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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JOSEPH A. MARASCO et al., Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, Respondent.	B198536 (Los Angeles County Super. Ct. No. BC 341333)
DOUGLAS R. RING et al., Real Parties in Interest.	

ORIGINAL PROCEEDING; petition for writ of mandate, prohibition, or other writ. Ronald M. Sohigian, Judge. Petition granted; peremptory writ issued.

Loeb & Loeb, Alan Wilken and Jed Lowenthal; Greines, Martin, Stein & Richland, Robin Meadow, Robert A. Olson and Kent J. Bullard, for Petitioners Joseph Marasco, Suzanne Caplan, Jacqueline Morgen, and James H. Ring, Trustees of the Ellis Ring Trust, and Joseph Marasco, Trustee of the Francis Ring Trust.

Greenberg Traurig, Eric V. Rowen, Scott D. Bertzyk, Karin L. Bohmholdt and Eric S. Fisher, for Real Parties in Interest Douglas R. Ring, Inc., Douglas R. Ring, Trustee of the Ring-Miscikowski Trust, and Cynthia Miscikowski, Trustee of the Ring-Miscikowski Trust.

Petitioners Joseph Marasco, Suzanne Caplan, Jacqueline Morgen, and James H. Ring, Trustees of the Ellis Ring Trust, and Joseph Marasco, Trustee of the Francis Ring Trust (collectively Ellis Ring Family) collectively are one-half co-owners of the Marina Admiralty Company, a limited partnership (the Partnership). They petition this court to enter a peremptory writ of mandate directing the trial court to vacate its judgment in favor of the other co-owners, real parties in interest Douglas Ring, Inc., Douglas R. Ring, Trustee of the Ring-Miscikowski Trust, and Cynthia Miscikowski, Trustee of the Ring-Miscikowski Trust. The trial court ordered dissolution of the Partnership and the sale of the Partnership's sole asset, the 981-unit Mariners Village Apartment complex in Marina del Rey, California. Petitioners contend that the trial court improperly applied the statutory grounds for partnership dissolution, and the judgment is supported by insufficient evidence. We grant the petition.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This dispute arises out of the Partnership's unsuccessful negotiations with the County to obtain a new ground lease on the Mariners Village complex.[1] Plaintiff Douglas Ring concluded after such negotiations that it was not in the Partnership's best interests to pursue an extension of the lease, but that instead the property could be sold at an extremely favorable price for the Partnership. The defendants, including the other general partner the Ellis Ring Trust, disagreed, leaving the co-owners at an impasse. Douglas Ring, Inc. commenced this action for dissolution of the Partnership and sale of the Property. The trial court ordered the Partnership dissolved and the property sold, finding that it was not reasonably practicable to carry on the partnership business and the economic purposes of the Partnership were likely to be unreasonably frustrated, and the Partnership business was being carried on at a loss.

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[1] Under the terms of a ground lease, during the period which a ground lease is in effect, the lessee does not own the land, but owns the improvements. At the end of the lease, the County anticipates that it will take back the improvements, although the County can require the lessee to tear down the improvements and leave the land in a leveled state.

A. Background.

1. Formation of the Partnership.

In April 1972, brothers Ellis Ring and Selden Ring, as its two general partners, formed Marina Admiralty Company, a limited partnership. The individual parties here are the children of Selden Ring and Ellis Ring, who are both now deceased. Suzanne Caplan, Jacqueline Morgen, and James Ring are the children of Ellis Ring, and Douglas Ring is the son of Selden Ring. As originally formed, the partnership interests were divided between a 75 percent interest owned by an institutional investor (Connecticut General Mortgage and Realty Investments[2]), and 12.5 percent interests owned by the Ellis Ring and Selden Ring interests. E&S Ring Management Co., an entity controlled by the Ring family, manages the complex.

The Partnership owns and operates as its sole asset the 981-unit Mariners Village Apartment complex (Mariners Village) in Marina del Rey; the complex is the "flagship" or "crown jewel" of the family's many real estate holdings. Mariners Village occupies the land pursuant to a long-term lease with the County of Los Angeles that expires in 2023.

2. The Buyout of Prudential, the Nomura Loan, and the Second Amended Restated Partnership Agreement.

In December 1995, the Partnership agreed to buy Prudential's 75 percent limited partnership interest. The purchase required the Partnership to amend its Partnership Agreement and to finance the purchase; none of the partners contributed any capital. Pursuant to the buyout, the partnership shares were divided one percent each to the general partners (newly-formed Douglas Ring, Inc. (DRI) and the Ellis Ring Trust, respectively), 24 percent to the Ellis Ring Trust, 25 percent to the Francis Ring Trust, and 49 percent to the Ring-Miscikowski Trust. This resulted in a 50-50 division between the ancestral Ellis Ring interests and the ancestral Selden Ring interests, respectively.

Subsequent to the death of Ellis and Selden Ring, on April 3, 1996, after several interim amendments, the Second Amended Restated Partnership Agreement became the

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[2] Apparently the predecessor to an entity known as Prudential.

operative partnership agreement (Partnership Agreement). The Partnership Agreement provides that the general partners have the exclusive right to manage the Partnership's affairs (section 8.1). The term of the Partnership set forth at Article 2 was "continued until dissolved pursuant to Article 15, unless extended or sooner terminated in accordance with the provisions of this Agreement or as otherwise provided by law." The purpose of the Partnership set forth at section 1.5 was to "acquire a leasehold interest in, improve and thereafter own and operate, as an apartment complex and in the manner set forth, that certain real property consisting of approximately 23 acres of land located in Marina del Rey. . . . [T]he partnership may . . . own, develop, re-develop, lease, license, sell, exchange, mortgage, pledge, encumber, exploit or otherwise deal with or dispose of all of the property and assets of every nature whatsoever of the Partnership." The Partnership Agreement provided at section 4.2 that no partner could be required to contribute any capital, and at section 8.1 that in the event of any dispute, the general partners were to preserve the status quo.[3]

In Article 15 ("Dissolution and Termination of Assets") the Partnership Agreement provided that "[t]he Partnership shall be dissolved on April 1, 2029 or upon the earlier occurrence of any of the following events: . . . [¶] . . . [¶] 15.1.2 The sale or other disposition of all or substantially all of the property of the Partnership and the collection and distribution of all of the proceeds to the Partnership therefrom. . . ."

In July 1996, the Partnership's purchase of Prudential's interest was financed entirely by a $54,866,945 loan (the "Nomura loan"). The Nomura loan matured April 11, 2013, 10 years before the Lease was to expire, and carried an interest rate of 8.71 percent. The Nomura loan Agreement prohibited additional borrowing against the property in an

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[3] Section 8.1 states in relevant part that "in the event of any disagreement between the General Partners as to any particular action, determination, judgement (*sic*), or decision, the General Partners shall take (or omit to take) any and all such actions, and make any and all such determinations, judgements (*sic*) and decisions, as shall be necessary or (in the judgment of any General Partner) appropriate to preserve the status quo. . . ."

amount in excess of $1,250,000 (§ 6.1(C)) and provided that upon loan acceleration, a "Yield Maintenance Premium" would be due (§§ 1.1(d), 2.6, 2.11).

The Partnership Agreement was amended in July 1996 to add Article 19, which Article was operative by its terms until the Nomura loan was paid in full,[4] and provided at section 19.5.1 that "notwithstanding the provisions of Article 15 hereof, the Partnership shall be dissolved only upon the bankruptcy of the last remaining partner, and, if such bankruptcy occurs, only if the Partnership is not continued as provided in Section 12.2."

3. The Lease Extension Negotiations.

(a) MARINA HARBOR.

Sometime in the late 1990s or early 2000s, Douglas Ring suggested that the Partnership pursue a lease extension with the County with respect to Mariner's Village. At that time, the Ellis Ring Family was pursuing a lease extension for Marina Harbor, a property they owned near Mariners Village,[5] and indicated they wanted Douglas Ring to wait until that was completed. The Ellis Ring Family obtained a 39-year lease extension for Marina Harbor at a 10.5 percent ground rent, the going rate for long-term extensions. They were required, as a condition to the extension, to spend $20 million renovating, and to add 120 new units.

(b) THE DECEMBER 12, 2003 LETTER.

In October 2003, the partners agreed to commence the process of obtaining a lease extension. Eric Hamermesh, a financial advisor, recognized there was antipathy between the two sides of the family. However, he pointed out to the parties that "by virtue of the fact that this property was on a ground lease, and also [had] a significant amount of deferred maintenance, . . . the failure of the two groups to be able to come up with some type of mutually agreeable, coherent plan, basically, was resulting in this becoming a

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[4] Article 19's prefatory statement provides, ". . . until [the Nomura loan] to the Partnership is paid in full in accordance with all loan documents related thereto, . . . each Partner agrees and covenants as follows, . . ."

[5] Douglas Ring and his family have no interest in Marina Harbor.

wasting asset, because at the end of the expiration of the lease term it would, presumably, revert to the county and there would be zero residual value."

Douglas Ring had also concluded that the property should be sold because the leasehold would begin to decline in value. Furthermore, the building itself was wearing out, and the maintenance was eating up the cash available for distribution to the Partnership. At the end of its term, the Nomura loan had a $17 million balloon payment. Douglas Ring believed that even if the County did not require them to demolish the property, the County would use that requirement as leverage in negotiations.

In October 2003, AIMCO, at the behest of Eric Hamermesh, made an offer for Douglas Ring, Inc.'s "general partnership interest in 38 percent (38%) of Marina Admiralty Company." The total offer was $24 million, consisting of $20 million at closing, with $4 million to be paid upon the obtaining of a lease extension; the due diligence period was 45 days. Douglas Ring ultimately rejected the AIMCO offer because it was too low, was conditioned on his obtaining a lease extension for AIMCO, and placed all of the burdens on him; in particular, AIMCO intended to hold back $4 million of the purchase price until he obtained a lease extension.

In October 2003, Douglas Ring met with Hamermesh to formulate a plan to sell the property. The plan called for them to approach the County for a lease extension; once they either obtained a lease extension or concluded it was impossible to do so, they would sell the property. At a meeting in November 2003, Douglas Ring met with Hamermesh and the Ellis Ring Family, and they discussed the advantages and disadvantages of a sale. At the time, Douglas Ring believed that they could obtain a short-term lease that would make sense, and was unaware that the County planned to revise its lease extension policies.

The end result of the November 2003 meeting, after several redrafts, was a letter dated December 12, 2003. The letter provided:

1. The general partners had "all agreed that the Partnership will begin the process of seeking a Lease Extension from the County of Los Angeles relating to the Mariners Village apartment complex we own in Marina del Rey, California."

2. "We have also agreed to work together to market the Partnership's leasehold interest for sale. We will commence marketing our leasehold either when a Letter of Intent for a Lease Extension is issued to us by the County of Los Angeles or when an actual offer to provide a Lease Extension is issued to us by the County."

3. "We have also agreed that beginning the week of January 12, 2004, we will initiate discussions with the County about the terms of a Lease Extension. We agree that we will pursue [the] optimal Lease Extension available from the County based upon the facts, circumstances, and conditions then in existence."

4. "At this time we agree that because we are not pursuing new construction on the site, the optimal Lease Extension available today would be a Short Term (20 years) Extension."

5. "We agree that once we have commenced the process of seeking a Lease Extension, we will pursue the process until its completion unless we mutually determine that doing so would not be in the best interest of the Partnership."

The parties separately agreed that based upon his prior experience, Douglas Ring would handle negotiations with the County, although the letter specified that the negotiating team with the County would consist of Joe Marasco, Eric Hamermesh, and Douglas Ring, and that Marasco had authority to act on behalf of Caplan, Morgen, and James Ring.

(c) COUNTY POLICY AND THE NEGOTIATION PROCESS.

A County policy statement on lease extensions issued in 1989 stated that "[t]he primary focus of this lease extension policy is the redevelopment of leaseholds to ensure long-term economic viability, increased revenue to the County and enhanced public facilities. . . . [¶] The County's policies and official goals/objectives with regard to granting lease extensions to Marina del Rey leaseholders are: [¶] 1. Redevelopment and making the properties economically and physically competitive (e.g., competitive with the <u>new</u> hotels, condominiums, slips, apartments and commercial buildings in the new Playa Vista project and other new Westside projects). Redevelopment will be rigidly defined to differentiate it from deferred maintenance, refurbishing, or extensive redecoration. . . .

[¶] . . . [¶] The purpose of the extension fee and redevelopment requirements is to provide each lessee with an incentive to redevelop." In the early 2000s, the County decided to review in depth the granting of short-term lease extensions and the economic impact on the County.

In the spring of 2004, at the time Douglas Ring began to speak with Roger Moliere, the Executive Officer of Real Property Management and Development for the Los Angeles County Metropolitan Transit Authority and the County's chief consultant regarding proposed revisions to lease extension guidelines, the County had not finalized its short-term extension policy, but had been meeting with consultants to discuss and consider variations on short-term lease extensions. It did not finalize its short-term policies until early 2005.

The new County policy dictated that the County not grant a long-term lease extension (39 years) unless the lessee agreed to either tear down and rebuild the existing structure, or invest a substantial amount of money per unit ($180,000) in renovation, which would provide the County with higher density and higher rents. Because most of the construction in the Marina had been built in the 1960s and 1970s as speculation, and was not of high quality, the County's preference was to completely replace the buildings. The County also wanted a sinking fund for improvements to the property as it aged.

For a short-term extension (28 years), the County increased its ground rent 40 percent, from 10.5 percent to 14.5 percent. Moliere was authorized by the County to explore short-term lease extensions predicated upon this increase in rent and an extensive and defined package of renovations. The rental rate on long-term extensions remained unchanged at 10.5 percent for 39 year extensions.[6]

[6] Moliere testified at trial that the effect of the new policy was to halt all negotiations for short-term extensions in the Marina because the terms were unfavorable to lessees. Moliere believed the new guidelines did not allow for financing or return of the lessee's investment over the term of extension.

Under the County's lease negotiation procedures, the lessee would initiate the process of requesting a lease extension; negotiations would begin after the first informal meeting. The County would require the lessee to prepare a preliminary term sheet with proposed renovations and improvements, which would then be negotiated with the goal of agreement on the elements necessary to complete the transaction. The parties would progress through several iterations until they reached an agreement. This would be submitted to the Board of Supervisors, with the expectation that the lease would ultimately be approved. The lessee would be required to reimburse the County's consultant and negotiator's costs, and upon submission of a formal proposal from the lessee, the County would request $10,000 as deposit against the County's costs.

(d) DOUGLAS RING'S NEGOTIATIONS.

Douglas Ring began negotiating with the County in January 2004, but found the County (which at this time was in the middle of its lease policy modification) was not articulating what it wanted. In February 2004, the County sent Douglas Ring, Hamermesh and Marasco a County template on which they were to fill in the Partnership's proposed renovations. In May 2004, John Pringle, the President of E&S Management Co., the management company for Mariners Village, began work on a long-term extension proposal. Douglas Ring believed the County had "learned its lesson" with Marina Harbor on a long-term extension, and would not cut the same deal, which was merely to renovate and add some new units.

In June 2004, Moliere advised Douglas Ring that the County had not approved short-term extensions (20 years or less) unless the proposal was coupled with the building of new units, the rehabilitation of old units, hardscape and landscape improvements, hall, entryway and common area improvements. Moliere noted that with either a long-term or short-term extension, at the end of the lease term, the buildings would be in the 80- to 100-year old range, and therefore "significant commitments by way of sinking funds for repositioning at the approximate halfway point of the extended term and for capital improvements have also been the rule and a commitment to as broad a replacement of individual components at the outset has been greatly encouraged and/or required."

In August 2004, Douglas Ring sent a proposal to Moliere containing improvement worksheet templates for a short-term (28 year) and a long term (39 year) extension. Neither involved a complete teardown; the short-term extension proposal "reconfigures and repositions the property," while the long-term extension proposal "entails a substantially greater sum of money and totally reconfigures the asset." Moliere and the County agreed not to recommend the 39-year proposal because it did not involve a complete tear-down and the five-year construction timeline was too long. The County indicated the short-term proposal needed some work.

Moliere testified at trial that the amount the Partnership was proposing to invest, $39 million, was about five times less than the commitment the County was looking for. Moliere further testified that if during the initial discussions the County came to the conclusion that the lessee's proposal was "out of the ballpark," the County would not ask for the $10,000 deposit or for a formal proposal. Only under limited and exceptional circumstances would the County recommend to the Board of Supervisors a long-term extension that did not include a complete tear-down and rebuild. In such a case, the County would require significant new units as well as a reconditioning of the old units. In any event, the County would be looking for an investment commitment that would completely redo all of the systems that related to the project, in addition to fully rehabilitating all of the old units and constructing a new, significant portion of the project.

In April 2005, the County sent Douglas Ring a letter stating it was ready to recommence lease negotiations. The letter stated that "Due to relatively short remaining lease terms, it became apparent to us that these proposed projects will likely require an extension of lease term greater than the 20 years that the Board has heretofore approved in such cases, in order to both recover the investment necessary to provide the required level of renovation to qualify for a lease extension, and to finance that investment."

(e) THE REGAN REPORT.

In April 2005, Douglas Ring hired a consultant, James Regan of Wald Realty Investors, to prepare an evaluation of the leasehold on both an "as-is" basis and with a 28-year extension. Regan made some assumptions that he knew would be unacceptable to the

County, such as a deferral of the ground rent for nine years. Regan's report, dated June 9, 2005, contained two scenarios. The first scenario assumed a sale to an investor who held the property until lease termination, but did no renovation. Under that scenario, the present net value of cash flow was $45 million. The second scenario assumed a renovation program, a sale in year nine, and a lease expiring in 2051. Under that scenario, the present value of cash flow was $57.7 million. The report noted that the Nomura loan's yield maintenance premium made it uneconomic to pay off the debt for several years, and that the renovations would be funded out of cash flow. Under the second scenario, the property would not generate any positive cash flow for the first four years of the renovation program. Regan noted that if the County required more rapid renovation than the proposal, additional equity funding would be required.

Following his receipt of Regan's final analysis, in the Spring of 2005, Douglas Ring concluded that a lease extension did not make sense for the Partnership. He discussed this with Moliere, who concurred. An extension was not attractive because the County wanted an immediate increase in its ground rent; the benefits of a lease extension would not come to fruition until the current lease expired in 17 to 18 years; they would receive no credit for prior improvements, and the County wanted a faster build-out than the Partnership could accomplish. Furthermore, the renovations could not be financed out of cash flow, the balloon payment under the Nomura loan was coming due in 6.5 years, there were possible demolition costs, higher maintenance and capital expenditures, and the lease value was diminishing.

Douglas Ring further believed that a detriment to obtaining a lease extension prior to sale was that the terms would be "carved in stone" for any new buyer. Furthermore, even if the Partnership could obtain a lease extension, he did not believe the Partnership had the financial wherewithal to execute it, and if they obtained an option to extend the lease, the County would get 20 percent of the sales proceeds if the property were sold with a negotiated extension in place. Further, even if the County had given them an offer they would have accepted, they would have marketed the property before signing it. Douglas Ring thus ceased negotiating with the County with Marasco's concurrence because of the

County's new policy, although defendants now contend that Ring unilaterally "pulled the plug" on further lease negotiations.

(f) THE BORRIS OFFER.

On September 1, 2005, Howard M. Borris, at the behest of the Ellis Ring Family, made Douglas Ring an offer for his general and limited partnership interests of $5.6 million, to be paid not in cash but in a trade of one or more of the Ellis Ring Family's properties. Borris stated that calculation of the $5.6 million figure was based upon, among other things, "some probability that a Purchaser might not be able to renegotiate the lease with the County and would have to deliver the Realty in a demolished, level graded land state." Borris used the Regan/Wald Realty report as a basis, and applied a 15 percent discount rate, intended to be "more representative of an expected return for your discounted minority interest, and for a wasting asset requiring the intensive management, deferred maintenance, lack of liquidity, as well as the community relations required by the County." Douglas Ring rejected the offer.

The parties do not dispute that for the years 2004 through 2007, the Partnership operated at a profit. In 2005, the Partnership's net income was $2.6 million; the projected income for 2007 is $5 million.

B. Douglas Ring, Inc.'s Dissolution Action.

On October 12, 2005, Douglas Ring, Inc. commenced this action for dissolution and sale. Trial commenced on November 27, 2006.

1. Pretrial Offers to Purchase.

Shortly prior to trial, the Partnership received two offers to purchase the property. The first, from Archstone-Smith dated October 11, 2006, was for $194 million and did not require a lease extension to be in place prior to close of sale. Archstone reserved a 30-day due diligence period, with the right to cancel during that period. The second, a non-binding offer from Silverado Canyon Partners dated November 6, 2006, was for $225 million and also did not require a lease extension to be in place prior to close of sale. Silverado similarly reserved a 30-day inspection and due diligence period.

2. Trial – Plaintiffs' Case.

Trial commenced on November 27, 2006. Testimony consisted of expert testimony and testimony of members of the Ellis Ring Family, Douglas Ring, and Eric Hamermesh.

(a) GEORGE LLOYD.

Lloyd is the Group Vice President for Acquisitions at Archstone-Smith Operating Trust. He has been with the company for 10 years, and previously worked as a real estate analyst with the Irvine Company. Archstone has significant holdings in Southern California, with 150,000 apartment units, and 2,000 units in the immediate area of Marina del Rey. Lloyd has had extensive dealings with the County, and Archstone recently purchased two properties in the Marina, Kingswood (2004) and Oakwood (2005). The Oakwood seller had already obtained a lease extension on the property, while the Kingswood seller had not; however, for Archstone, it was not a prerequisite to sale that the lease extension be worked out. Archstone was willing to make an offer for Mariners Village not conditioned upon a lease extension because Archstone believed it could "cut a better deal" with the County.

Lloyd valued Mariners' Village based upon the rent roll, its operating statement (provided by Douglas Ring), and the need to renovate the units based upon the County's current renovation template and his prior experience with the County. He estimated the renovation at 36 months' duration and used a model that looked at the first three years of income.

Lloyd testified he looked at two scenarios: (1) acquiring the property without a lease extension, and (2) acquiring the property after the current owner had already obtained a lease extension. Lloyd also looked at comparable sales, of which there had been four over the last three years, including two that were Archstone purchases. Lloyd used a discounted cash flow analysis, looking at the remaining lease term of 17 years and the net operating income or cash flow for that term, then discounting it to a present day

value at the cost of capital using an eight percent discount rate.[7] He did not factor in renovation costs because if the buyer did not obtain the ground lease extension, it would not be prudent to spend much capital on the property. Lloyd derived the net capitalized cash flow based upon income the ground lease would produce, and also checked that against two discounted cash flow scenarios. He admitted that his valuation would be based, in part, upon improvements or refurbishment to the property and extension of the lease, but his valuation did not depend upon an evaluation of other properties' income stream.

Lloyd's discounted cash flow analysis of the property yielded a value of $194 million.

Currently, Archstone has no arrangement with the County such that it could obtain more favorable lease extension terms for Mariners Village than any other purchaser in the marketplace. However, Archstone has economies of scale that would make renovation more economical for it.

(b) RICHARD M. ROBINSON.

Robinson testified as an expert on pricing and gave an economic analysis of the Mariners Village lease from the point of view of a lessee, the County, and a prospective buyer. Robinson conducted a comparative analysis of the existing Nomura loan, to determine how much interest would be paid if it were held to term and if it were paid off early. Robinson did five types of financial analyses: (1) discounted cash flow analysis, with an as-is (no extension) scenario; (2) discounted cash flow with expenses minimized; (3) discounted cash flow with a short-term extension and renovation; (4) a pricing analysis to determine what an institutional buyer would pay for the lease; and (5) a comparative analysis of the amount of interest that would be paid under different scenarios of the Nomura loan.

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[7] Future cash flows are estimated and discounted to give them a present value. The discount rate used is generally the appropriate cost of capital, and incorporates judgments of the uncertainty (riskiness) of the future cash flows.

Under the first scenario, based on the remaining lease life of 16.5 years, he took 2005 as a base year and increased revenues three percent every year; he then discounted this income using an 8.5 percent rate obtained from a Price Waterhouse Cooper resource known as Korpacz, which contains the current investment parameters for apartment complexes. The net present value of the income stream under this scenario was $84 million, but with deduction of the $39 million still remaining as the principal on the Nomura loan, the net value was $45 million.

His second financial analysis contained some adjusted operating assumptions, including lower expenses. Under this scenario, there would be a faster deterioration of the property. He assumed the need for a sinking fund for the balloon payment on the Nomura loan, and considered the need to tear down the property. With less renovation, there would be a reduced turnover between units because they were not being refurbished. Under this scenario, the total present value of the net cash flow stream, after payment of Nomura indebtedness, was $61 million.

Under the third scenario, which considered a short-term lease extension, he assumed a 28-year extension and expenditures of $70,000 per unit and 14.5 percent ground rent. He applied a discount rate of 10.5 percent to reflect the additional return the lessee could expect. Robinson assumed there would be a sale after 10 years, so he discounted back 10 years of expected net operating income. The lessee would need to spend $69 million in today's dollars to renovate; the lessee would obtain an additional 28 years of cash flow, but the net value of such cash flow would be $45 million. This would result in a $24 million loss on a current value basis.

He did an amortization of the Nomura loan if held to term and a present value analysis of interest to be paid. He concluded that the loan could be paid off today for less than half of the amount of interest to be paid; there is $18 million of interest to be paid between now and the end of the loan, but the present value of that $18 million is between $13 to $14 million. By paying the yield premium, the Nomura loan could be eliminated for $7 million. The present value of the net income operating stream the properties would be expected to deliver was $84 million, using an 8.5 percent discount rate.

He prepared a pricing analysis, not an appraisal. Such an analysis sets realistic lease payments, and is an analysis of what a seller might expect to receive from a willing buyer. He reviewed the net operating income and applied a capitalization rate appropriate for the situation. Because Lloyd at Archstone had projected net operating income of $12.6 million, Robinson used that figure as being a better indication of what an institutional buyer believed. He adjusted his six percent cap rate for the "peculiarities" of the property. He looked at numerous Westside apartment properties; their average cap rate was 4.7 percent for a fee simple property. To account for the leasehold, he had to "add something to it. . . . And this is where [my] judgment comes in. There's no table, per se that we can look this up, but based on my experience with leaseholds and . . . valuing properties and my knowledge of this property as well, I added 150 base points, or one-and-a-half percent." Furthermore, he made a downward adjustment based upon the property's size (981 units) which made it efficient to run because of the economies of scale. Applying a six percent cap rate to the $12.6 million net operating income, he arrived at a price of $210 million.

Robinson testified to his belief that the County is very difficult to negotiate with and gets the best terms for itself. He also believes it is the County's position that at the end of the lease term, the improvements belong to the County, so although the property might not be worth much to the lessee, it has significant value to the County. Robinson believes the County is deliberately making short-term lease extensions uneconomic because it wants to force the other options, namely, let the lease run to term, get the land back, or rebuild. In Robinson's opinion, if the lease were permitted to run to term, the $194 or $225 million being offered before trial would no longer be on the table.

He believed the Archstone offer was realistic because they had money, experience, and were willing to take the risk on the lease extension themselves. The other offers for Mariners Village led him to believe that his valuation was on par, that those buyers would pay more for the property than the current owner would get from holding onto it, and that a short-term extension was not economically feasible. According to Robinson, cap rates

are at a historic low, construction costs are going up rapidly, and the leasehold loses value every year.

(c) ERIC HAMERMESH.

Hamermesh observed personal friction between the two sides, and saw a lease that was becoming a wasting asset; if something was not done, the property would revert to the County and all residual value would be lost. Because of the animosity between the two wings of the family, he suggested AIMCO as a buyer.

In his opinion, it was a good time to sell because cap rates are likely to increase. Further, the lease at expiration would leave the family's ownership without anything to show for it; enormous capital expenditures would be required to retain the lease. A lease with approximately 20 years left was not conventionally financable; a borrower could only get a five year loan, and there would be insufficient cash flow to pay such a loan in a five-year period.

(d) DOUGLAS RING.

Douglas Ring testified the Ellis Ring Family wanted a short-term lease because it would not involve a tear down as would a long-term extension; furthermore, they did not want to incur any personal debt. They all agreed there would be no new construction. Previously, they had been paying for renovations at the complex out of cash flow and doing them on a unit-by-unit basis. This is more expensive because it prevented economies of scale. Further, they are not able to raise the rents as fast because they do not have a newly renovated complex; rather, they phase in the higher rents as the units are refurbished.

Douglas Ring testified to his belief that the Ellis Ring Family was proposing that the Partnership walk away from $150 to $200 million for reasons that do not make economic sense. In his view, if maintaining the status quo of the partnership means maintaining its economic value, then failing to sell constitutes a breach of fiduciary duty. He does not believe the purpose of the Partnership can be to maintain the assets forever, because at some point the lease will expire.

(e) ELLIS RING FAMILY.

The Ellis Ring Family members (Suzanne Caplan, James Ring, and Jacqueline Morgen) testified to their understanding of the December 12, 2003 letter, their backgrounds in real estate and business, and generally admitted that they had not investigated whether a lease extension would benefit the partnership, and had not analyzed the relative merits of a short-term versus a long-term extension. Suzanne Caplan, one of the trustees of the Ellis Ring Trust, testified at trial that she believed the Partnership should obtain a fully negotiated lease extension with the County before making any decisions concerning the property. James Ring had no opinion concerning the value of the Mariners Village leasehold, or whether an extension, short or long term, would add value to the leasehold. He had no understanding of the terms and conditions imposed by the County for extensions, and has not communicated with anyone from the County.

3. Defendants' Case.

(a) JOSEPH MARASCO.

Marasco is the managing day-to-day trustee of Ellis Ring Trust, and is an accountant, but not a CPA. The Ellis Ring Family members have not told him they have sentimental attachment to Mariners Village; rather, they want to enhance the value of the asset. The last major renovation was in 2003; the required work was paid for out cash flow and some capital contributions.

Marasco had discussions with Douglas Ring regarding lease extensions on the various family properties, and they agreed that Mariners Village would be the most complicated, so they would complete the other properties first. Marasco believed getting a lease extension was essential for getting the highest and best value in the market. In his view, the December 12, 2003 letter meant they were going to get a lease extension, and then put the property up for sale. The Ellis Ring Family interests did not want to sell the property without a lease extension, and he thought a letter of intent from the county would let a prospective purchaser know there is a lease extension available.

Marasco testified he had heard that the County had revised its lease negotiation policies in 2004, but he did not investigate the change in the policy. He had not spoken

to Moliere. He did not know the current value of the Mariners Village leasehold, or the size of the capital expenditures that remain over the term of the lease. He did testify that the partnership is not in a position to finance any improvements because the Nomura loan prohibits further encumbrance, requiring all payments to be made out of cash flow. In getting the lease extension, the Partnership would have to pay off the Nomura loan.

After Douglas Ring gave him the Wald/Regan report, Marasco discarded it because it was not what he wanted, and was based upon assumptions Regan knew were not correct, such as a nine-year rent deferral. Douglas Ring told him to make him an offer or he would sue; this ultimatum caused the Ellis Ring Family to contact Borris, who made the $5.6 million offer. Marasco admitted the offer was "ludicrous," but it was based on the Wald/Regan report, so they "gave it back to him."

He did not respond to the Archstone or Silverado offers because he wanted to put together a package and start a bidding war. He believes that Douglas Ring made the unilateral decision to stop the lease negotiation process.

(b) GARY M. TENZER.

Tenzer testified as an expert. He is employed at George Smith Partners, and engages in structuring real estate finance transactions. Tenzer testified to a hypothetical buyout by one side of the family of the other side of the family's interest. His assumptions were that the loan would need to be repaid with 10 years or more left in the lease term; the ground lease would expire in April 2013; the property could sell for $200 million; the property was burdened with an existing loan of $39 million, with a defeasance payment of at least $6 million; net operating income from property for the term would be $13.7 million; and the probable interest rate on the loan would be 5.5 percent. The loan would pay off the existing Nomura loan balance of $39 million. Under these assumptions, the annual debt service of $20.284 million to be paid over six years would exceed the net operating income by $6.6 million per year. In other words, a buyer could not finance the buyout with the income from the property; no lender would make a loan because of the negative cash flow. Using the same 5.5 percent interest rate over six years, the most that could be borrowed while still giving the lender the required 1.15 debt

coverage would be $60.7 million. It would not be possible to refinance the Nomura loan given the existing lease, but the existing balance could be replaced at a lower rate.

(c) ANDY A. TOROSYAN.

Torosyan, a CPA, did an analysis of the recapture of depreciation to determine the tax effects on the partners. He did not know whether the individual partners have taken depreciation; he had only reviewed the partnership return. Under section 745 of the Internal Revenue Code, following a sale the partners would recapture the depreciation and acquire a new basis.

He made the following assumptions to analyze the tax effect of a sale of the partnership: The property was sold as of December 31, 2005; the sale was to an unrelated party; the property had been owned for more than a year; prior tax returns were accurate and complete; a valid section 745 election was made; and no other property was subject to recapture. Under these assumptions, the depreciation totaled $54,034,136, but only $20,917,526 of that was subject to tax under Internal Revenue Code section 1250. Upon sale, all individuals would be subject to tax. Adding different assumptions, if the sales price were $100 million, tax would be $7,406,687 on section 1250 property, with a capital gain of $10,783,940 for a total liability of $18,190,027. If the sale was for $150 million, there would be the same 1250 tax but the capital gain would be $23,588,440, for a total of $30,995,127.

He testified that a sale for cash subject to dissolution proceedings will not qualify for a 1031 exchange.

C. Trial Court's Statement of Decision.

The trial court filed its Statement of Decision on February 27, 2007. The parties agreed that Corporations Code[8] section 15032[9] governed, but disputed whether section

[8] All statutory references herein, unless otherwise noted, are to the Corporations Code.

[9] Section 15032 provided in relevant part: "(1) On application by or for a partner the court shall decree a dissolution whenever: . . . [¶] . . . [¶] (c) A partner has been guilty of

16801[10] applied. The trial court declined to determine whether section 16801 applied because it was inconsequential to its decision. The court determined that plaintiffs were entitled to dissolution of the partnership, a winding up of its affairs, and a sale of its assets because defendants had been guilty of conduct that prejudicially affected the carrying on of business, the business of the partnership could only be carried on at a loss, and other circumstances rendered dissolution equitable.

Regarding defendants' conduct, the court noted that: defendants had failed to investigate the County's new lease extension policies; they had no knowledge of the current value of the partnership or its leasehold, and whether an extension of the lease would add value to the partnership; and their buy-out offers at unrealistically low prices were made in bad faith.

The court found that the Partnership Agreements' provisions relating to the "status quo" did not preclude dissolution because statutory law, read into the Partnership Agreement, "trumps" the contractual provisions. In particular, the court found that the Partnership Agreement gave the general partners the power to take actions that in their judgment were necessary and appropriate to preserve the status quo, which included maintaining the value of partnership assets, and that the partners could not contract away

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such conduct as tends to affect prejudicially the carrying on of the business, [¶] (d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him, [¶] (e) The business of the partnership can only be carried on at a loss, [¶] (f) Other circumstances render a dissolution equitable."

[10] Section 16801 provides in relevant part: "A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events: . . . [¶] . . . [¶] (5) On application by a partner, a judicial determination that any of the following apply: [¶] (A) The economic purpose of the partnership is likely to be unreasonably frustrated. [¶] (B) Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner. [¶] (C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

their fiduciary duties. Furthermore, it found the Partnership Agreement did not prohibit dissolution and expressly permitted the sale of the leasehold.

The court found that the parties' goal subsequent to the December 12, 2003 letter was to sell the assets of the Partnership for the best price and on the best terms. The court further found that a sale of the Partnership property without a letter of intent from the County or a further expression of its terms for a lease extension was in the best interests of the Partnership and in furtherance of its purposes. "[T]he record reflects significant communications between the County and the partnership as to the terms the County was looking for as to both short-term and long-term extensions. It also demonstrates that (i) either type of an extension would have required an investment far beyond anything this partnership proposed or contemplated; (ii) the partnership did not have the financial capacity to fund the investment necessary for either type of extension and the partners could not be compelled to contribute such capital; and (iii) a short-term extension – which is what the parties' [December 12, 2003] letter agreement focused upon – would have caused the partnership to lose money (i.e., made the leasehold less valuable) on terms the County was insisting upon."

The court found the defendants' contention that the partnership should obtain a letter of intent from the County before sale was not in the best interests of the partnership, but in fact would be "ruinous" to the partnership. In particular, the court found defendants' contention, "if realized in fact, would cause serious economic loss to the partnership and its partners by, among other things, reducing the value of the leasehold in the eyes of qualified buyers."

Most importantly, the trial court found that "[u]nder current conditions the business of the partnership can only be carried on at a loss." The court found the evidence was "overwhelming" that (i) the partnership could realize far more (in excess of $100 million) by selling the leasehold than it could hope to realize by holding the leasehold to term, and that the loss of this enterprise value was inevitable absent dissolution and sale.

DISCUSSION

I. APPEALABILITY.

The parties dispute whether the matter is appealable. Defendants contend that it is, because the judgment is final, it is in the nature of an injunction, and it is a partition of real property interests. (Code Civ. Proc., § 904.1, subds. (a)(1), (6), (9).) Plaintiffs contend that it is not final because the trial court retained jurisdiction to oversee a sale of the property. (*Kinoshita v. Horio* (1986) 186 Cal.App.3d 959, 966 [judgment dissolving partnership and directing sale of its assets not appealable where court retained jurisdiction to ensure compliance with its decree].)

Pursuant to the final judgment rule, an appeal lies only from a final judgment. (Code Civ. Proc., § 904.1, subd. (a)(1)).) "'[W]here no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.'" (*Olson v. Cory* (1983) 35 Cal.3d 390, 399.) In partnership cases, however, "[a]pplication of the final judgment rule has proven especially difficult in partnership dissolutions and similar proceedings because they tend to require a series of adjudications by the trial court." (*Kinoshita v. Horio, supra,* 186 Cal.App.3d at p. 963.) In order to avoid piecemeal disposition of the issues, *Kinoshita* held the judgment before it was not appealable. (*Id.* at. pp. 966-967.)

Here, we need not reach the issue, but exercise our discretion and hear the matter on the defendants' petition for writ of mandate. (*County of Orange v. Superior Court* (2007) 155 Cal.App.4th 1253, 1257.) To require the parties to wait until the processes of an appeal can be completed, in view of the fact that the writ proceedings have been fully briefed, would be unnecessarily "'dilatory and circuitous.'" (*Olson v. Cory, supra,* 35 Cal.3d at p. 401.)

II. STANDARD OF REVIEW.

Where, as here, the trial court's ruling depends upon its review and resolution of disputed facts, we apply the substantial evidence standard of review. In such case, "the

power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination. . . ." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874; *Wallace v. Sinclair* (1952) 114 Cal.App.2d 220, 227-228 [substantial evidence supported dissolution of partnership operating at loss].) In measuring the sufficiency of the evidence, we review the entire record, and do not limit our review to isolated portions of the evidence. (*Marriage of Schmir* (2005) 134 Cal.App.4th 43, 50 [substantial evidence review after nonjury trial not limited to evidence cited in court's statement of decision but extends to the entire record].)

III. THE TRIAL COURT DID NOT IMPROPERLY ADMIT OR RELY ON VALUATION EVIDENCE.

Defendant argues the trial court's evidentiary rulings admitting the valuation evidence of Lloyd and Robinson and its reliance on such evidence were flawed because (1) the trial court applied inconsistent assumptions and methodologies to valuation; and (2) the valuation evidence of the property was inadmissible under Evidence Code sections 816,[11] 819,[12] and 822.[13] We disagree.

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[11] Section 816 provides in relevant part that "When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation."

[12] Section 819 provides in relevant part that "When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the capitalized value of the reasonable net rental value attributable to the land and existing improvements thereon (as distinguished from the capitalized value of the income or profits attributable to the business conducted thereon)."

[13] Section 822, provides in relevant part "(a) In an eminent domain or inverse condemnation proceeding, notwithstanding the provisions of Sections 814 to 821, inclusive, the following matter is inadmissible as evidence and shall not be taken into account as a basis for an opinion as to the value of property: . . . [¶] . . . [¶] (2) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which the property or interest was optioned,

Defendants point to the fact that some valuation scenarios considered payment of the Nomura loan, while others did not; some assumed a lease extension, while others did not; the cap rate was applied to the property in the hands of a new owner, but not to Mariners Village in the hands of the partnership; different cap rates were applied for determining cash flow versus pricing; and different experts made different assumptions about the potential added value of a lease extension. Further, defendants contend the value of the property could not be proved by the non-binding pretrial offers to purchase and that the capitalization rates used by the plaintiffs (1) were not based upon existing improvements as the statutes require but were based upon a theoretical renovated property, (2) and were not derived from comparable properties because fee simple estates were used.

We conclude the trial court did not abuse its discretion in admitting plaintiffs' expert valuation testimony. The value of real property may be determined with expert testimony; such testimony must be based upon matter "of a type that reasonably may be relied on by an expert in forming an opinion upon the subject to which his [or her] testimony relates," unless such evidence is otherwise expressly excluded by statute. (Evid. Code, §§ 801, subd. (b); 813, subd. (a)(1).) The reasonableness of an expert's reliance is a matter of degree and varies with the circumstances of each case. (*People ex rel. Dept. of Transportation v. Clauser/Wells Partnership* (2002) 95 Cal.App.4th 1066, 1085 (*Clauser/Wells*.) The trial court has broad discretion to rule on foundational matters. (*Korsak v. Atlas Hotels, Inc*. (1992) 2 Cal.App.4th 1516, 1523.) However, the

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offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813." Subdivision (b) of section 822 makes it applicable to non-eminent domain proceedings: "(b) In an action other than an eminent domain or inverse condemnation proceeding, the matters listed in subdivision (a) [of section 822] are not admissible as evidence, and may not be taken into account as a basis for an opinion as to the value of property, except to the extent permitted under the rules of law otherwise applicable."

"'factors of *necessity*, *reliability*, and *speculation* or *conjecture* at least provide some guideposts for the judge in determining whether a proffered expert opinion satisfies the requirements of [Evid. Code, § 801]. . . .' [Citation.]" (*Id.* at p. 1524.)

Where the property to be valued is of an unusual character or no accepted methods of valuation exist, courts will give an expert witness broad leeway to devise valuation techniques as long as the underlying factual matter is deemed reliable. (*Buchwalter v. Airline Training Center* (1982) 134 Cal.App.3d 547, 554 [necessity for information "dictates that courts accord to experts somewhat greater latitude in sources of information than might otherwise be the case"].) In *Clauser/Wells,* the witness valued salvaged auto parts by relying on books, courses on valuation, conversations with appraisers and brokers regarding inventory sales, and conversations with distributors and dealers regarding markup. *Clauser/Wells* found that because "appraisal of salvage auto parts indisputably presented a challenge [because it was] devoid of any precisely prescribed method for valuing such inventory items," any objection to the evidence went to its weight, rather than its admissibility. (*Id.* at pp. 1085-1086.)

Here, defendants do not dispute the experts were properly qualified and testified, subject to cross-examination, regarding the factual matters upon which they relied.

The different methodologies employed by the experts here were not subject to exclusion merely because they relied on different assumptions at different times for different scenarios. The case presented complex factual issues of how much value a lease extension contributed to the property; whether a long-term or a short-term extension was a viable option for the partnership; and what the property would be worth under the various factual possibilities presented by the different types of extensions, ground lease rates, renovations, a tear-down, payment of the Nomura loan yield premium, and holding the lease until term without an extension. All the underlying assumptions the experts used were based on reliable factual material of the sort that may be relied upon by an expert, and were subject to extensive cross-examination. Any infirmity in this evidence resulting from the novel scenarios presented by the nature of the property went to the

weight of the evidence, not its admissibility, and the trial court did not abuse its discretion in admitting the evidence.

With respect to defendants' arguments that the valuation evidence was required to be excluded under the Evidence Code, we disagree. Section 819, which limits capitalization evidence to existing improvements (rather than a business on property) does not bar capitalization of projected revenues from renovations to the Mariners Village apartments because the apartments constitute existing improvements. The witnesses testified to the cost of renovations to the existing apartments and therefore had a factual basis upon which to extrapolate an increased rental stream. Thus, this capitalization evidence was not remote or speculative testimony based upon non-existent improvements, as was the testimony in *San Diego Metropolitan Transit Development Bd. v. Cushman* (1997) 53 Cal.App.4th 918, 930, upon which defendants rely.

Evidence Code section 822, subdivision (a)(2) does not bar Lloyd's valuation testimony as being improperly based upon an offer to purchase, as defendants argue. Lloyd testified in detail to the valuation methodology he used in to arrive at the property's value. This evidence included the rent roll, Mariners Village's operating statement, the need to renovate the units based upon the County's current renovation template, and a 36-month renovation timeline. Lloyd's valuation formed the basis of Archstone's offer, rather than being based on it.

Finally, the capitalization rate used was not speculative or without foundation. The experts had the task of valuing income property that was not a fee simple, but was income property that depended upon the existence of a viable and stable ground lease. Therefore, to value the property, they had to quantify the risk factor the ground lease added to the property, and did so by adjusting the capitalization rate of comparable fee simple apartment properties in the same geographic area. The witnesses testified to the rationales they used in selecting the premium applied to the fee simple cap rate.

IV. THE TRIAL COURT ERRED IN ORDERING DISSOLUTION.

A. Section 15032 Governs Dissolution.

The Partnership was formed in 1972 under the Partnership Act of 1949. (Stats. 1949, ch. 383, § 1.) On July 1, 1984, the Revised Limited Partnership Act (RLPA) became effective. (Stats. 1983, ch. 1223, § 10.) Currently, Chapter 2 of Title 2 of the Corporations Code (§§ 15501-15533) applies to pre-1984 partnerships; Chapter 3 of Title 2 (§§ 15611-15723) applies to RLPA partnerships.[14] Under RLPA, a pre-1984 limited partnership could elect to be governed under RLPA; otherwise, it would continue to be governed under existing law. (§ 15530; §§ 15710-15714.) Marina Admiralty Company, pursuant to the Second Amended and Restated Partnership Agreement, made no such election.

In 1996, pursuant to the Uniform Partnership Act of 1994, the legislature repealed Chapter 1 of Title 2 (§§ 15001 though 15006 and 15007 through 15058), where section 15032 resided. (Stats. 1996, ch. 1003, § 1.2.) As part of the same legislation, the legislature enacted the Uniform Partnership Act of 1994 (RUPA) (Chapter 5 of Title 2, §§ 16100-16962) RUPA contains section 16801 governing dissolution.

However, although RUPA provides that it governs "all partnerships" after January 1, 1999 (§ 16111, subd. (b)), it defines partnership narrowly: "'Partnership' means an association of two or more persons to carry on as coowners of a business for profit formed under section 16202, predecessor law, or comparable law of another jurisdiction, and includes for all purposes of the laws of this state, a registered limited liability partnership, *and excludes any partnership formed under Chapter 2 (commencing with section 15501) or Chapter 3 (commencing with section 15611).*" (§ 16101, subd. (9) (Italics added).) RUPA does provide some gap-filling provisions for RLPA partnerships; section 15722 provides that "In any case not provided for in this chapter [Chapter 3], limited partnership shall be governed in the same manner as general partnerships would

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[14] After January 1, 2010, all partnerships will be governed by the Uniform Limited Partnership Act of 2008. (§ 15912.06, subd. (b).); Stats. 2006, ch. 495, § 20.)

be governed pursuant to section 16111, by the Uniform Partnership Act (Chapter 1, commencing with section 15001), or the Uniform Partnership Act of 1994 (Chapter 5, commencing with section 16100)).” Chapter 3 contains its own judicial dissolution provision at section 15682.

Analyzing these provisions, we find the legislative intent is clear that Chapter 1, although repealed, still applies in certain cases to limited partnerships. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [where the language of statute is clear, no need to resort to other indicia of legislative intent].) Mariners Admiralty Company, as a Chapter 2 partnership, is not governed by RUPA, and does not benefit from the gap-filling of section 15722, which applies to Chapter 3 partnerships. What section 15722 and the other provisions of RUPA do establish is that RUPA does not apply to Chapter 2 partnerships, but that Chapter 1 shall apply in certain instances. Mariners Admiralty Company, as a Chapter 2 limited partnership is governed by the provisions of Chapter 1, which includes section 15032, the provision in effect at the time Marina Admiralty Company was formed.

B. The Evidence Does Not Support Dissolution Under Section 15032.

There can be no doubt the Partnership is at an impasse. Plaintiffs (the Douglas R. Ring branch of the family) have concluded pursuing a lease extension with the County of Los Angeles is not in the Partnership’s best interests and the property should be sold now. Defendants (the Ellis Ring branch) disagree, believing negotiations with the County should continue and any sale be deferred until an extension (or letter of intent) is obtained. While the parties are deadlocked on the timing and conditions for marketing the property, the primary business of the Partnership, operating Mariners Village, continues, and the Partnership has received numerous sizeable offers for Mariners Village.

We conclude, however, that neither this impasse, nor the fact the Partnership has received several lucrative offers for the property, justifies dissolution.

1. The December 12, 2003 Letter Does Not Mandate Sale.

Each party argues that the December 12, 2003 letter (Exhibit 14) supports its position. Plaintiffs assert that the overriding purpose of the letter was to memorialize a commitment to sell the leasehold for the best price and on the best terms possible, thereby transforming the sale of the property into the current business of the Partnership, and making marketing the property, rather than leasing the apartments, the "status quo." Defendants assert that the letter imposes no unconditional obligation to sell the property.

Here, however, the unambiguous language of the letter is inconsistent with the plaintiffs' interpretation, adopted by the trial court, and it is not possible to read the letter (drafted by Douglas Ring) as an unconditional agreement to market the property absent a lease extension or letter of intent. Where, as here, the language of a contract is unambiguous, its interpretation is solely a judicial function, with the threshold question of ambiguity also a question of law. (*Parsons v. Bristol Development Co*. (1965) 62 Cal.2d 861, 865; *Appelton v. Waessil* (1994) 27 Cal.App.4th 551, 554-555.) Therefore, although extrinsic evidence was introduced concerning the meaning of the letter, it is not dispositive in our de novo review.

The December 12, 2003 letter expressly states at paragraph two, "[w]e will commence marketing our leasehold either when a Letter of Intent for a Lease Extension is issued to us by the County of Los Angeles or when an actual offer to provide a Lease Extension is issued to us by the County." A subsequent paragraph states, "We agree that once we have commenced the process of seeking a Lease Extension, we will pursue the process until its completion unless we mutually determine that doing so would not be in the best interests of the Partnership."

No part of the evidence plaintiffs cite supports an assertion that the Ellis Ring family agreed to sell the property whether or not a lease extension was obtained. At most, it indicates both branches of the family wanted to sell; both agreed the situation was fluid and that reassessment of the best approach might ultimately occur. This conclusion is consistent with the express language of the letter, "When we should commence marketing the leasehold interest for sale will depend upon a variety of facts

and circumstances relating to both the lease extension process and the then existing status of the apartment investment sales market. Accordingly, the decision as to when to commence marketing the leasehold will be part of an evolving process."

Under these circumstances, the letter did not reflect an agreement to shift the status quo, or the purpose of the Partnership, from operating Mariners Village to its sale.

2. Under Section 15032, Subdivision (e), The Partnership Not is Operating at a Loss.

Section 15032, subdivision (1) provides that "[o]n application by or for a partner the court shall decree a dissolution whenever: . . . [¶] . . . [¶] (e) [t]he business of the partnership can only be carried on at a loss." Although courts interpreting section 15032 treat the phrase "at a loss" literally, they recognize the nature and scope of the loss may vary. "Section 15032 . . . provides for a dissolution when business can be continued only at a loss. That statute does not designate the measure or speed of the loss. But it does mean that if the partnership will continue to lose a partner may insist upon a dissolution." (*Wallace v. Sinclair, supra,* 114 Cal.App.2d at p. 231.) In *Wallace v. Sinclair, supra,* the partnerships' losses abruptly began one year and continued unabated for several years, assisted by one of the partner's inept business skills. (*Id.* at pp. 225-227.) *Wallace* found dissolution proper under the circumstances. (*Id.* at pp. 231-232; see also *Price v. Slawter* (1960) 184 Cal.App.2d 715 [dissolution proper where partnership was losing money].)

Here, the Partnership is not being carried on at a loss pursuant to the statutory terms. The parties do not dispute that the Partnership is currently operating at a profit, and the current financial outlook of the Partnership is sound. Although the Partnership has no lease extension, the lease term expires in 15 years, and the Nomura loan comes due in 2013 (10 years before the expiration of the lease term with a balloon payment of $17 million), there is no dispute the Partnership is not currently operating at a loss. The fact that at some point in the future the Partnership may have difficulty making the Nomura loan balloon payment, or that, at the expiration of the lease term, it will have no property interest whatsoever in Mariners Village, does not justify the conclusion this currently profitable partnership can "only be carried on at a loss."

3. Section 15032, Subdivisions (c), (d) and (f), Do Not Mandate Dissolution.

Under section 15032, subdivisions (c) and (d), a partner's conduct that interferes with the running of the partnership business is grounds for dissolution. Subdivision (c) requires that the conduct prejudicially affect the carrying of the partnership's business; subdivision (d) requires the partner to conduct himself or herself in a manner which makes it not reasonably practicable to carry on the business of the partnership with him or her. (§ 15032, subds. (c), (d).) Additionally, subsection (f) permits dissolution where "other circumstances render a dissolution equitable." (§ 15032, subd. (f).) "Section 15032 confers broad power on a trial court to arrive at a fair resolution of conflict between partners under a variety of circumstances." (*Jacoby v. Feldman* (1978) 81 Cal.App.3d 432, 443.)

According to the Partnership Agreement, the purposes of the Partnership "are to acquire a leasehold interest in, improve and thereafter *own and operate, as an apartment complex,* and in the manner hereinafter set forth, that certain real property consisting of approximately 23 acres of land located in Marina Del Rey," and "[t]o do any and all things as are necessary, appropriate or incidental to the conduct of said business and the achievement of the purposes" set forth in the Partnership Agreement. (Italics added.) The Partnership also has the power to "sell. . . or otherwise deal with or dispose of all the property and assets" and to "engage in any and all activities that in the opinion of the General Partners are in furtherance of the purposes [of the Partnership] and are not prohibited by applicable law."

Owning and operating Mariners Village, not selling the property at an optimal price, is the Partnership's express purpose. Although the trial court concluded that a sale of Mariners Village was in furtherance of the purposes of the Partnership, and such a sale would be authorized by the Partnership Agreement, that does not lead to the conclusion that disagreement about the sale of the Partnership's assets interferes with the Partnership's business in a manner that invokes section 15032, subdivisions (1)(c) or (d);

the disagreement about selling the Partnership's assets, while significant, is not fundamental to "the carrying on of the [Partnership's] business."

In arguing against dissolution, defendants rely on the provisions of: section 8.1 of the Partnership Agreement, which requires the parties to maintain the status quo in the event of a disagreement; section 9.4, which precludes a partner from seeking a judicial dissolution,[15] and section 19.5.1, which limits the previous reach of Article 15 to an event of bankruptcy.

If this court were to accept the proposition, rejected above, that a sale of the leasehold interest (the Partnership's only asset) constituted "carrying on the business" of the Partnership, a deadlock between the general partners concerning the timing and condition of that sale could be the type of disagreement that could trigger dissolution in a partnership with a typical partnership agreement, at least in a situation where one general partner was able to demonstrate that the other general partner was not exercising reasonable business judgment by refusing to go along with the marketing plan. Such a result would be consistent with the holdings in *Owen v. Cohen* (1941) 19 Cal.2d 147, 152 ["courts of equity may order the dissolution of a partnership where there are quarrels and disagreements of such a nature and to such extent that all confidence and cooperation between the parties has been destroyed or where one of the parties by his misbehavior materially hinders a proper conduct of the partnership business"] and *Wallace v. Sinclair* (1952) 114 Cal.App.2d 220, 228 "[Where bitter and antagonistic feeling between partners has developed to the point that the partners cannot continue the partnership to their mutual advantage . . . a dissolution thereof is the equitable solution of an ugly situation and should be decreed"].)

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[15] That provision provides in relevant part that "Except as otherwise required by applicable law or specifically provided in this Agreement, no Limited Partner shall have the right power . . . (ii) to cause the dissolution and termination of the Partnership, by court decree or otherwise. . . ."

However, the current iteration of the Partnership Agreement, a document signed by the current general partners and limited partners, not the now-deceased brothers, is anything but typical. Section 8.1 requires that all actions taken by the general partners and all decisions affecting the business of the Partnership be made by a "Majority-in Interest of the General Partners [defined as the Ellis Ring Trust and Douglas R. Ring, Inc. (DRR)]," which, given two equal partners, necessarily means all decisions affecting the business require agreement by both. This provision contemplates disagreements and possible standoffs, or at least temporary deadlocks before further discussion and negotiation resolve the problem. Therefore, to avoid complete disruption of the business, the Partnership Agreement further expressly provides "in the event of any disagreement between the General Partners as to any particular action, determination, judgement [sic] or decision, the General Partners shall take (or omit to take) any and all actions, and make any and all determinations, judgements [sic] and decisions, as shall be necessary (or in the judgment of any General Partner) appropriate to preserve the status quo." Solidifying this provision still further, the parties barred a petition for dissolution at Section 9.4.

Thus, the Partnership Agreement effectively creates a rule of unanimity for any business decision that does not simply maintain the status quo – owning and operating the Mariners Village apartment complex – whether or not that decision involves an extraordinary event outside the usual business of the Partnership or can be characterized as "the proper conduct of the partnership business." For example, the decision to replace the existing complex with a new, upgraded structure, even though it impacts the core business of the Partnership, under section 8.1, would require the agreement of both general partners. In contrast, whether to undertake earthquake retrofitting or extensive pest control measures because termites are destroying the building (measures necessary to preserve the current leasing operations) would not be subject to the unanimity requirement if "in the judgment of any General Partner [it is] appropriate to preserve the status quo."

In sum, the parties themselves anticipated disputes might occur as to the management of the business and agreed to a rule of unanimity for decisions that simply

do not maintain the status quo. While such a requirement may be unusual, or lead to management difficulties, it was not outside the parties' powers to agree to this provision. At least in the absence of a breach of fiduciary duty by one of the general partners, as discussed below, there is no reason not to enforce that agreement. (Cf. *Bradstreet-I v. Equitable Life Assurance Society* (1999) 75 Cal.App.4th 1406, 1411 [although partners may determine by agreement many aspects of their relationship, they cannot contract away their fiduciary duty].)

Section 8.1's requirement of unanimity, however, does not trump the Corporations Code provisions for dissolution. Under the terms of the Partnership Agreement, which contemplated disagreements between the general partners without resort to the courts seeking dissolution, a dispute about how to conduct partnership affairs, even if bitter and prolonged, is simply not inconsistent with how the parties contemplated carrying on their business – it does not interfere with the running of the partnership business as the partners agreed it would be run. Therefore, such a dispute, by itself, is not grounds for dissolution of this partnership under Section 15032, subdivisions 1(c) and (d). In the language of the statute, this current disagreement does not "affect prejudicially the carrying on of the business" because it is precisely how the partners anticipated they might do business.

However, if one general partner were to breach his, her or its fiduciary duty to the other general partners in connection with decisionmaking concerning the partnership business, such conduct would take the impasse outside the contractual agreement for consensus and would be independently actionable and support a petition for dissolution under section 15032, subdivisions 1(c) or (d).[16] (See *BT-I v. Equitable Life Assurance Society, supra,* 75 Cal.App.4th at p. 1411.) Here, although harshly critical of the defendants' conduct (their self-professed failure to educate themselves as to the financial

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[16] Similarly, if the partnership cannot be operated without a loss, nothing in the Partnership Agreement's provisions for decisionmaking would preclude dissolution under section 15032, subdivision 1(e).

realities of the proposed lease renewal/extension and the "ludicrous" buyout proposal), the trial court did not find a breach of fiduciary duty. Instead, the court concluded that "If true, these claims mean that defendants are impermissibly unaware of information which they should have in the exercise of reasonable care to satisfy their obligations to the partnership and its various investors. . . . If these claims are not true, then that further reinforces this court's view that [defendants] have tried to force [plaintiffs] out of the partnership at a less-than-fair-value price." These alternative, mutually exclusive conclusions do not justify judicial intervention.

Finally, in light of the clear intentions of the parties to require resolution of disputes internally, and without judicial intervention, invocation of the court's equitable powers under section 15032, subdivision (f) is not appropriate on these facts. Whether the actions of the partners may be inadvisable, they are not outside the boundaries the parties voluntarily imposed upon themselves. In the absence of a breach of duty, not shown here, the court may not impose a solution different from the one the parties chose.

DISPOSITION

The petition is granted; the order to show cause is discharged. Let a peremptory writ of mandate issue directing the respondent superior court to vacate its judgment ordering dissolution of the Partnership and a sale of its assets, and to enter judgment in favor of petitioners. Petitioners are to recover their costs in this proceeding.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ZELON, J.

We concur:

PERLUSS, P. J.

WILEY, J[*].

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[*] Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.