STATE OF IDAHO)
County of KOOTENAI)ss
FILED 4/19/2021
AT 5:15 O'Clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

HERCULES INVESTMENT SYNDICATE, LLC, a Washington limited liability company, authorized to do business in the State of Idaho,

Plaintiff, Counter-Defendant,

vs.

GARY R. CHASTEK and CATHY CHASTEK, husband and wife, et al.,

Defendants, Counter-Plaintiffs,

Case No. **CV28-20-2712**

MEMORANDUM DECISION DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on cross motions for summary judgment. This case revolves around a dispute between plaintiff, Hercules Investment Syndicate (Hercules) and defendants, Gary and Kathy Chastek (the Chasteks) as to whether real property (the Farragut Property) is owned wholly by Hercules as partnership property, or whether Mr. Chastek retained a personal ownership interest in the Farragut Property separate from the partnership. Hercules has raised two causes of action against the Chasteks. Compl. 9-13. The first cause of action is to quiet title to the Farragut Property. *Id.* at 9-10. The second cause of action is for breach of contract regarding a settlement agreement (*Id.* at 10) as well as specific performance "[t]o the extent that damages do not provide an adequate remedy," stating that Hercules "is entitled to a decree for specific performance... to make, execute, deliver and record a Quitclaim

Deed to the Property to Hercules." *Id.* at 11.

The Chasteks filed a counterclaim requesting that this Court first find that "Gary Chastek is entitled to a judgment quieting title confirming that he owns 17.6666% interest in the Subject Property". Answer, Affirmative Defenses and Countercl. 9. Second, the Chasteks ask this Court to direct the sale of the subject property and award them attorney fees and costs. *Id.* at 10. Third, the Chasteks ask this Court to grant them their respective share of profits made by Hercules from the property since July 2012. *Id.* at 10-11. Finally, the Chasteks ask this Court to find that a settlement agreement entered on July 11, 2012 and July 13, 2012 "resolved the litigation known as *Gary Chastek v. Hercules, Investment Syndicate, LLC, et. al,* in the Superior Court of the State of Washington" and "[b]y bringing this action, the Counter-Defendant has breached the terms of the Settlement Agreement". *Id.* at 11-13. The Chasteks requested damages due to the breach. *Id.*

Hercules filed their Complaint on April 23, 2020. The Chasteks filed their Answer, Affirmative Defenses and Counterclaims on June 11, 2020. Hercules filed an Answer to Counterclaims and Reply to Affirmative Defenses on July 2, 2020.

On December 24, 2020, the Chasteks filed a Motion for Summary Judgment, a Memorandum in Support of Motion for Summary Judgment, a Statement of Undisputed Facts in Support of Motion for Summary Judgment, a Declaration of Toby McLaughlin, and a Declaration of Gary Chastek on December 24, 2020. On January 8, 2021, Hercules filed Plaintiff's Motion to Continue Hearing Date, claiming that due to the holidays and due to Chasteks filing their motion on Christmas eve, counsel for Hercules did not have sufficient time to respond to Chasteks' motion for summary judgment, and notifying the Court and counsel that Hercules intended to file its own motion for

summary judgment. On January 11, 2021, Hercules filed a Response in Opposition to Defendant's Motion for Summary Judgment. On January 15, 2021, Chasteks filed Defendant Chasteks' Motion to Continue Hearing and Reply Brief in Support of Motion for Summary Judgment. Oral argument on Chasteks' motion for partial summary judgment was held as scheduled on January 25, 2021. At that hearing, the Court first heard argument on Hercules' motion to continue the hearing on Chasteks' motion for partial summary judgment. At the conclusion of that argument, the Court granted Hercules' motion to continue, and set a hearing date of March 17, 2021, on Chasteks' motion for partial summary judgment, and any motion for summary judgment filed by Hercules.

On February 17, 2021, Hercules filed Plaintiff's Motion for Partial Summary Judgment, Declaration of Janet D. Robnett, Declaration of Curtis Clark, Declaration of Joyce Esposito, Declaration of Michael Chastek, Declaration of Thomas Chastek, and Declaration of Patrick Chastek . On March 3, 2021, the Chasteks filed a Defendants' Objection to Plaintiff's Motion for Partial Summary Judgment, Declaration of Gary Chastek, Defendant Chasticks' Statement of Disputed Facts in Opposition to Plaintiff's Motion for Partial Summary Judgment and Defendant Chasticks' Motion to Strike Declarations filed in Support of Plaintiff's Motion for Partial Summary Judgment. Also on March 3, 2021, Hercules filed Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment. On March 8, 2021, Hercules filed an Amended Declaration of Toby McLaughlin in Support of Motion for Partial Summary Judgment, and Defendant Chasteks' Motion for Leave to File an Amended Declaration. On March 10, 2021, Hercules filed Plaintiff's Reply to Defendants' Objection to Plaintiff's Motion for Summary Judgment, a Supplemental Declaration of Curtis A. Clark in Support of Motion for Partial Summary Judgment, Plaintiff's Motion for Leave of the Court to File

Supplemental Declaration of Curtis A. Clark, and Plaintiff's Objection to Defendants' Motion to Strike Declaration Filed In Support of Plaintiff's Motion for Partial Summary Judgment. On March 10, 2021, the Chasteks' filed a Reply Brief in Support of Motion for Summary Judgment. On March 11, 2021, Chasteks filed Defendant Chasteks' Objection to Plaintiff's Motion for Leave to File Supplemental Declaration of Curtis Clark and Motion to Strike.

Oral argument on the cross-motions for summary judgment were heard by this Court on March 17, 2021. At the beginning of that hearing, the Court denied Chasteks' motion for leave to file the supplemental declaration of Toby McLaughlin as such was untimely, and the Court denied Hercules' motion to file the supplemental declaration of Curtis Clark as no good cause was shown by Hercules. The Court then heard argument on the cross-motions for summary judgment, at the conclusion of which the Court took those motions under advisement.

II. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to Rule 56, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." I.R.C.P. 56(c).

> If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

> (1) give an opportunity to properly support or address the fact;
> (2) consider the fact undisputed for purposes of the motion;
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
> (4) issue any other appropriate order.

I.R.C.P. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "Once the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party" to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party "must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact." *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). "Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence." *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520, 525 (2014) (quoting *Park West Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

> In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

The moving party may also meet "the 'genuine issue of material fact' burden. . . by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). "Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking." *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick* at 311, 882 P.2d at 478).

> Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial, or to offer a valid justification for the failure to do so under [I.R.C.P. 56(d)]. *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App.1994) (alteration added).

Dunnick at 311, 882 P.2d at 478; *see also Heath* at 712, 8 P.3d at 1255.

III. ANALYSIS.

A. Introduction.

Hercules' Motion for Partial Summary Judgment asks this Court to find in favor of its claim to quiet title on the Farragut Property and their breach of contract claims regarding the Farragut Property. Pl.'s Mot. for Partial Summ. J. 4. According to Hercules, were Hercules to prevail on its motion for partial summary judgment, the only issue left to be tried would be the amount of damages owed to Hercules by the Chasticks. Plaintiff's Mem. in Supp. of Mot. for Partial Summ. J. 21. The Chasteks ask this Court to rule on summary judgment:

> (1) dismissing all of the Plaintiff's claims; (2) finding that the Counter-Plaintiff Gary Chastek is entitled to a judgment quieting title as to his 17.6666% interest in the Subject Property; (3) finding that by bringing this

> action the Plaintiff breached the terms of a settlement agreement between these same parties that was executed in 2012 and finding that the Defendants are entitled to an award of legal costs and attornyes fees incurred herein; (4) finding that Gary Chastek is entitled to a share of the timber proceeds received by the Plaintiff for logging the subject property in the amount of $70,844.95, plus prejudgment interest and issuing judgment including these amounts; and (5) finding that Gary Chastek is entitled to the partition of the Subject Property and ordering its sale with this Court retaning jurisdiction over that sale and the distribution of proceeds.

Def's. Mot. for Summ. J. 1-2. The claims of quiet title and breach of contract will be discussed in that order. Finally discussed will be Hercules' argument that under grounds of equitable estoppel, "[a]s a result of its performance under the Settlement Agreement, Hercules LLC is entitled to specific performance as a remedy." Pl.'s Mem. in Opp to Defs' Mot. for Summ. J. 9-11.

B. Quieting Title.

The Chasteks first argue that:

> For Hercules to prevail on its claim that it owns all of the interest in the Subject Property, therefore, it must prove that Gary conveyed to Hercules his 17.6666% interest therein. This, however, never occurred, and there is no evidence to support Hercules' claim that it now owns Gary Chastek's 17.6666% ownership interest in the Subject Property.

Def's. Mem. in Supp. of Mot. for Summ. J. 9-10.

Hercules argues that:

> Pursuant to Section 6.2.1 of the LLC Agreement, each of the Members made Capital Contributions to Hercules LLC in the amounts set forth on the books of Hercules LLC. (*Clark Decl.*, ¶ 7; *Esposito Decl.*, ¶ 7; *Michael Chastek Decl.*, ¶ 7). A Schedule B was never prepared to anyone's knowledge; rather, the Capital Contributions were those shown on the books of Hercules LLC at that time. (*Esposito Decl.*, ¶ 7; *Michael Chastek Decl.*, ¶ 7). Since 1998, the Farragut Property, in its entirety, has been and continues to be carried on the books as an asset of Hercules LLC. (*Clark Decl.*, ¶ 7).

Pl.'s Mem. in Supp. of Mot. for Partial Summ. J. 13.

At no time from 1984 to the present, has any income or expense relating

> to the Farragut Property been received or paid by anyone other than Hercules LLC, or its predecessor. (*Clark Decl.*, ¶ 13). Despite the ownership described by deeds, it has always been treated and handled with Hercules LLC as the sole owner of this parcel. (*Id.*; *Esposito Decl.*, ¶ 8; *Michael Chastek Decl.*, ¶ 8; *Patrick Chastek Decl.*, ¶ 5; *Thomas Chastek Decl.*, ¶ 5).

Id. at 14. Furthermore, Hercules cites *Murgoitio v. Murgoitio*, 111 Idaho 573, 576, 726 P.2d 685, 688 (1986), and argues that the relevant question is whether the intent of the parties was to contribute the entirety of the Farragut Property to Hercules or its predecessors. *Id.* at 15. Hercules argues that such intent was clear. *Id.* Hercules then contends that:

> The LLC Agreement thus effected a transfer of the entire Farragut Property into Hercules LLC in 1998, just as it had previously been in Hercules Investment Syndicate. That transfer was effective as amongst all the parties and signators to the LLC Agreement, which included Gary. (*See Clark Decl.*, Ex. 2; *Esposito Decl.*, Ex. 1; *Michael Chastek Decl.*, Ex. 1). The parties clearly intended for the Farragut Property to be contributed to Hercules LLC, rather than being held by individual Members. Regardless of the ownership described by the deeds, at no time since at least 1984 has the Farragut Property ever been treated or accounted for as an asset owned by anyone in their individual capacity – it has always been handled as if Hercules LLC was the sole owner of this parcel.

Id. at 16.

The Chasteks argument revolves around the fact that the chain of title has never included a deed of conveyance of the Farragut Property to Hercules. The documents provided to this Court show that this is true, and the closest Hercules has come to showing a deed of conveyance is the 2007 quit claim deed, which was signed by the other parties who held title to the Farragut property, but it was not signed by Gary Chastek. Compl. Ex. H. In regards to the LLC Agreement (which the Chasteks call "the Operating Agreement"), the Chasteks argue that:

> More importantly, <u>as a matter of law</u> the Operating Agreement cannot have conveyed Gary' s interest in the Farragut Property for several reasons. The most obvious reason is that Hercules' unrecorded limited

> liability company operating agreement is not a deed. The Operating Agreement is devoid of any language which can reasonably be interpreted as a conveyance of an interest in the Farragut Property to Hercules. (*Clark Dec.,* ¶ 6, Ex. 2). In fact, the Operating Agreement makes no reference whatsoever to the Farragut Property. *(Id.).* Idaho law requires more than a vague reference to unspecified prior "capital contributions" in an unrecorded operating agreement to convey an interest in real property.

Def.'s. Reply in Supp. of Mot. for Summ. J. 10-11.

> Moreover, the record is devoid of any evidence that the Operating Agreement contains reference to a document that contains the legal description of the Farragut Property. Section 6.2.1 of the Operating Agreement references prior capital contributions to Hercules by its members as set forth in "Schedule B" attached thereto. However, there is no Schedule B attached to the Operating Agreement and, as admitted by Hercules, Schedule B has never existed. *(P's Mem. in Sup. of Mot. for Partial Sum. J,* p. 13) ("Schedule B was never prepared to anyone's knowledge."). There is simply no evidence that supports Hercules' claim that Gary conveyed his interest in the Farragut Property through his signing of the Operating Agreement.

Def.'s. Reply in Supp. of Mot. for Summ. J. 12.

Murgoitio involved a dispute between two surviving partners in an LLC that held opposing views as to the intent of real property that was either owned by the partnership or owned by the parties individually as reflected by the deeds. 111 Idaho at 576, 726 P.2d at 688. In *Murgoitio*, the Idaho Supreme Court found that:

> The Uniform Partnership Law, specifically I.C. § 53–308, provides that all property originally brought into the partnership stock, or subsequently acquired on the account of the partnership is partnership property. The statute provides that unless a contrary intent is shown, property acquired with partnership funds is presumed to belong to the partnership. I.C. § 53–308(2). According to the case law interpreting this section, the ultimate determination of whether an asset is partnership property depends on the parties' intent. *Shumway v. Shumway,* 106 Idaho 415, 421, 679 P.2d 1133, 1139 (1984).

Id. In *Murgoitio*, the trial Court found the following information as evidence in support of the trial court's finding that the real property was owned by the partnership:

> All the property—aside from the Kellogg and Boyce properties which were purchased by James and subsequently deeded to his sons—was

> purchased with partnership funds. The partnership made both the down payments and all of the mortgage payments. The partnership paid the taxes, insurance and maintenance on the property. After acquisition, much of the property was substantially improved. All the improvements were made with partnership labor or with labor and materials paid for by the partnership, and the improvements were depreciated on the partnership tax returns. Similarly, the taxes, insurance and maintenance were deducted as partnership expenses. In addition, the real property was occupied, managed and used as an integral part of the partnership businesses. The crops raised on the property were consumed in either the dairy or the feed lot; any excess was sold and the income went to the partnership. The partnership did not pay any compensation to the individual partners for its use of the properties.

111 Idaho at 576-77, 726 P.2d at 688-89. Additionally, Lou, the party that initiated the action in *Murgoitio*, was questioned regarding the nature of the title of the real property. Lou stated that "some of the properties are in my name, some of them are in R.G.'s name, some of them are in J.C.'s name, some of them are in J.C. and my name, and some of it is in J.C., L.L., and R.G. All three of them. So it's been quite a collaboration." 111 Idaho at 577, 726 P.2d at 689. At some point during the litigation in *Murgoitio,* Lou changed his initial position and instead asserted that the partnership owned no real property and the "deeds reflect the parties' true intent as to ownership and that they are controlling on this issue." *Id.* The Idaho Supreme Court ultimately held that:

> While we recognize that there was a great deal of conflicting evidence on this issue, we note that the task of weighing such evidence is within the province of the trial court. *Rasmussen, supra* at 405, 659 P.2d at 159. The trial court's finding that the real property was owned by the partnership is supported by substantial and competent evidence and is not clearly erroneous and will, therefore, be upheld on appeal.

Id. The 1986 *Murgoitio* opinion deals with Idaho Code. § 53-308. The current statute (Idaho Code § 30-23-204) is the same in the relevant sections and reads:

> (c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one (1) or more partners with an indication in the instrument

> transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
> (d) Property acquired in the name of one (1) or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

In the present case, the 1998 LLC Agreement was signed by all the partners including Gary Chastek. Section 6.2.1 of the LLC Agreement reads:

> **6.2.1 Initial Capital contributions.** The Members have made Capital Contributions to the Company in the amounts set forth on the books of Hercules Investment Syndicate on the effective date of this Agreement, which amounts are set forth on Schedule B attached herto and incorporated into this Agreement by reference. Receipt of such Capital Contributions is hereby acknowledged. No Member shall be required to make any additional Capital Contributions to the Company, except for cash calls required by the Managers on certain select investments.

Clark Decl. Ex 2. This Court finds that a genuine issue of material fact exists regarding the ownership of the Farragut Property because Hercules has presented evidence that the intent of the parties was for the Farragut Property to be owned by Hercules. Hercules faces a problem of title and the statute of frauds, as there is no written and signed deed of conveyance on the record describing the Farragut Property that was supposedly conveyed to Hercules. Despite this, the intent of the parties, as found in *Murgoitio*, is relevant towards determining whether real property is determined to be individual or partnership property, and such evidence of intent can overcome problems of title as well as the statute of frauds. 111 Idaho at 576-77, 726 P.2d at 688-89. Hercules' theory as to how it obtained the Farragut Property is based on the 1998 LLC Agreement, specifically, initial capital contributions made under 6.2.1 of the LLC Agreement. This Court finds that capital contributions mentioned in the LLC Agreement cannot be construed as Hercules using partnership assets to obtain the Farragut Property. Additionally, no deed exists granting title to Hercules of the Farragut property.

For these reasons, this Court finds that the Farragut Property is presumptively separate property under Idaho Code §30-23-204(d). There is no mention of what the capital contributions made by Gary Chastek and the other partners in the 1998 LLC Agreement entailed. The LLC Agreement mentions a "Schedule B" to describe these capital contributions, but both parties concede that such a document does not exist. The LLC Agreement only describes that, "[m]embers have made Capital Contributions to the Company in the amounts set forth on the books of Hercules Investment Syndicate on the effective date of this Agreement". Clark Decl. Ex. 2 § 6.2.1.

Since this Court has found that the Farragut property is presumptively separate property under I.C. § 30-23-204(d), in order to survive summary judgment, Hercules must put forward evidence that the intent of the parties was for the Farragut Property to be partnership property. Hercules has met that burden. Hercules has put forward evidence that the Farragut property was carried on the partnership books of Hercules at the time of the signing of the LLC Agreement and continues to be carried that way on their books. Clark Decl., ¶ 7. Additionally, Hercules has put forward evidence that the Farragut property has been treated by the parties as being solely owned by Hercules from 1984-2012, and "property taxes, insurance, timber revenues or the like, were allocated amongst the Members in proportion to their sharing ratios, as depicted on the schedule prepared by Curtis Clark." Clark Decl., ¶ 11, Ex. 3. Finally, Hercules has presented evidence that, "[t]he managing Members, including Gary, were provided schedules that depicted what the ownership percentage of each investment was at least annually... There was never a question about the ownership of the Farragut Property by hercules LLC." (Clark Decl., ¶ 12), and "[a]t no time from 1984 to the present, has any income or expense relating to the Farragut Property been received or paid by anyone other than Hercules LLC, or its predecessor." (Clark Decl., ¶ 13).

Much like in *Murgoitio*, the disputed property in the present case was titled to the individual members and not to the partnership. Unlike in *Murgoitio*, Hercules' acquisition of the Farragut property was not made with partnership assets, but Mr. Chastek and the other members did sign the LLC Agreement which states that "the Members have made Capital Contributions to the Company in the amounts set forth on the books of Hercules Investment Syndicate". Clark Decl. Ex. 2 §6.2.1. Furthermore, the Chasteks have not presented evidence refuting the evidence that the capital contributions mentioned in the LLC Agreement pertain to anything other than the Farragut Property, which was and continues to be held on the internal accounting books of Hercules. Clark Decl., ¶ 7. Much like in *Murgoitio*, there is evidence that the Farragut property was treated by the partnership members as being owned by Hercules, and Hercules received the income and paid the expenses of the Farragut Property. Unlike *Murgoitio*, the income and expenses were then allocated to the parties in proportion to their sharing ratios (In *Murgoitio*, "the partnership did not pay any compensation to the individual partners for its use of the properties.") *Murgoitio*, 111 Idaho at 576-77, 726 P.2d at 688-89.

As shown above, there is a great deal of conflicting evidence regarding the intent of the parties as to the ownership of the Farragut Property. In *Murgoitio*, the issue of ownership of the real property in question was determined at trial (111 Idaho at 574, 726 P.2d at 686), and as stated by the Court in *Murgoitio,* "[t]he question of the parties' intent was a question of fact for the trial court". 111 Idaho at 576, 726 P.2d at 688. This Court finds that Hercules has presented evidence to overcome the presumption under Idaho Code. § 30-23-204(d) that the Farragut Property is individual property. For the reasons set forth above, this Court finds that a genuine issue of material fact exists

regarding the ownership of the Farragut Property.

C. Breach of Contract.

Hercules argues that:

> In 2011, Gary filed the Lawsuit against Hercules LLC and the other Managers, Joyce and Mike. The Lawsuit was resolved through arbitration, the terms of which are set forth in the Settlement Agreement. (*Clark Decl.*, ¶ 16, Ex. 7; *Esposito Decl.*, ¶ 11, Ex. 3; *Michael Chastek Decl.*, ¶ 11, Ex. 3). With the implementation of the Settlement Agreement, Gary received certain assets of Hercules, in cash or in kind, in exchange for his releasing all interest in Hercules LLC. The negotiations leading up to the Settlement Agreement and the value of Gary's interest in Hercules took into consideration the full value of the Farragut Property. (*Clark Decl.*, ¶¶ 14-15, 17). Indeed, Gary's attorney in 2011, Lezlie Benham of Nearhood Law Offices, acknowledged as much when she sent the Members of Hercules LLC a letter, including analysis from David Gabrielsen, regarding his valuation of properties owned by Hercules LLC, including the Farragut Property. (*Esposito Decl.*, ¶ 10, Ex. 2; *Michael Chastek Decl.*, ¶ 10, Ex. 2). Gary understood that his full interest in Hercules took into consideration the full value of the Farragut Property.

Pl.'s Mem. in Supp. of Mot. for Partial Summ. J. 17. Additionally, Hercules argues that Mr. Chastek and each member of the Settlement Agreement received a K-1 form, and Mr. Chastek "realized a taxable gain of $150,571 on the sale of real property from the sale of his interest in the Idaho real property to Hercules LLC." *Id.* at 19. Furthermore, "[a]s shown on the work paper attached to 2012 K-1, the taxable gain allocated to Gary's sale of his interest in the Farragut Property alone was $134,710.27, which was computed on the *full $785,950 fair market value* of the Farragut Property." *Id.* Mr. Chastek never objected to the taxable gain as to the sale of the Farragut property. *Id.* Therefore, Hercules argues that, "As a result of the Settlement Agreement and withdrawal from Hercules LLC, Gary acknowledged – 8 years ago – that he was divested of all interest in the Farragut Property" (*Id.* at 19-20), and "[t]he Farragut Property was, and still is, an asset of Hercules LLC. As a result of the Settlement Agreement, Gary no longer holds any interest in the assets of Hercules LLC, including

the Farragut property." *Id.* at 20. Finally, Hercules argues that:

> Under Section 9 of the Settlement Agreement, Gary was required to execute "all documents necessary to effectuate the terms of this agreement **including all documents necessary for the transfer of real property and any other documents arising therefrom**." (*Clark Decl.*, Ex. 7;*Esposito Decl.*, Ex. 3; *Michael Chastek Decl.*, Ex. 3). (Emphasis added). There is no limitation in the Settlement Agreement that "all documents necessary for the transfer of real property and any other documents arising therefrom" be limited to those acknowledged by the parties at the time of settlement. Pursuant to Section 9 of the Settlement Agreement, Gary was required to sign the Quitclaim Deed in 2019 when it was discovered that the record title to the Farragut Property was not held by Hercules LLC. Gary's failure to sign a Quitclaim Deed acknowledging the same constitutes a breach of the Settlement Agreement.

Id. at 21 (bold and underlining in original).

The Chasteks argue that, "While the Settlement Agreement, like Hercules' Operating Agreement, was signed by Gary, it did not convey his interest in the Farragut Property. To do so, pursuant to Idaho's Statute of Frauds, the agreement would have had to contain a valid legal description of the property." Defs.' Reply in Supp. of Mot. for Summ. J. 13. Next the Chasteks argue that the case at hand is barred by the doctrine of claim preclusion in regards to the Spokane litigation. Mem. in Supp. of Mot. for Summ. J. 11-13. Furthermore, the Chasteks' argue that:

> The Settlement Agreement is clear and unambiguous. It expresses the clear intent of the parties to release not only the claims expressly at issue in the Spokane Litigation, but also "any other matters which are or could have been set forth in the Spokane Superior Court Case referenced above." (*Complaint,* Ex. I, ¶ 5). The deeds by which Gary acquired ownership interest in the Subject Property were executed between 1980 and 1989. (*Complaint,* ¶¶ 8-11). The deed by which Hercules' claims ownership of Gary's interest in the Subject Property was executed in July, 2007. *(Id.,* ¶ 15). Clearly, therefore, any claim by Hercules that Gary's interest in the Subject Property had been conveyed to Hercules through the 2007 Quit Claim Deed, as it asserts herein, could have been included in the 2011/2012 Spokane Litigation. That claim, therefore, was expressly released by the unambiguous terms of the Settlement Agreement.

Id. at 15. Finally, the Chasteks argue that:

> Aside from the Statute of Frauds, Hercules is not entitled to the remedy of specific performance with regard to the Settlement Agreement because that agreement simply does not require Gary to convey his interest in the Farragut Property to Hercules. Rather, Gary was required to release his membership interest in Hercules, which he did. Gary cannot be forced to specifically perform a contractual obligation which does not exist.

Defs.' Reply in Supp. of Mot. for Summ. J. 17.

This Court finds that a genuine issue of material fact exists regarding the breach of contract and specific performance claims because the issue of the ownership of the Farragut Property must be decided upon before the breach of contract and specific performance claims are properly addressed. As found by this Court above, a genuine issue of material fact exists regarding the question of the ownership of the Farragut Property, and this Court finds that nothing written in the 2012, Settlement Agreement, nor the "Spokane litigation", is determinative in deciding upon the ultimate issue of ownership regarding the Farragut Property.

The most relevant term in the Settlement Agreement states, "Gary Chastek will resign as a manager and member of Hercules, and waive all further interest in property or Investment of Hercules except as set forth herein." Clark Decl. Ex 7, p. 4, ¶ 6. The Settlement Agreement lists two properties (Sunrise Bay, and Emerald Beach II lot 4 Unrecorded Tracts) that "Hercules shall cause to be conveyed to Gary Chastek, as sole owner". *Id.* at p. 2, ¶ 1. These are properties owned by Hercules and are to be conveyed to Mr. Chastek as part of the Settlement Agreement. *Id.* The Farragut Property is not mentioned anywhere in the Settlement Agreement. From Hercules' perspective, the Farragut property is already in the possession of Hercules, so the term stipulating that Mr. Chastek will, "waive all further interest in property or Investment of Hercules except as set forth herein", presumably applies to Mr. Chastek's partnership interest in the Farragut Property. Therefore, for this Court to rule upon whether the

Settlement Agreement has been breached, it must first be determined whether the Chasteks own a personal stake in the Farragut property, separate from the partnership, or if the Farragut Property is owned wholly by Hercules. If the Farragut property is rightly owned by Hercules, then Mr. Chastek likely breached the Settlement Agreement by not providing title of the Farragut Property to Hercules. If it is determined that the Chasteks own the Farragut Property, individually from the partnership, then the Chasteks have not breeched the Settlement Agreement, and indeed there is a colorable argument that Hercules breeched the settlement agreement by bringing forward the present action.

For these reasons, this Court finds that a genuine issue of material fact exists regarding Hercules' claims of breach of contract and specific performance and regarding Chasteks' claims of breach of contract and specific performance. For similar reasons as found above, this Court also finds that the Chasteks' Motion for Summary Judgment requesting their share of the timber proceeds from the Farragut Property and partition of the Farragut Property cannot be properly addressed by the Court until the ultimate issue of the ownership of the Farragut Property is reached.

D. Equitable Estoppel.

Hercules argues that under grounds of equitable estoppel, "[a]s a result of its performance under the Settlement Agreement, Hercules LLC is entitled to specific performance as a remedy." Pl.'s Mem. in Opp to Defs' Mot. for Summ. J. 9-11. The Chasteks argue that "Hercules did not include in its Answer to the Chastek's counterclaims the affirmative defense of estoppel." Def's. Reply 24. Additionally, the Chastek's argue that:

> Even if the Court allow Hercules to proceed on an unpled claim of equitable estoppel, to which the Chasteks hereby object, the Chasteks are nevertheless entitled to summary judgment there is no evidence

> whatsoever in the record that Gary Chastek made any false representations of any kind, or concealed any fact from Hercules. The chain of title of the Farragut Property is matter of public record. Hercules was represented in the Spokane litigation by competent legal counsel and with the advice of its accountant, Curtis Clark. Hercules neither lacked knowledge of the chain of title nor lacked the means of knowledge of who owned that property. Hercules' unpled claim of equitable estoppel must be dismissed on summary judgment for lack of an evidence as to several of the essential elements of a claim for Equitable Estoppel. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986).

Id. at 25.

This Court finds that it is not proper for Hercules to bring an unpled claim of equitable estoppel for this Court's consideration of the present motions for summary judgment. I.R.C.P. 8(c) and 12(b). Therefore, this Court will not consider claims of equitable estoppel in the present motions for summary judgment.

IV. CONCLUSION AND ORDER.

For the reasons described above, Hercules' Partial Motion for Summary Judgment is denied and the Chasteks' Motion for Summary Judgment is denied.

IT IS HEREBY ORDERED plaintiff Hercules' Motion for Partial Summary Judgment as to its claims of quiet title and breach of contract is **DENIED.**

IT IS FURTHER ORDERED that defendants Chasteks' Motion for Summary Judgment dismissing all of plaintiff's claims, of quiet title and breach of contract, is **DENIED.**

IT IS FURTHER ORDERED that the Chasteks' Motion for Summary Judgment requesting their share of the timber proceeds of the Farragut property and partition of the Farragut Property is **DENIED.**

ENTERED this 19th day of April, 2021.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 20th day of April, 2021, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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Jeanne Clausen, Deputy Clerk