that plaintiffs and defendants are "persons" under the statute. Wyo. Stat. § 17-21-101(a)(ix) (defining "person" to include individuals like the Sinclairs, corporations like Flying Phoenix and J&R Enterprises, and other legal or commercial entities like Six Flags Fireworks). Further, there is no dispute that selling fireworks is a for-profit business. The element in question is co-ownership.

[¶ 116] Co-ownership is defined by a shared community of interests, which includes the sharing of ultimate control, actual losses, and profits. These shared interests lead partners to view themselves as a single business rather than separate businesses. The relationship between the parties here, both before and after the property purchase and development, does not exhibit these defining characteristics. Instead, it more closely resembles a consignment agreement than a partnership, as the parties did not share ownership over goods, risks, or profits in a manner indicative of a true co-ownership arrangement. Additionally, the parties viewed themselves, and acted, as separate businesses, not as members of the same business.

The parties' relationship is closer to a consignment, which does not entail co-ownership, than a partnership, which requires co-ownership.

The parties did not share ultimate control

[¶ 117] The parties did not exercise joint and ultimate control over the business. Rather, as is typical in a consignment relationship, the parties divided control and duties along retail and acquisition or supply lines, with each side respecting these boundaries. Plaintiffs controlled and performed the consignor activities of acquiring and delivering fireworks for sale by defendants. Defendants, on the other side of the boundary, controlled and performed the consignee activities of selling the fireworks to end consumers at prices at or above minimums set by plaintiffs.

[¶ 118] Defendants could not share joint and ultimate control because they never owned the fireworks. Plaintiffs retained ownership over the fireworks until defendants sold them to the end consumer, retaining the right to retrieve the fireworks at any time. Plaintiffs exercised these ownership rights, retrieving and reassigning fireworks to other locations when defendants could not sell them in Campbell County. Plaintiffs' sole ownership, and right to retake possession, of the fireworks are emblematic of a consignment relationship, not a partnership.

The parties did not share fully in the risks of the business.

[¶ 119] Because plaintiffs retained ownership of the fireworks until sold to the end consumer, they bore the risk of actual or negative loss. If the fireworks did not sell, they would be returned to plaintiffs or stored for next year, rather than be paid for by defendants. This arrangement was risky for plaintiffs, who took out high-interest loans to purchase the fireworks in bulk and were solely responsible for making payment on those loans.

[¶ 120] Unlike plaintiffs, defendants were never exposed to the potential for significant negative losses on account of the business relationship. Under the arrangement, defendants could have earned a commission even in slower years, while plaintiffs would be responsible for satisfying loans made to finance purchase of the unsold fireworks. During years when firework sales were banned altogether after plaintiffs purchased fireworks, defendants would miss out on potential sales. They may have suffered some losses in preparing for the sale season, but their risk of loss would have paled in comparison to plaintiffs' risk of defaulting on sizeable, high-interest loans.

[¶ 121] Plaintiffs could mitigate (and in some years did mitigate) the risk of actual loss by selling fireworks in other locations during high-sales years. Yet, there was no guarantee that other locations would sell a greater volume than anticipated and

acquired by plaintiffs for those other locations. A risk of actual loss remained for plaintiffs alone. The lack of shared risk of actual loss points to a consignment and is fatal to plaintiffs' partnership claims.

Defendants received a consignment commission; they did not share profits with plaintiffs.

[¶ 122] Plaintiffs' exclusive ownership of the fireworks, their right to reclaim possession, and their sole assumption of the risk of actual loss strongly suggest a consignment arrangement. In a consignment, the consignee receives a commission (a percentage of sales) as compensation for selling the goods. This commission is considered compensation for the sale of goods or the sharing of gross returns, rather than a form of profit-sharing giving rise to the prima facie inference of partnership. This presents a challenge for plaintiffs, as their partnership argument relies heavily on the receipt of profits as prima facie evidence of partnership.

The parties acted as separate and independent businesses, not a single business enterprise.

[¶ 123] Further undermining any assertion of co-ownership is the way the parties viewed themselves, and acted as, distinct entities rather than members of a single business. This separation is most glaring in their lack of exclusivity and loyalty. Plaintiffs delivered fireworks to other stands in Campbell County that competed with defendants, both before and after the property acquisition and building installation. Similarly, defendants sold non-party fireworks from plaintiffs' building without plaintiffs' knowledge or permission. These competitor sales demonstrate a lack of the commitment expected of partners and underscore how the parties subjectively viewed themselves as separate and distinct entities, rather than co-owners of a single business.

[¶ 124] Another indication of the separation between plaintiffs and defendants is that plaintiffs sold fireworks allocated to defendants elsewhere without concern for defendants when Campbell County banned them from selling fireworks. Jim Landis expressed the lack of unity by testifying that plaintiffs' obligation to defendants ended when they could not sell in Campbell County. But he summed it up best by questioning why he should be concerned about defendants during the years they could not sell, stating, "this is commerce." This indifference to members of an

alleged partnership is far from typical of parties who view themselves, and act as, a single business.

[¶ 125] Also instructive is the parties' division of roles on a consignor and consignee basis and reluctance to exercise control each other's sphere of operation. The strict division of roles suggest a consignment relationship with separate businesses playing the roles of consignor and consignee rather than partners running a unified business.

[¶ 126] Other findings suggest the parties did not view themselves, or act as a single business, and counsel against concluding the parties formed a partnership, including:

- The parties never executed a partnership agreement, despite having the requisite business and legal acumen;
- The parties never filed partnership tax returns;
- The parties never shared financial accounts;
- Campbell County taxed the parties separately; and
- The parties' documents used the term "consignment," not "partnership."

[¶ 127] Plaintiffs argue that the parties formed a partnership when they jointly developed a permanent sales location, emphasizing property ownership as evidence of partnership formation. This is the wrong focal point. The co-ownership element focuses not on ownership of property, but on ownership of the business itself. Business co-ownership is characterized by a shared community of interests, including sharing ultimate control, profits, and actual losses. When the court shifts the focus to business co-ownership, it becomes evident that the essential components of a shared community of interests are missing.

[¶ 128] Plaintiffs' argument is further flawed because, despite shifting the sales location, the parties' financial arrangement and division of duties and control remained mostly consistent. The fundamental financial agreement remained unchanged, with a 60/40 split, plaintiffs covering acquisition and delivery costs, and defendants covering retail-related costs. Defendants' responsibilities, including providing the property, maintaining the sales trailer, stocking shelves, selling

fireworks, and handling security, remained the same. Likewise, plaintiffs continued their core duties of providing the sales building and fireworks. If the relationship between the parties was not considered a partnership before the property acquisition and building installation, nothing about the property changed that fundamental relationship.

[¶ 129] While some aspects of the relationship between the parties are uncommon to consignments, such as plaintiffs supplying the retail sales structure, these uncharacteristic elements existed in some form before the property acquisition and building installation, at which time the parties seemed to agree they were in a consignment relationship. Therefore, these aspects do not fundamentally change the nature of the relationship, which has always been much closer to a consignment than a partnership.

[¶ 130] Plaintiffs seek to avoid characterizing the parties' arrangement as a consignment. They argue that the relationship does not meet the UCC definition of "consignment" found in Wyo. Stat. § 34.1-9-102. Yet, Comment 14 to that UCC section acknowledges that a relationship can be excluded from the Article 9 definition of a "consignment" and still be a true consignment governed by non-U.C.C. law. Although the parties' relationship may not strictly meet the criteria of a U.C.C. Article 9 consignment, it could still be considered a true consignment. *See United Agri-Prod. Fin. Servs., Inc.,* 733 P.2d at 256 (discussing difference between true consignments and Article 9 consignments). *See also In re Music City RV, LLC*, 304 S.W.3d 806, 809-10 (Tenn. 2010) ("[B]ecause the transactions at issue do not fall within Article 9's definition of 'consignment, the UCC does not apply and the consignments here are governed by the common law of bailments."). And the features of a consignment, such as the absence of shared control and profit and loss sharing, are highly relevant to determining whether a partnership was formed under Wyoming law.

[¶ 131] Because the parties never formed a partnership, plaintiffs' first three claims for relief, each of which relies on the existence of a partnership, are **DENIED**.

PLAINTIFFS' CONTRACT CLAIM

[¶ 132] Plaintiffs base their fourth claim for breach-of-contract on a duty to deal exclusively with fireworks provided by plaintiffs. Although no written agreement

governed that alleged duty, plaintiffs pleaded that defendant breached both a "binding oral agreement" and an "implied-in-fact contract." Compl., ¶ 62 & 64. *See also* Jnt pt. mem. at 1(a)(iv) (describing the fourth claim as both "an oral contract" and a "course of performance contract.").

[¶ 133] The details of the alleged agreement evolved as the litigation progressed. Plaintiffs' complaint suggests the following contact terms: (1) acquisition of business real property; (2) acquisition, placement, and costs of rehabilitating the permanent business building to be suitable for fireworks sales; (3) acquisition of business equipment; (4) joint use of the business property for the sale of fireworks; and (5) sharing in revenues from the sale of fireworks on the business property. Compl., ¶ 68. Plaintiffs later, in the parties' joint pretrial memorandum, framed the contract's terms more specifically: plaintiffs provided fireworks and a building in exchange for defendants selling plaintiffs' fireworks only. Jnt. pt. mem. at 1(a)(iv). Plaintiffs also explained that defendants breached the contract by selling third-party fireworks. *Id.*

[¶ 134] Plaintiffs then, in their proposed findings of fact and conclusions of law, outlined in more detail the conduct framing the contract the defendants allegedly breached:

> Every year from the 2002 fireworks season through the 2022 fireworks season, the Sinclairs received fireworks from Flying Phoenix to sell at the location in Gillette. Any unsold product remained allocated to the business. The parties did not reduce to a single writing a contract for the procurement, delivery, acceptance, and sale those fireworks at the business in Gillette. For the entire history of the relationship, the Defendants accepted the fireworks from Flying Phoenix and sold those fireworks during the fireworks season[.] At the end of the season, the parties reconciled the inventory by agreement and Defendants paid Flying Phoenix its share of the fireworks Flying Phoenix provided. In reliance on course of dealing, Flying Phoenix offered the fireworks for the Gillette store by providing an inventory sheet with suggested product, procured fireworks, delivered them to Gillette store, the Defendants accepted the fireworks, sold the fireworks, and paid Flying Phoenix. The

> conduct of the parties was consistent and they operated under mutually agreed upon terms of an offer of fireworks from Flying Phoenix, acceptance of those fireworks, and payment for those fireworks. The parties' mutual manifestation of intent to enter an agreement is proven by their longstanding conduct that was carried out in the same manner for twenty years.
>
> The Sinclairs breached this agreement by selling third-party fireworks along with Plaintiffs fireworks or only third-party fireworks from 2020 to 2023, which meant lost sales to Plaintiffs. Plaintiffs' damages are as described [herein].

Plfs.' FFCL, ¶¶ 126 & 127 (internal references omitted).

[¶ 135] As damages, plaintiffs seek $296,798.38[4] for loss due to third-party sales, $50,931.01[5] for loss of unsold inventory at the Gillette location, and $127,582 for loss of revenue of unsold inventory at the Riverton location. Jnt. pt. mem. at 5(a). Plfs.' FFCL ¶¶ 70-75.

[¶ 136] As noted, the court considers the characterization of plaintiffs' contract claim found in their proposed findings of fact and conclusions of law to supersede any inconsistencies in their earlier pleadings. The plaintiffs' fourth claim alleges breach of an implied-in-fact contract for exclusive dealing based on the parties' conduct.

Facts

[¶ 137] According to Randall Sinclair, it was Jim Landis who gave the Bagleys a stand and a conex from which they could sell plaintiffs' fireworks. R. Sinclair, Jan. 31, 2024, 23:9-20.

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[4] Plaintiffs requested $273,087.90 in the Joint Pretrial Memo. This exact figure is not reflected in plaintiffs' proposed findings of fact and conclusions of law.

[5] Plaintiffs' proposed findings of fact and conclusions of law reflects Exhibit 81, Page 3 in stating this figure as "$50,931.01". It appears that the $59,931.01 included in the Join Pretrial Memo was a typo.

[¶ 138] The parties stipulated that Six Flags' business had "been quite profitable over the years" in part because of its "great location" for selling fireworks: an "island of county land surrounded by the City of Gillette." Stip., ¶¶ 20 & 102. Rebecca Landis credited the Carlisle property's location as the reason for Six Flags' outselling its competitor, the Bowling Alley stand, which until 2014 received from plaintiffs product similar to that received by defendants. R. Landis, Jan. 31, 2024, 138:1-10.

[¶ 139] As described above, plaintiffs' fireworks operation is substantial, not only around the country but specifically in Campbell County, Wyoming. By 2009, plaintiffs had decades of experience distributing fireworks to multiple locations in that county. J. Landis, Jan. 30, 2024, 38:22-42:2; 47:20-48:24. Jim Landis testified about his knowledge of Wyoming law governing fireworks, even mentioning that he successfully lobbied the legislature around 1993 regarding such laws. *Id.* He was aware that Campbell County has opted to closely control sales of fireworks, typically lifting the general prohibition on fireworks sales for only a few weeks out of the year. J. Landis, Jan. 30, 2024, 38:5—39:17.

[¶ 140] According to the testimony of Jim Landis, it was "fair" for Flying Phoenix to purchase and improve the skid building in response to the Sinclairs' purchase of the land. J. Landis, Jan. 30, 2024, 53:11-14 & 58:1-9. The improved building was a good business idea because it provided, according to Jim, the "opportunity to get more inventory in there and test some new product and make more money" at a "proven location." Id. at 47:20-49:14.

[¶ 141] Unlike plaintiffs, defendants did not have an expansive business operation. Defendants run the classic "mom and pop" business, operating only one fireworks stand or store at a time and with only the general public for customers. C. Sinclair, Feb. 1, 2024, 111:16-23. Their operation grew organically from a moving stand into a permanent location upon their purchase of the Carlisle property. The court found credible their reason for buying the Carlisle property: along with a permanent place to locate their fireworks stand, they intended to use the lot to supplement their income in retirement and to pay for their son's college expenses by renting space to other small commercial vendors. C. Sinclair, Jan. 31, 2024, 215:11-18; Feb. 1, 2024, 89:4-90:23 & 104:22-105:16. R. Sinclair, Jan. 30, 2024, 172:12-18; Jan. 31, 2024, 6:6-15. The Sinclairs did not appear to have even considered that the building came

with a duty to sell only plaintiffs' fireworks; they genuinely did not see a need to tell plaintiffs when they started selling fireworks from other vendors or using it for other purposes. C. Sinclair, Feb. 1., 2024, 47:5-9; 67:20-68:4. T. Sinclair, Jan. 31, 2024, 46:16-25 & 96:4-13.

[¶ 142] In plaintiffs' proposed findings of fact and conclusions of law, the total sales tally from 2020 to 2023 amounts to $1,179,076. Plfs.' FFCL, ¶ 76. Ex. 71, pgs. 18-24. For the year 2023, plaintiffs propose that their net profits would have been $149,645. Plfs.' FFCL, ¶ 72.

Law

[¶ 143] Even when parties do not expressly agree to contract terms orally or in writing, they may nonetheless reach an "implied-in-fact" contract. *Birt v. Wells Fargo Home Mortg., Inc.*, 2003 WY 102, ¶ 15, 75 P.3d 640, 649 (Wyo. 2003). Such a contract "may arise where 'parties act in a manner conveying mutual agreement and an intent to promise[.]'" *Symons v. Heaton*, 2014 WY 4, ¶ 9, 316 P.3d 1171, 1175 (Wyo. 2014) (quoting *Worley v. Wyoming Bottling Co., Inc.*, 1 P.3d 615, 620 (Wyo.2000)). The distinction between an express contract and an implied-in-fact contract is the mode of assent: implied-in-fact contracts are created by conduct, while express contracts are created by words. *See* 42 C.J.S. Implied Contracts § 11. Implied-in-fact contracts require the same elements as express contracts, including "'mutual assent or offer and acceptance, [and] consideration[.]'" *Rogers v. Wright*, 2016 WY 10, ¶ 45, 366 P.3d 1264, 1278 (Wyo. 2016) (citations omitted).

[¶ 144] Wyoming law follows the "objective theory" of contract formation, whereby "contractual obligation is imposed not on the basis of the subjective intent of the parties, but rather upon the outward manifestations of a party's assent sufficient to create reasonable reliance by the other party." *McDonald v. Mobil Coal Producing, Inc.,* 820 P.2d 986, 990 (Wyo. 1991). To form an implied-in-fact contract, the parties must—through their conduct—outwardly appear to have settled on the terms of their bargain. *Bouwens v. Centrilift*, 974 P.2d 941, 946 (Wyo. 1999) (citations omitted). Courts commonly review "the outward appearance of the agreement process" by analyzing "two distinct steps: first, a manifestation of assent that is called an offer, made by one party (called the offeror) to another (called the offeree); and second, a manifestation of assent that is called an acceptance, made by the offeree to the offeror." *Id*. The question is "whether a reasonable man in the

position of the offeree would have believed that the other party intended to make an offer." *Boone v. Frontier Ref.,* 987 P.2d 681, 687 (Wyo. 1999) (citations omitted). The conduct supporting an implied-in-fact contract "must be sufficient to support the conclusion that the parties expressed a mutual manifestation of an intent to enter into an agreement." *Symons*, ¶ 9, 316 P.3d at 1174 (citations omitted).

[¶ 145] Wyoming courts assess whether a contract is supported by consideration by asking of each side: "What did you give to get what you got?" *Prudential Preferred Properties v. J & J Ventures, Inc.,* 859 P.2d 1267, 1272 (Wyo. 1993).

[¶ 146] Contract formation requires "mutual assent *to the same terms*." *Roussalis v. Wyoming Med. Ctr., Inc*., 4 P.3d 209, 250 (Wyo. 2000) (citations omitted and emphasis added). Those terms need not be "spelled out in minute detail" but the "essentials of the contract must have been agreed upon and be ascertainable." *Id.* at 230. Determining what counts as "an essential term" is often a question for the fact finder. *Id.* at 232. Whenever "the evidence is conflicting or admits of more than one inference," the fact finder must "determine whether the contract did in fact exist[.]" *Id*. *See also Robert W. Anderson Housewrecking & Excavating, Inc. v. Bd. of Trustees, Sch. Dist. No. 25, Fremont Cnty., Wyo*., 681 P.2d 1326, 1329-30 (Wyo. 1984) (when trial is to the court, trial judge must determine as a matter of fact whether contract exists).

[¶ 147] Wyoming law recognizes requirements contracts. Wyo. Stat. Ann. § 34.1-2-306. Such a contract is an agreement "by the buyer to buy his good faith requirements of goods exclusively from the seller." *Wilsonville Concrete Prod. v. Todd Bldg. Co.*, 574 P.2d 1112, 1114–15 (Or. 1978) (cited as appropriate legal standard in Wyoming by *Century Ready-Mix Co. v. Lower & Co.*, 770 P.2d 692, 696 (Wyo. 1989)). For subsection (a) of § 306 to apply, however, the parties must first mutually assent to a term which measures quantity by the requirements of the buyer. *See* Wyo. Stat. Ann. § 34.1-2-306(a) *and Century Ready-Mix,* 770 P.2d at 696 (defining characteristic of requirements contracts is that "the quantity term is not clearly and specifically stated but, instead, is described in terms of 'requirements'[.]"). *See also Cyril Bath Co. v. Winters Indus., a Div. of the Whittaker*

Corp., 892 F.2d 465, 467 (6th Cir. 1989) ("promise to purchase exclusively from one supplier" may be implicit but is essential for a requirements contract).[6]

Analysis

[¶ 148] As described above, the parties principally interacted through a consignment arrangement. Plaintiffs bring no claim alleging that the consignment arrangement was violated—such as, for example, if defendants had not honored the 60% split that they had agreed to pay to plaintiffs.

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[6] Recognizing the Wyoming Supreme Court's direction to apply the UCC whenever it is "readily apparent" that it "is intended to cover the problems raised" in a case, the court explored whether plaintiffs' contract claim should be analyzed under Article 2 of the UCC. *Meuse-Rhine-Ijssel Cattle Breeders of Canada Ltd. V. Y-Tex Corp.*, 590 P.2d 1306, 1309 (Wyo. 1979). As in *Meuse-Rhine-Ijssel*, it appears to the court that certain provisions of the UCC might "provide a means to assist in resolving the issues of fact presented" in this case. *Id.* at 1311. *See also Century Ready-Mix*, 770 P.2d 692 (applying UCC sections (now found in Title 34.1) 1-103, 1-303, 2-201, 2-202, and 2-306 to hold that, for requirements contracts, "'usage of trade' affords a method to establish the quantity requirement" of the UCC statute of frauds), *Metz Beverage Co. v. Wyoming Beverages, Inc*., 2002 WY 21, 39 P.3d 1051 (Wyo. 2002) (assessing oral requirements contract under UCC §§ 2-201 and 2-309), and *Meuse-Rhine-Ijssel,* 590 P.2d 1306 n.6 (applying various provisions of UCC Article 1 and Article 2 to exclusive dealing agreement). The parties made passing reference to the UCC in their proposed findings of fact and conclusions of law—with both citing § 1-303 and § 2-201 and plaintiffs additionally citing § 9-102 in discussing their partnership claim. But unlike in *Metz*, the parties have not stipulated that "the agreement in question was one for the sale of goods" to be governed under UCC Article 2. *Metz*, ¶ 12, 39 P.3d at 1055. Nor have the parties addressed a foundational question: does UCC Article 2 apply to consignments when the consignor retains title until third-party purchase? The best answer the court gleans from Wyoming law is "no." *See Young v. Thomas*, 785 P.2d 489, 491 (Wyo. 1990) (finding that title passing from landowners to third-party purchasers—and bypassing sharecroppers—meant sharecropping agreement whereby parties divided the proceeds of a sold crop was not a "contract for the sale of goods" and noting that the UCC "applies only to a contract for the sale of goods which involves the passing of title.") (citations omitted). Because it is thus not "readily apparent" that the UCC "is intended to cover the problems raised" in this case, the court will consider only those statutes raised by the parties; the court will "not interfere with the course of the litigation selected by the parties" by analyzing plaintiffs' contract claim under UCC Article 2. *Meuse-Rhine-Ijssel*, 590 P.2d at 1309. *See also Bredthauer v. TSP*, 864 P.2d 442, 447 (Wyo. 1993) (courts need not consider "legal theories or issues never formally raised"); *State v. Campbell Cnty. Sch. Dist.*, 2001 WY 90, ¶ 33, 32 P.3d 325, 333 (Wyo. 2001) (courts "will not frame the issues for the litigants and will not consider issues not raised by them").

[¶ 149] Rather, plaintiffs' contract claim alleges that defendants breached a duty to sell only fireworks acquired from plaintiffs, a contract that must have arisen as a stand-alone agreement ancillary to the consignment arrangement. The bargained-for exchange: plaintiffs provided consigned fireworks and a building and contributed to various property expenses to secure the right to exclusive distribution on defendants' land.

[¶ 150] To find an implied-in-fact contract, the court must determine that the parties' course of dealing objectively showed that both sides intended to be bound to perform their end of the bargain. In particular, the court must find that through the parties' course of dealing the evidence shows: (1) that it would have appeared to a reasonable person in defendants' position that plaintiffs offered consigned fireworks and the building and improvements in exchange for defendants' promise of exclusive dealing and (2) that, conversely, it would have appeared to a reasonable person in plaintiffs' position that defendants agreed to sell only plaintiffs' product in exchange for consigned fireworks and the building and improvements.

[¶ 151] Plaintiffs carry the burden of proving their claim, and the court finds that plaintiffs failed to meet that burden. The parties' course of dealing does not suggest that consigning fireworks or purchasing and improving the building were intended to secure exclusive dealing.

[¶ 152] To start, the court finds the parties' course of dealing in consigned fireworks insufficient to support a contract for exclusive dealing. Each season, the fireworks were delivered with a written price list that included terms governing that particular delivery. And with each delivery, the type, price, and quantity of fireworks changed. The court views the repeated consignment deliveries as separate, repeated agreements, under which plaintiffs received 60% of whatever amount of product sold. It would have been unreasonable for plaintiffs to expect perpetual, exclusive distribution to defendants simply because they had supplied them with fireworks in the past. *See Coastal Chem. Corp. v. Filtrol Corp*., 374 F.2d 108, 109 (5th Cir. 1967) (repeated purchases under proposal letter lacking "certainty, unconditional obligations, and mutuality necessity" did not give rise to a requirements contract) *and Goaltex Corp. v. Ass'n for Blind & Visually Impaired*, 979 N.Y.S.2d 481, 488 (Sup. Ct. 2014) ("[T]he Court must reject plaintiff's contention that a valid output or requirements contract existed. *Cf., Granite Capital Holdings, Inc.* [and] *Lorbrook Corp. v. G & T Indus., Inc.*, [requirements contract

must contain agreement as to price, identity of goods sold, minimum quantity, delivery, and time and method of payment]. The nature of the repeated course of performance between these parties, in which prices and quantities defendant wished to purchase varied from Purchase Order to Purchase Order, merely emphasizes the absence of that type of agreement.") (cleaned up).

[¶ 153] Nor is the court convinced by plaintiffs' suggestion that providing the building and improvements could have given rise to a contract implied-in-fact between the parties. A reasonable person in the Sinclairs' position would not have interpreted the building and improvements as an offer for exclusive dealing.

[¶ 154] Most important, plaintiffs did not deal exclusively with defendants when the building was purchased. At the time, they shipped their fireworks to many stands, and it was undisputed—and for the court of particular importance—that plaintiffs delivered product to the Bagleys' "Bowling Alley" stand that directly competed with Six Flags until going out of business in 2014.

[¶ 155] The evidence showed that Jim Landis provided the sales facilities for two competing retailers in Gillette. He provided the Bowling Alley stand with their facilities, and the current dispute centers on Mr. Landis similarly providing facilities for Six Flags (i.e., the Bowling Alley stand's competition). Defendants were aware of both arrangements. It appears that Mr. Landis was more concerned with selling his product than with enriching either Six Flags or the Bowling Alley stand.

[¶ 156] In fact, the evidence showed that plaintiffs had many locations at which they could distribute their fireworks. As described above, plaintiffs have substantial business dealings all over the country. They regularly use complex financing arrangements (i.e., millions of dollars at high interest rates) to obtain fireworks from China each season. Their businesses are broken down into different "divisions," including wholesale and display product and a standalone trucking division. Their customers include display companies and municipalities. The appearance (from defendants' perspective) of Plaintiffs' motivation in paying for the building and improvements must be considered in light of such an expansive business operation.

[¶ 157] Also important is the character of the property involved. The evidence showed that the unique circumstances of the property's location—county land surrounded by city land—significantly increased Six Flags' sales.

[¶ 158] Given the consignment arrangement, any amount plaintiffs invested in the Carlisle property appears to have *benefited plaintiffs* as much as the investment benefited defendants. Sales at the Carlisle location would have likely increased with more floor space to sell fireworks. The evidence showed that sales in fact did increase, along with plaintiffs' revenue—their 60% cut increased in line with sales. Plaintiffs could reasonably have purchased and improved the building intending to recover their expenditure through increased sales at the "great location" of defendants' land—without having to find the rare breed "island of county land surrounded by the City of Gillette."

[¶ 159] And defendants could reasonably have interpreted the building and improvements as an attempt to court their business rather than an offer to secure exclusive distribution rights. The timing of plaintiffs' investment (2007-09) and their alleged damages (2020-2023) means defendants would have had to have understood—in 2009—that plaintiffs' offer to restrict their sale of third-party fireworks was intended to last for over a decade. Assent to such a long term would have been unreasonable considering the dollar value of plaintiffs' end of the bargain, especially when defendants had purchased the land a few years earlier for $59,000. Objectively, plaintiffs' $66,720 expenditure to purchase, improve, and install the building was not sufficient consideration for what plaintiffs allege was bargained: $66,720 in exchange for exclusive distribution rights valued at far more per year.

[¶ 160] This objective assessment squares away with the overall impression the parties' testimony made on the court. All four individuals came across as hardworking and pragmatic. When they wanted to form an entity or formalize an arrangement, they did so. Their testimony showed that neither side considered the building's purchase an offer to secure exclusive dealing. *See Symons* 316 P.3d at 1175 (although subjective intent not relevant when determining whether implied-in-fact contract was formed, testimony regarding one party's impression of other party's assent properly considered). *See also Birt*, 75 P.3d at 650 (same).

[¶ 161] Overall, it appears that purchase of the building and improvements was reasonably intended to persuade—not require—defendants to sell only plaintiffs' fireworks at the Carlisle stand. Providing better facilities to distribute plaintiffs' product was a rational business decision and the evidence suggests that plaintiffs

likely recouped their investment several times over through increased consignment revenues.

[¶ 162] Under the circumstances, however, defendants showed no outward manifestation of assent sufficient for plaintiffs to expect exclusive dealing in exchange for the building and improvements. Plaintiffs did not deal exclusively with defendants throughout the parties' interactions, and the amount of plaintiffs' expenditure was insufficient to expect exclusive dealing under the circumstances. The court finds that a reasonable person in the Sinclairs' position would not have believed that the plaintiffs were offering the building and improvements in exchange for exclusive distribution rights.

[¶ 163] The court concludes that no contract for exclusive sales could have been breached because the parties' behavior did not suggest mutual assent to exclusive dealing. Accordingly, plaintiffs' claim for breach of contract is **DENIED**.

PLAINTIFFS' CONVERSION CLAIM

[¶ 164] Plaintiffs' fifth claim for relief is conversion, a claim that plaintiffs also refined as the litigation progressed. In their complaint, plaintiffs asserted they have legal title to the "partnership business building including fixtures," to "partnership business equipment," and to "fireworks stored on property." Compl., ¶¶ 74-76. But in their proposed findings of fact and conclusions of law, plaintiffs take a broader view, asserting that "the real property, improvements, and personal property are partnership property which the Sinclairs have converted to their own use." Plfs.' FFCL, ¶ 133.

[¶ 165] As for damages, plaintiffs pleaded that Flying Phoenix "has suffered damage by the loss of the property" and that its "damages shall be proven at trial." Compl., ¶¶ 80-81. Their complaint requested "[t]hat Defendants pay to Plaintiffs damages, including pre-judgment interest." *Id.* at pg. 16. In their proposed findings of fact and conclusions of law, plaintiffs request only that the court require defendants to pay for one-half of the cost to move the building:

> "Sinclairs conversion of the assets denies Flying Phoenix its property. Defendants testified the cost to remove the building is $250,000. Given that Defendants . . . have converted Plaintiffs' property,

> Defendants are required to give Flying Phoenix access to Defendants property and are required to pay $125,000, one-half the cost of removal."

Plfs.' FFCL, ¶ 136.

Facts

[¶ 166] The building was purchased and is assessed in the name of Flying Phoenix. Stip., ¶¶ 28, 30, 97. Plaintiffs' expert-witness appraiser's report suggests that Flying Phoenix owns the building. Ex. 73, pg. 9. Jim Landis testified on the first day of trial that Flying Phoenix did not own the building, and then testified on the third day of trial that Flying Phoenix did own the building. J. Landis, Jan. 30, 2024, 117:11—118:25; J. Landis, Feb 1, 2024, 144:14-24. The court resolves this conflicting testimony by relying on the bill of sale, the assessor's records, and the appraiser's report. At all times relevant to this conversion claim, Flying Phoenix held legal title to the building.

[¶ 167] The building was placed on and (according to plaintiffs' proposed findings of fact and conclusions of law) "substantially affixed" to the Carlisle property with plaintiffs' permission in 2008. Plfs.' FFCL, ¶ 101. Jim Landis paid to have the building affixed to the ground and testified that he "never intended to move the[e] building." Stip., ¶ 37. J. Landis, Jan. 30, 2024, 55:10-12. It was undisputed that the defendants own the land to which the building is affixed. Stip., ¶ 16.

[¶ 168] Plaintiffs' proposed findings of fact and conclusions of law suggests that conversion occurred when the defendants sent to plaintiffs their February 28, 2023, Notice of Abandoned Personal Property.[7] Plfs.' FFCL, ¶ 133. But the following month—on March 2 and 22—and again on June 1, 2023 (weeks after filing the complaint in this lawsuit), plaintiffs communicated their willingness to ship fireworks to defendants for sale at the Carlisle property. Ex. 64, pgs. 1, 2, & 8. Their June 1 communication, sent by their attorney, stated:

[7] At ¶ 133, Plaintiffs' proposed findings of fact and conclusions of law, citing Exhibit 62, suggests that defendants denied "Flying Phoenix the right to use any property at 804 Carlisle Street, assessing an exorbitant $500 per day storage fee, and providing seven days to remove the property." The Notice of Abandoned Personal Property supposedly stated that "Flying Phoenix had 'no authority to enter the premises' without prior authority of Sinclairs." Exhibit 62, however, is a one-page invoice with no reference to property restrictions or any deadline for removal.

> The fireworks are ready to be shipped out today. Your clients also may sell the fireworks provided [by] my clients which are stored on the property in Gillette under the terms and conditions historically used by the parties. Let me know if your client will accept the fireworks and when you want it brought to Gillette in compliance with the parties[']agreement.

Id. at pg. 8.

Law

[¶ 169] The tort of conversion is "any distinct act of dominion wrongfully executed over one's property in denial of his right or inconsistent therewith." *Johnson v. Reiger*, 2004 WY 83, ¶ 27, 93 P.3d 992, 999 (Wyo. 2004) (citations omitted). Conversion requires a showing of five elements:

> (1) plaintiff had legal title to the converted property;
> (2) plaintiff either had possession of the property or the right to possess it at the time of the conversion;
> (3) the defendant exercised dominion over the property in a manner which denied the plaintiff his rights to use and enjoy the property;
> (4) in those cases where the defendant lawfully, or at least without fault, obtained possession of the property, the plaintiff made some demand for the property's return which the defendant refused; and
> (5) the plaintiff has suffered damage by the loss of the property.

McTiernan v. Jellis, 2013 WY 151, ¶ 23, 316 P.3d 1153, 1161 (Wyo. 2013). All five elements must be shown. *Id.*

[¶ 170] One cannot convert real property. *Ferguson v. Coronado Oil Co*., 884 P.2d 971, 975 (Wyo. 1994) ("Only personal property (chattel) can be converted.") (citations omitted). *See also* CHATTEL, Black's Law Dictionary (11th ed. 2019) ("Movable or transferable property; personal property; esp., a physical object capable of manual delivery and not the subject matter of real property.").

[¶ 171] Whenever "a defendant is rightfully in possession, both a demand for possession and an absolute refusal to deliver the property are necessary before a suit will lie for conversion." *Champion Ventures, Inc. v. Dunn*, 567 P.2d 724, 727 (Wyo. 1977) (citations omitted). Demand is not required, however, when "a positive act of conversion capable of being shown independent of a demand and refusal would render demand unnecessary, even where the original possession was rightful." *DeClark v. Bell*, 65 P. 852, 853 (1901). *See also Frost v. Eggeman*, 638 P.2d 141, 144 (Wyo. 1981) ("Demand and refusal are merely evidential and need not be shown where another independent act of conversion is in evidence[.]") (citations omitted) *and Satterfield v. Sunny Day Res., Inc.*, 581 P.2d 1386, 1389 (Wyo. 1978) (same) (citing *De Clark v. Bell* and *City Loan Co. v. State Credit Ass'n*, 490 P.2d 118 (Wash. App. 1971)). *City Loan Co.* in turn cited a Missouri Court of Appeals case that explained the demand exception more fully:

> Proof of conversion may be made in either of three ways: (1) by a tortious taking, (2) by any use, or appropriation to the use of the person in possession, indicating a claim of right in opposition to the rights of the owner, or (3) by refusal to give up possession to the owner on demand. In the first two instances, supra, the fact of conversion becomes self-evident through proof of the overt acts of the converter, and that is why it has been said that a 'demand or refusal, * * * are merely evidential, not creative, and they need not be shown to make out a case of conversion where some other independent act of conversion * * * is in evidence.' On the other hand, if possession was not acquired by a tortious taking or the possessor does not appropriate or use the property in a fashion to indicate a claim thereto adverse to the owner, then no evidence of a conversion exists until there is proof, first, that a proper demand for possession was made by the one who is entitled thereto and, second, that the possessor wrongfully refused delivery.

Glass v. Allied Van Lines, Inc., 450 S.W.2d 217, 220–21 (Mo. App. 1970) (internal citations omitted). So, when conversion is not "self-evident" based on facts in evidence, demand and refusal are required.

[¶ 172] In Wyoming, "one cannot be liable for conversion of another's property if the person consented to the conversion." *Campbell v. Davidson*, 2023 WY 100, ¶ 33, 537 P.3d 734, 744 (Wyo. 2023) (citing Restatement (Second) of Torts § 252 (1965) ("One who would otherwise be liable to another for . . . conversion is not liable to the extent that the other has effectively consented to the interference with his rights.")).

[¶ 173] As to damages: the "proper measure of damages for conversion of property is the actual value of the property converted and may include reasonable expenses incurred in an effort to recover possession of the property." *Alcaraz v. State*, 2002 WY 57, ¶ 8, 44 P.3d 68, 71 (Wyo. 2002) Such recovery costs "are a species of special damages and must be specially pleaded and proved." *Cross v. Berg Lumber Co.*, 7 P.3d 922, 932 (Wyo. 2000) (citations omitted). "Special damages are not the necessary result of the wrongful act and are not implied by law; they must be specially pled with a reasonable degree of particularity, although one need not plead a sum certain." *Id*. (*citing* W.R.C.P. 9(g); *Melehes v. Wilson*, 774 P.2d 573, 579 (Wyo.1989); *and Hadley v. Baxendale,* 9 Ex. 341, 156 Eng.Rep. 145 (1854)).

[¶ 174] As explained in the Restatement (Second) of Torts, a successful claim of conversion divests a plaintiff of title to the converted chattel upon the defendants' payment of the damage award:

> In conversion the measure of damages is the full value of the chattel, at the time and place of the tort. When the defendant satisfies the judgment in the action for conversion, title to the chattel passes to him, so that he is in effect required to buy it at a forced judicial sale. Conversion is therefore properly limited, and has been limited by the courts, to those serious, major, and important interferences with the right to control the chattel which justify requiring the defendant to pay its full value.

Restatement (Second) of Torts § 222A cmt. c (1965).

Analysis

[¶ 175] The court denies plaintiffs' conversion claim for three reasons: one cannot convert a building affixed to realty, plaintiffs made no demand for return of the

property, and one-half of the building's removal cost would be an inappropriate measure of damages.

[¶ 176] First, as plaintiffs acknowledge, the building is now "substantially affixed" to the Sinclair's property. As such, the building is not personal property and cannot be converted.

[¶ 177] Second, because defendants lawfully obtained possession of the building with plaintiffs' permission, and because there are no other independent acts in evidence making conversion self-evident, plaintiffs must have made some demand for the building's return (which the defendants must have in turn refused). Plaintiffs presented no evidence that they demanded return of the building. Quite the opposite, plaintiffs repeatedly—even after filing this lawsuit—communicated their willingness to deliver fireworks to the Carlisle property so that defendants might sell them "under the terms and conditions historically used by the parties." Plaintiffs have repeatedly consented to defendants' dominion over the building.

[¶ 178] And the defendants have not refused to return the building, either: they even made demand on plaintiffs to retrieve it from the property, claiming that they were owed $500 per day if it were not removed. The difficulty or expense of detaching the building from the property has no bearing on whether defendants refused to return the building, which is required for the fourth element of conversion.

[¶ 179] Finally, while recovery costs may sometimes be awarded for a conversion claim, the court would be hesitant to award such damages in this case because they were not specially pleaded. Nor would such an award appropriately reflect the proper measure of damages for conversion, which is "the actual value of the property converted." The Restatement suggests that, following a successful conversion claim, converted property is titled in the defendant, not subject to repossession by the plaintiff.

[¶ 180] In sum, plaintiffs made no demand for the return of the building, instead suggesting that defendants should continue using the building to sell fireworks. Defendants did not refuse to return the building: they in fact demanded that plaintiffs remove it from their property. Because the building was substantially affixed to the property and is therefore not personal property, and because plaintiffs never demanded the building's return, the conversion claim cannot stand. Even if

it could, the court does not find the remedy requested appropriate for conversion. The claim is **DENIED**.

PLAINTIFFS' UNJUST ENRICHMENT CLAIM

[¶ 181] For their sixth claim for relief, plaintiffs invoke the equitable remedy of unjust enrichment, asserting that defendants "will be unjustly enriched if they are allowed to retain the building and the benefits of the business developed with the Plaintiffs." Jnt. pt. mem., at ¶ 1(a)(vi).

[¶ 182] The complaint alleges that plaintiffs "purchased and improved a partnership business building which was moved onto" the Carlisle property, that defendants used the partnership building for the sale of fireworks, and that defendants were on reasonable notice that plaintiffs expected to be paid the value of their contribution "in the event partnership sale of fireworks no longer occurred." Compl., ¶¶ 83-85.

[¶ 183] In their proposed findings of fact and conclusions of law, plaintiffs outline the damages they seek under their unjust enrichment claim:

> The Plaintiffs have presented no damage amount for the use of the building for weddings, graduation or storage. The Defendants generated $15,000 from the tools sales. Plaintiffs['] damages are $9,000. Defendants testified the cost to remove the building is $250,000. Given that Defendants [] have converted Plaintiffs' property, Defendants [are] required to give Flying Phoenix access to Defendants property and are required to pay $125,000, one-half the cost of removal.

Plfs.' FFCL, ¶ 139 (internal references omitted). Plaintiffs also requested $292,978, the "[r]eplacement cost of the building." Jnt. pt. mem., at ¶5.

Facts

[¶ 184] Plaintiffs' expert witness J. Scott Crosby valued the building affixed to the Carlisle property at $76,500. Ex. 73, p. 34. The parties stipulated that it would cost approximately $250,000 to move the building off of the Carlisle property. Stip., ¶ 101. The building was installed in accordance with the parties' understanding of local regulations for fireworks sales. R. Sinclair, Jan. 31, 2024, 66:19-67:02; C. Sinclair, Jan. 31, 2024, 219:20-219:24.

[¶ 185] As found above in the court's discussion of plaintiffs' conversion claim, Flying Phoenix held legal title to the building at all times relevant to this unjust enrichment claim.

[¶ 186] Plaintiffs' purchase and installation of the building—with defendants' permission—improved the value of the defendant-owned Carlisle property. *See* Defs.' FFCL, pg. 28; Plfs.' FFCL , ¶ 138.

[¶ 187] As mentioned above, defendants generated income from the property by leasing part of the property to Larry's Tools for $500 per month for approximately five months each year starting in 2007 and ending in 2010. Stip., ¶ 41. Larry's Tools used "a tent on the edge of the property" to sell their tools, which was stored in an RV next to that tent. R. Sinclair, Jan. 31, 2024, 48:4-25. Tools were not sold from the building. *Id.*

Law

[¶ 188] Unjust enrichment is "an equitable remedy which implies a contract so that one party may recover damages from another." *Statzer v. Statzer*, 2022 WY 117, ¶ 13, 517 P.3d 574, 579 (Wyo. 2022) (citations omitted). The claim reflects "the unjust retention of a benefit to the loss of another. It exists as a basis for recovery for goods or services rendered under circumstances where it would be inequitable if no compensation was paid in return." *Symons v. Heaton*, 2014 WY 4, ¶ 15, 316 P.3d 1171, 1176–77 (Wyo. 2014) (quoting *Redland,* ¶ 138, 288 P.3d 1173 at 1203).

[¶ 189] An unjust enrichment claim addresses "a situation where a party receives something of value without payment, which was accepted and used so as to unjustly enrich the recipient of the goods or services." *Metz Beverage Co. v. Wyoming Beverages, Inc.*, 2002 WY 21, ¶ 36, 39 P.3d 1051, 1061 (Wyo. 2002).

[¶ 190] Unlike plaintiffs' claim for breach of a contract implied in fact, their claim for unjust enrichment seeks to enforce a contract implied in law. *See Symons*, ¶ 12, 316 P.3d at 1176. "The former may be found to exist as a matter of fact and is dependent upon the parties' intent, while the latter is imposed as a matter of law, as an equitable remedy." *Id.* at ¶ 12, 1175.

[¶ 191] In Wyoming, an unjust enrichment claim has four elements:

> (1) Valuable services were rendered, or materials furnished,
> (2) to the party to be charged,
> (3) which services or materials were accepted, used and enjoyed by the party, and,
> (4) under such circumstances which reasonably notified the party to be charged that the plaintiff, in rendering such services or furnishing such materials, expected to be paid by the party to be charged. Without such payment, the party would be unjustly enriched.

Statzer, ¶ 13, 517 P.3d at 579.

[¶ 192] Of these elements, the fourth is at the heart of an unjust enrichment claim. *Elec. Wholesale Supply Co. v. Fraser*, 2015 WY 105, ¶34, 356 P.3d 254, 263 (Wyo. 2015). The fourth element of an unjust enrichment claim includes two separate requirements. *Jacoby v. Jacoby*, 2004 WY 140, ¶ 12, 100 P.3d 852, 856 (Wyo. 2004). First, the plaintiff must prove "the circumstances were such that the [defendant] was reasonably notified that the [plaintiff] expected to be paid[.]" *Id.* Second, the plaintiff must prove that the defendant would be unjustly enriched if the plaintiff is not paid. *Id.*

[¶ 193] Unjust enrichment is remedied by the benefited party paying restitution to the claimant. *Rocky Mountain Turbines, Inc. v. 660 Syndicate, Inc.*, 623 P.2d 758, 763 (Wyo. 1981) (quoting Calamari & Perillo, *Law of Contracts* (2nd Ed.), § 15-2, pg. 571 (1977)) (in turn quoting the Restatement of Restitution § 1 (1937) ("A person who has been unjustly enriched at the expense of another is required to make restitution to the other[.]")). *See also Redland*, ¶ 146, 288 P.3d at 1206 ("It is a general principle, underlying various legal doctrines and remedies, that one person should not be permitted unjustly to enrich himself at the expense of another, but should be required to make restitution of or for property or benefits received, retained, or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly.") (citations omitted).

[¶ 194] Improvements to land with the landowner's approval support unjust enrichment—*Redland,* ¶¶ 149-50, 288 P.3d at 1207—and when awarding damages in that context, the court may consider the extent of a defendant's fault in receiving

the improvements as well as whether the defendant had an opportunity to reject acceptance. *See* Restatement (Third) of Restitution and Unjust Enrichment, III 7 Intro. Note (2011).[8] *See also id*. § 2 cmt. E.[9] One claiming unjust enrichment for a transfer of property may be entitled to recission of the transaction, wherein each party "restores property received from the other, to the extent such restoration is feasible[.]" *Id.* at § 54(2)(a) (2011). *See also id.* cmt. A ("As a further requirement, the proponent of rescission must show that the unwinding of performance (as opposed to a remedy by money judgment) is both feasible and equitable on the facts of the case.").

[¶ 195] The extent to which a defendant was unjustly enriched may be calculated with reference to reports on the value of property improvements. *Redland*, ¶¶ 155-56, 288 P.3d at 1208. A proper amount of recovery "is the difference in the fair market value of the property before and after the improvements." 42 C.J.S. Improvements § 17.

[¶ 196] Under W.R.C.P.Ch.C. 70(a), the court may require a party to convey title or to "to perform any other specific act" within a specified time period. Parties enforce a money judgment by a writ of execution, "unless the chancery court directs otherwise." W.R.C.P.Ch.C. 69.

Analysis

[¶ 197] The court grants plaintiffs' unjust enrichment claim. Defendants received a benefit when plaintiffs purchased and installed a building on their property. The

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[8] ("[R]estitution in respect of nonreturnable benefits may require the court to choose between two or more possible measures of value. That choice is guided primarily by the extent to which the defendant is at fault in obtaining the benefit.").

[9] ("At some points within this Restatement, the protection of the recipient that is inherent in a liability limited to unjust enrichment is reinforced by the statement that the recipient may not be subjected to a 'forced exchange.' The usual context of this observation is one in which the claimant has conferred a nonreturnable benefit (such as services, articles for consumption, or improvements to property). Although such a benefit has a market value, it may be something that the recipient would not have chosen to purchase at that price or at all. With rare exceptions, the law of restitution does not oblige a recipient to pay for a benefit he had the right (but not the opportunity) to refuse. Proof that a forced exchange is in the recipient's interest, or that the transaction is economically efficient, does not justify the claimant's failure to obtain the recipient's agreement to pay. By contrast, there is no problem of forced exchange so long as liability for unrequested benefits is limited to the amount of a cash outlay that the recipient (but for the claimant's expenditure) would have been compelled to bear in any event.") (internal citations omitted).

court finds that the defendants accepted and used a valuable building for which they should have reasonably expected to compensate plaintiffs.[10]

[¶ 198] It is undisputed that plaintiffs' purchase and installation of the building—with defendants' permission—improved the value of the defendant-owned Carlisle property. The first three elements of plaintiffs' unjust enrichment claim are not disputed.

[¶ 199] As noted above, no agreement for exclusive dealing arose from the parties' course of conduct. With no such arrangement in place, defendants should reasonably have expected that plaintiffs—who appeared to provide the building to distribute more product at the Carlisle property—would have expected to be compensated for the cost of the building if (1) plaintiffs did not or could not remove the building and (2) defendants no longer sold plaintiffs' consigned fireworks. Without such payment, defendants' property would be unjustly enriched. Plaintiffs have proven the fourth element of their unjust enrichment claim.

[¶ 200] The court declines to award plaintiffs $9,000, which represents 60% of the $15,000 defendants earned on tool sales. The evidence showed that tool sales occurred only upon the land, which the court has determined was not partnership property. As such, defendants were not unjustly enriched when they received lot rent for the tool stand.

[¶ 201] The court also declines to award plaintiffs one-half of the cost to remove the building. The court finds that defendants were not at fault in interacting with plaintiffs regarding the building. They proposed a new facility from which to sell fireworks and they allowed the building to be installed on their property. But they did not act tortiously in their solicitation or acceptance of the building, which was secured to their property to accommodate their understanding of local regulations governing sales of fireworks. The court further finds that return of the substantially affixed building is not feasible: the removal cost would be over three times the value of the building. Moreover, an award of $125,000—to be put toward removing a

[10] The court notes that the unjust enrichment claim seeks compensation for value added by the building and improvements, as opposed to plaintiffs' contract claim, which seeks remedy for breach of an exclusive-dealing agreement.

building worth $76,500—would be punitive and economically wasteful. The court declines plaintiffs' request for such an award.

[¶ 202] Instead, as suggested by Wyoming precedent and the Restatement of Restitution provisions cited above, the court concludes that the building is a nonreturnable benefit that defendants requested be installed on their property. Defendants would have to expend the building's fair-market value to obtain a similar building for the Carlisle property. As such, the law dictates that they compensate plaintiffs for that value.

[¶ 203] The court **GRANTS** plaintiffs' claim for unjust enrichment and awards to plaintiffs the fair market value of the building in the amount of $76,500, as identified by plaintiffs' expert witness. Under W.R.C.P.Ch.C. 69 & 70(a), the court orders that this judgment be specially enforced as follows:[11]

- Defendants must pay plaintiffs the full judgment amount of $76,500 by June 1, 2024.
- Within ten days of receipt of the full judgment amount of $76,500, the plaintiffs must deed legal title to the building to defendants through a bill of sale.
- Within ten days of receiving legal title to the building, defendants must arrange for the local assessor to assess the building in defendants' names in accordance with this order.

DEFENDANTS' DECLARATORY JUDGMENT CLAIMS

[¶ 204] Defendants request declaratory judgment as to the nature of the parties' business relationship and ownership of 804 Carlisle Street, Gillette, Wyoming. Ans

[11] The court so orders on account of a letter received from plaintiffs' counsel on April 18, 2024 (FSX No. 72783229). Therein, plaintiffs' counsel stated that "It is imperative that the parties receive a ruling by the Court so the parties know each parties' rights and obligations with respect to operating the business for the July 4th Summer Season. Significant actions regarding acquisition of inventory, access, and employment of staff need to be made soon to provide enough lead time prior to the start of sales." The court trusts that the parties are now aware of their rights and obligations regarding the Carlisle property and can now prepare for the upcoming fireworks season.

& CC, ¶¶ 80 – 89; Defs.' FFCL, pg. 26 (proposing declaration that defendants "are the owners of the Carlisle Property" and "no partnership exists."). What defendants seek is declaratory judgment on an issue that the court necessarily addressed when ruling on plaintiffs' partnership claims (did a partnership exist) and on an issue (property ownership) that is not disputed by the parties if no partnership exists.

Facts

[¶ 205] Defendants' declaratory judgment claims seek the opposite conclusion of plaintiffs' partnership claims (i.e., no partnership and no partnership property). So, the relevant facts are the same as those for the partnership claims and are not repeated here.

[¶ 206] An additional factual finding relevant to defendants' declaratory judgment claim is straightforward and undisputed: Carmen and Randall Sinclair own the Carlisle Property. The parties stipulated as much:

> In 2002, Carmen and Randall Sinclair, as husband and wife, purchased the Carlisle Property. The mortgage listed the mortgagors as "Randall A. Sinclair, husband of Carmen K. Sinclair" and Carmen K. Sinclair, wife of Randall A. Sinclair". The Sinclair Defendants made all necessary Mortgage payments, and the Mortgage was released December 9, 2003.
>
> Carmen and Randall Sinclair purchased the Carlisle Property for $59,000.

Stip., ¶¶ 16, 17.

Law

[¶ 207] The Uniform Declaratory Judgments Act permits interested persons to "obtain a declaration of rights, status or other legal relations." Wyo. Stat. § 1-37-103. When a declaration would "not terminate the uncertainty or controversy," the court may refuse to render it. Wyo. Stat. § 1-37-108.

[¶ 208] Although a party may bring an action for declaratory judgment, such action should only be maintained where it would serve a useful purpose. *Sandoval v. State ex rel. Wyoming Dep't of Transp.*, 2012 WY 160, ¶ 18, 291 P.3d 290, 296 (Wyo. 2012). A counterclaim for declaratory judgment fails to serve a useful purpose when the

court resolves the question when ruling on the claim. *Sarkis' Cafe, Inc. v. Sarks in the Park, LLC,* 55 F. Supp. 3d 1034, 1038 (N.D. Ill. 2014) (ruling a counterclaim seeking declaration of noninfringement would not serve a useful purpose because the court would resolve the question of infringement when ruling on the trademark infringement claim). *See also Aviva USA Corp. v. Vazirani*, 902 F. Supp. 2d 1246, 1272–73 (D. Ariz. 2012), *aff'd*, 632 F. App'x 885 (9th Cir. 2015) (dismissing counterclaims for declaration of noninfringement because they were redundant to the trademark holders' claims of infringement, would be rendered moot by adjudication of the main action, and the counterclaimants failed to show the necessity of a declaratory judgment).

[¶ 209] Stated another way, when counterclaims for declaratory judgment are redundant of the plaintiff's claims, they become moot upon resolution of plaintiff's claims. *F.D.I.C. v. OneBeacon Midwest Ins. Co.*, 883 F. Supp. 2d 754, 761–62 (N.D. Ill. 2012) (dismissing as redundant counterclaim for declaratory judgment of non-coverage when the court would address the coverage question when ruling on the claim about wrongful denial of coverage); *U.S. v. Zanfei*, 353 F. Supp. 2d 962, 964–65 (N.D. Ill. 2005) (dismissing a declaratory judgment counterclaim that was identical to the government's complaint except for seeking the opposite effect).

Analysis

[¶ 210] Defendants' declaratory judgment counterclaims do not serve a useful purpose because the court addressed these issues when resolving plaintiffs' partnership claims. Casting this conclusion another way, the counterclaims are redundant of plaintiffs' claims and rendered moot by adjudication of those claims.

[¶ 211] Defendants' declaratory judgment claim about property ownership does "not terminate the uncertainty or controversy" because the parties do not dispute ownership of the Carlisle property if no partnership exists, as the court found. The parties stipulated that defendants Carmen and Randall Sinclair own the property.

[¶ 212] In conclusion, defendants have failed to show the necessity (or useful purpose) of declaratory judgment on their counterclaims. As a result, those claims are **DENIED**.

DEFENDANTS' CONTRACT CLAIM

[¶ 213] Defendants allege breach of a storage agreement. The court quotes their discussion of the claim from their proposed findings of fact and conclusions of law in its entirety:

> **(h) STORAGE AGREEMENT**
> 95. In October 2022, Defendants requested Plaintiffs removed the Building from the Carlisle Property. (*See* Day 3, 73:22-24)
> 96. Defendants further offered to charge Plaintiffs a storage fee beginning October 16, 2022 in the amount of $500.00 per day if the Building was not removed. (*See* Day 3, 73:25- 074:03)
> 97. Plaintiffs did not remove the Building prior to October 16, 2022, or object to the storage fee of $500.00 per day. (*See* Day 3, 74:04-09)
> 98. Plaintiffs have not tendered any payment towards the storage fee. (*See* Day 3, 74:10-12).
> 99. Plaintiffs' action of leaving the Building on the Carlisle Property and not objecting to the storage fee lead Defendants to believe that Plaintiffs had accepted Defendants offer to store the Building. (*See* Day 3, 74:17-21)
>
> ***Conclusion of Law – Breach of Storage Agreement***
>
> Based upon the findings of facts as stated above Section (h). Defendants made an unambiguous offer to store the Building on the Carlisle Property beginning on October 16, 2022, for $500.00 per day, if the same was not removed. Plaintiffs, through their silence and actions accepted Defendants offer. Defendants are entitled to judgement in the amount of $500.00 per day accruing since October 16, 2022.

Defs' FFCL, pgs. 12-13 & 23.

Facts

[¶ 214] The testimony referenced by defendants (of Carmen Sinclair, Feb. 1, 2024, 73:19-74:21) states in full:

> Q. And do you recall Mr. Schumacher asking you about your breach of contract claim?
> A. Yes.
> Q. And isn't it true in October you requested that Plaintiffs remove the building?
> A. Yes.
> Q. And isn't it true that if they didn't remove it by October 16th, you agreed to charge a storage fee?
> A. Yes.
> Q. And did they remove the building at that time?
> A. No.
> Q. Did they communicate any objection to the storage fee?
> A. We didn't hear anything.
> Q. Did they pay anything towards the storage fee?
> A. No.
> Q. When was the first time you heard any communication from Plaintiffs regarding the storage fee?
> A. I don't recall anything from them directly.
> Q. And did Plaintiffs' actions of leaving the building on the property and not objecting to the storage fee lead you to believe they had accepted your offer?
> A. Yes.

[¶ 215] At trial, Jim Landis testified that plaintiffs never agreed to pay $500 per day to store the building on the Carlisle property. Jan. 30, 2024, 101:19-102:5. Carmen Sinclair could not say why plaintiffs would owe such a high daily amount for storing a building that defendants were using on defendants' property. Feb. 1, 2024, 65:11-19. The $500 per day demand was sent to prompt a response to defendants' offer to purchase the building. C. Sinclair, Feb. 1, 2024, 66:13-17.

[¶ 216] Documentary evidence shows that on August 22, 2022, plaintiffs received a letter from defendants' attorney offering $60,000 for the building. Ex. 57 pg. 11. The letter stated that if the offer were declined, "the Sinclairs [would] have no other recourse than to ask that the building be removed from their property by October 15, 2022." *Id*. On October 3, 2022, defendants' counsel followed up with a letter suggesting that they planned to charge plaintiffs $500 per day in the event the building were not removed by October 15, 2022. The letter stated:

> If you are unable to reach an arrangement [regarding sale of the building] with the Sinclairs, my clients would like you to remove your building and restore the land to the condition it was in before the building was placed on the land. The deadline for meeting these terms is October 15, 2022. If the building is not removed by that time, my clients will charge Five Hundred Dollars per day in rental for wrongfully occupying their land.

Ex. D, pg. 1. On February 28, 2023, defendants sent plaintiffs an invoice for $68,000. Ex. 62, pg. 1. The dollar amount reflects daily storage fees of $500 for 136 days. *Id.*

Law

[¶ 217] A successful claim for breach of contract must prove the "basic elements of a contract[,]" which are "offer, acceptance, and consideration." *Frost Const. Co. v. Lobo, Inc.*, 951 P.2d 390, 394 (Wyo. 1998) (citations omitted). Contract formation depends upon the intent of the parties. *Id*. A contract is formed only with "[m]utual assent between contracting parties." *Id.* at 395. Again, under the "objective theory" of contract formation, "contractual obligation is imposed not on the basis of the subjective intent of the parties, but rather upon the outward manifestations of a party's assent sufficient to create reasonable reliance by the other party." *McDonald v. Mobil Coal Producing, Inc.,* 820 P.2d 986, 990 (Wyo. 1991).

[¶ 218] Absent special circumstances, a contract offer cannot be accepted by silence. *See* Restatement (Second) of Contracts § 69 Cmt. a (1981) ("Ordinarily an offeror does not have power to cause the silence of the offeree to operate as acceptance."); 17 C.J.S. Contracts § 70 ("For purposes of contract formation, silence and inaction, or mere silence or failure to reject an offer when it is made, generally does not constitute an acceptance of the offer."); Howard O. Hunter, *Modern Law of*

Contracts § 4:8 (2024 update) ("Silence in the face of an offer is not an acceptance unless there are special circumstances in the trade or in the relationship between the offeror and the offeree that put the offeree on notice that silence in a particular circumstance will be understood to constitute acceptance.").

[¶ 219] The court "need not consider issues which are not supported by proper citation of authority and cogent argument or which are not clearly defined." *Hamburg v. Heilbrun*, 889 P.2d 967, 968 (Wyo. 1995) (citation omitted).

Analysis

[¶ 220] Defendants did not prove the basic elements of a contract. The court does not view their attorneys' October 3, 2022 letter to invite assent to a bargained-for exchange—to propose that plaintiffs could "store" the building on defendants' land for $500 a day. The letter was an ultimatum, apparently aimed to incentivize plaintiffs to sell the building; objectively, it would not reasonably have been interpreted by its recipient as an invitation to contract.

[¶ 221] And even if the letter were an offer, there is no evidence that plaintiffs accepted it. Jim Landis testified that he did not agree to pay the $500 per day, and the court has found no authority giving any legal significance to defendants' belief that plaintiffs had accepted defendants' offer through silence. The general rule is to the contrary. Defendants' breach of contact claim is not supported by proper citation of authority, is not cogently argued, and is not clearly defined. The claim is **DENIED**.

EJECTMENT

[¶ 222] The Sinclairs' also raise a claim for ejectment, alleging that the failure to remove the building from the Carlisle property has deprived them of possession of that land. In their proposed findings of fact and conclusions of law, they suggest that the court treat the building "as permanently affixed and order [the Sinclairs and their LLC] to compensate [Flying Phoenix and J&R Landis Enterprises] for their improvements. The fair value of which, based on the evidence presented by Plaintiffs' expert is $76,500.00." Defs.' FFCL, pg. 28.

Law

[¶ 223] Ejectment, once a common-law remedy, is now codified at Wyo. Stat. §1-32-202, which states:

> In an action to recover real property it is sufficient if the plaintiff's petition states that he has a legal estate in and is entitled to possession of the real property, describing the same with sufficient certainty as to enable an officer holding an execution to identify it, and that the defendant unlawfully keeps him out of possession. It is not necessary to state how the plaintiff's estate or ownership is derived.

See Bragg v. Marion, 663 P.2d 505, 506 n.1 (Wyo. 1983).

[¶ 224] For a claim of ejectment to succeed, a claimant must show an illegal withholding of possession. *Bragg,* 663 P.2d at 506.

Facts & Analysis

[¶ 225] The evidence showed that the Sinclairs have used the building as desired ever since it was installed on their property. *See, e.g.,* R. Sinclair, Jan. 31, 2024, 37:23—38:2. Although they demanded that the building be removed, and although the building was not removed in accordance with their demand, they have continually sold fireworks from the Carlisle property when allowed under local regulations. They have used the building even during this lawsuit. *Id.* Because they have full access to their property and are not prevented from possessing either the land or the improvements in any way, their claim for ejectment fails.

[¶ 226] In addition, the Sinclairs have provided no legal authority that would allow the court to order what amounts to a judicial sale of the building under an ejectment claim. They ask the court to order that they, as claimants, pay plaintiffs $76,500 for the building and improvements. The action of ejectment is meant "to recover real property" from an unlawful possessor, not to judicially acquire legal title to a building left on one's land. The claim is therefore **DENIED.**

IT IS SO ORDERED.

Dated: 4/25/2024

/s/ Steven K Sharpe
CHANCERY COURT JUDGE