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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MURRAY GOLDSTEIN, as Trustee,
etc.,

Plaintiff and Respondent,

v.

JUDY EGAN et al.,

Defendants and Appellants.

B267790

(Los Angeles County
Super. Ct. No. BC463923)

APPEAL from a judgment of the Superior Court of Los Angeles County, Amy Hogue and Samantha Jessner, Judges. Reversed and remanded with directions.

Kennedy Law and Jennifer Kennedy for Defendants and Appellants.

Dale Arthur Arens, Norman Yale Blaz and Alan M. Goldberg for Plaintiff and Respondent.

In 1995, Murray Goldstein, as trustee for his trust, entered into a limited partnership agreement with his daughter, Elise Goldstein, regarding the ownership and operation of certain real property. Under the agreement, Elise could not transfer her interest in the partnership without Murray's prior written consent. In 2006, after Elise was diagnosed with a terminal illness, she transferred her partnership interest to her revocable living trust, and then amended her trust to provide that such interest should be distributed to her two siblings, Judy Egan and David Goldstein, upon her death. The day after Elise amended her trust, Murray provided his written consent to the transfer of Elise's partnership interest to the trustee of her living trust, as amended, but did not sign a separate document consenting to the transfer of such interest from Elise's trust to Judy and David.

Several years after Elise's death, Murray, as trustee for his trust, filed this action against Judy and David, seeking declaratory relief regarding the parties' respective rights and duties under the partnership. In response, Judy and David filed a cross-complaint against Murray for various claims arising from their alleged partnership interest. At a bench trial on the limited issue of whether Murray provided his prior written consent to the transfer of Elise's partnership interest to Judy and David, the trial court found that Murray never provided such consent. Based on that finding, the court then granted Murray's motion for judgment on the pleadings and ordered the partnership dissolved. We reverse and remand the matter for further proceedings consistent with this opinion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. The Limited Partnership Agreement

Murray and his first wife, Jeanette, had three children – Elise, Judy, and David.¹ In 1963, Murray and Jeanette purchased a residential apartment building in Pacific Palisades, California. On November 8, 1985, following Jeanette’s death, Murray formed the “Trust of Murray Goldstein” to hold title to his assets, including the apartment building.

On December 30, 1995, Murray, as trustee for his trust, entered into an “Agreement of Limited Partnership” (the “Partnership Agreement”) with his daughter, Elise.² Under the Partnership Agreement, the “Goldstein Investment Partnership, L.P.” (the “Goldstein Partnership”) was established to own and operate the Pacific Palisades apartment building. As set forth in the preamble to the Agreement, the Goldstein Partnership specifically was formed “to provide more effective management of the real property held by the parties, to assist the older-generation family member with the day-to-day management of the real property, to permit participation in the partnership’s investments by younger-generation family members, and to preserve effective control over the partnership assets within the

¹ For clarity and convenience, and not out of disrespect, we refer to the Goldstein family members by their first names.

² Murray died during the pendency of this action, and upon his death, he was succeeded as the trustee of his trust by his third wife, Barbara Goldstein. For purposes of this appeal, when we refer to Murray in his capacity as the trustee of his trust, we are including any successor trustee acting on behalf of the trust following Murray’s death.

family for the foreseeable future.” At the time the partnership was formed, Murray was 76 years old.

Under the terms of the Partnership Agreement, Murray’s trust was designated as the limited partner with a 99 percent interest in the partnership. Elise was designated as the general partner with a one percent interest in the partnership. The Agreement stated that, subject to certain terms and conditions, “the General Partner shall have the full and exclusive authority to direct and manage the affairs of the Partnership,” and “the Limited Partner shall not take part in the management of the business of the Partnership or transact any business for or in the name of the partnership. . . .”

With respect to the transferability of the general partnership interest, Paragraph 9.6 of the Partnership Agreement provided: “The General Partner shall not sell, transfer, gift, encumber, pledge, or convey all or any part of her interest as a General Partner in the Partnership without the prior written consent of the Limited Partner, which consent can be arbitrarily withheld by the Limited Partner in order to effectuate the purpose of the Partnership as set forth in the preamble to this Agreement.”

II. The Transfer of Elise’s Partnership Interest

On September 20, 2003, Elise formed the “Elise E. Goldstein Revocable Trust.” Elise later was diagnosed with a terminal illness. On July 6, 2006, shortly before her death, Elise executed an “Assignment” in which she transferred and assigned to the trustee of her trust “all of [her] right, title and interest in and to partnerships (general or limited). . . .” Elise executed the Assignment as both the settlor and trustee of her trust.

Less than two weeks later, on July 17, 2006, Elise executed a “Third Amendment” to her trust. In addition to revoking the prior two amendments, the Third Amendment provided that “[a]fter the Settlor’s death, the Trustee shall administer the Trust estate in the following manner: (1) The Trustee shall distribute the Settlor’s interest in Goldstein Investment Partnership, L.P. to Judy Egan and David Goldstein in equal shares if they are then living. If either Judy Egan or David Goldstein fails to survive the Settlor, this gift shall be distributed to the other of them who survives the Settlor. If both Judy Egan and David Goldstein fail to survive the Settlor, this gift shall lapse and be disposed of as part of the balance of the trust estate. . . .” On the same day that Elise executed the Third Amendment, Ronald Berg, acting as the trustee for Elise’s trust, signed a written acknowledgment that the amendment had been delivered to him.

The following day, on July 18, 2006, both Murray and Berg executed a one-page document pertaining to the transfer of Elise’s general partnership interest. The document consisted of three sections. The first section entitled “Approval of Limited Partner” was signed by Murray in his capacity as the trustee of the Trust of Murray Goldstein, the limited partner of the Goldstein Partnership. It stated as follows: “Pursuant to Paragraph 9.6 of Article IX of the Agreement of Limited Partnership of Goldstein Investment Partnership, L.P. dated December 30, 2005, as may be amended, by signature of its Trustee, below, the Limited Partner grants its prior consent to the transfer described below.”

The second section entitled “Assignment of General Partnership Interest” was immediately below the first section. It

was signed by Berg in his capacity as the attorney-in-fact for Elise under a power of attorney. The second section provided: “The undersigned, as Attorney-in-Fact for Elise Emily Goldstein (the ‘Principal’) under a general power of attorney dated July 6, 2006, hereby transfers and assigns on the Principal’s behalf her entire 1% general partnership interest in the Goldstein Investment Partnership, L.P. to Ronald S. Berg, or his successor(s), as Trustee of the Elise E. Goldstein Revocable Trust dated as of September 20, 2003, as amended.”³

The third and final section entitled “Acknowledgement and Acceptance of Assignment” was signed by Berg in his capacity as the trustee of the Elise E. Goldstein Revocable Trust. The third section stated: “The undersigned hereby acknowledges and accepts the foregoing transfer and assignment of the general partnership interest in Goldstein Investment Partnership, L.P., and agrees to be bound by, keep, observe and perform each and all of the terms and conditions of that certain Agreement of Limited Partnership of Goldstein Investment Partnership, L.P. dated December 30, 2005, as may be amended, which pertain to said interest.”

Elise died on July 28, 2006. It is undisputed that Murray never signed a separate document granting his prior written consent to the transfer of the general partnership interest from Elise’s trust to Judy and David, as provided for in the Third Amendment to Elise’s trust.

³ The record on appeal does not include a copy of the Power of Attorney dated July 6, 2006, in which Elise appointed Berg to be her attorney-in-fact.

III. The Complaint and Cross-Complaint

On June 21, 2011, Murray, as trustee for his trust, filed a civil action against Judy and David. The complaint alleged three causes of action: (1) declaratory relief, (2) dissociation of general partners, and (3) dissolution of limited partnership. The gravamen of the complaint was that Murray never granted his prior written consent to Elise's transfer of her partnership interest to Judy and David, as required under the Partnership Agreement. The complaint further alleged that, despite their lack of a partnership interest, Judy and David took affirmative steps to exert control over the Pacific Palisades apartment building and to exclude Murray from collecting the rents and participating in the management of the property. Murray sought a judicial declaration that Judy and David were not general partners of the Goldstein Partnership. Alternatively, Murray requested an order that Judy and David be dissociated from the partnership, or that the partnership be dissolved, because it was not reasonably practicable to carry on the activities of the partnership with Judy and David as the general partners.

In response to the complaint, Judy and David filed a cross-complaint against Murray and his third wife, Barbara. The second amended cross-complaint alleged 15 causes of action, primarily arising from Judy and David's claimed interest in the partnership. The first cause of action for declaratory relief sought a judicial determination that Judy and David were the general partners of the Goldstein Partnership and were entitled to distributions and other benefits from the partnership. The remaining causes of action alleged that Murray and Barbara had wasted partnership assets, looted partnership accounts, and

engaged in other wrongful acts in an effort to deprive Judy and David of their rights as general partners.

The parties' respective pleadings contained conflicting allegations about how the business of the Goldstein Partnership had been managed. According to Murray's complaint, he and Elise had co-managed the apartment building. Following Elise's death, Murray continued to manage the building by collecting rents, assisting tenants, and paying bills related to the property. Murray allowed both Judy and David to live rent-free in the building for a number of years, and from time to time, he asked them to assist with management tasks. In 2011, after Murray became estranged from his children, Judy and David attempted to seize control of the building and to exclude Murray from managing the property as he previously had done.

According to the cross-complaint filed by Judy and David, between 1995 and 2008, the apartment building consistently was managed by one or more of Murray's children with his approval. Following Elise's death, Murray opened bank accounts for the partnership that listed Judy or David as a general partner. For two years after Elise's death, Judy and David managed the apartment building by entering into tenant agreements and vendor contracts, collecting rents, overseeing the payment of the partnership's expenses, and directing the necessary repairs and maintenance for the building. Starting in 2008, however, Barbara used her relationship as Murray's wife and caretaker to unduly influence him in an attempt to usurp the partnership rights held by Judy and David.

IV. Phase One of the Trial—Murray’s Prior Consent to Elise’s Transfer of Her Partnership Interest

The case originally was assigned to Los Angeles Superior Court Judge Amy Hogue. On March 13, 2013, the court called the matter for a bench trial on the parties’ respective causes of action for declaratory relief. Prior to hearing any evidence, the court had a lengthy discussion with counsel about the scope of the issues to be decided in this first phase of the trial. Based on its preliminary review of the parties’ proposed exhibits, the court noted that the Partnership Agreement required Murray’s prior written consent to any transfer of Elise’s general partnership interest to Judy and David, and asked counsel for Judy and David what evidence they intended to offer to establish that Murray had provided such consent. Counsel responded that, in addition to Murray’s July 18, 2006 written consent to the transfer of Elise’s partnership interest to the trustee of her trust, there was evidence of Murray’s subsequent conduct such as designating Judy and David as general partners on the partnership’s income tax returns. Counsel also stated there was evidence that, prior to Elise’s July 17, 2006 execution of the Third Amendment to her trust, Murray contacted his estate attorney about his desire to have Judy and David succeed Elise as the general partners, and the attorney then prepared the Third Amendment in accordance with Murray’s wishes. Counsel for Judy and David argued that this evidence supported a finding that Murray approved of the transfer of Elise’s general partnership interest to her siblings.

Murray’s counsel argued that the July 18, 2006 instrument signed by Murray showed his consent to the transfer of Elise’s general partnership interest to her trust, but was not sufficient to constitute his prior written consent to the transfer of Elise’s

interest from her trust to Judy and David. Murry's counsel also raised the issue of whether Elise's transfer of her general partnership interest, even if approved by Murray, encompassed the right to manage the affairs of the partnership, or was limited to Elise's one percent ownership interest in the assets of the partnership. Murray's counsel asserted that, under the relevant provisions of the Corporations Code, Elise could only transfer her ownership interest in the partnership, but could not transfer her right to management and control of the partnership's business. Counsel for Judy and David, on the other hand, argued that the relevant statutory provisions allowed the partnership agreement to define the scope of the transferable interest, and that Elise's transfer of her partnership interest encompassed all of her rights and duties as the general partner.

After hearing from counsel, the trial court stated that there appeared to be issues of fact that precluded it from finding, as a matter of law, that Murray did not give his prior written consent to the transfer of Elise's general partnership interest to Judy and David. The court noted that the written instruments signed by Murray and Elise were ambiguous as to whether the transfer of Elise's general partnership interest was limited to her one percent ownership interest in the assets of the partnership or included her right to managerial control over the affairs of the partnership. The court also noted that there was ambiguity as to whether Murray's execution of the Approval of Limited Partner instrument was intended to constitute his prior written consent to the transfer of Elise's interest from her trust to Judy and David, as Elise had provided for in the Third Amendment. The court stated that it would need to hear evidence concerning Murray's knowledge of the Third Amendment at the time he

signed the approval of the transfer of Elise's partnership interest to the trustee of her trust, "as amended."

The trial court thus decided that the proper course would be to hold a bench trial on the first issue of whether "there was prior written consent under [Paragraph] 9.6 of the Partnership Agreement to a transfer of the general partnership interest." The court stated that the scope of admissible evidence on that first issue would be "evidence of what happened right around when these documents were signed." The court indicated that it would not consider evidence of subsequent conduct such as Murray's designation of Judy and David as general partners on the partnership's income tax returns and bank accounts on the ground that such evidence would not be relevant to the issue of Murray's prior written consent.

The following day, the trial court heard evidence on the issue of whether Murray provided his prior written consent to the transfer of Elise's partnership interest to Judy and David. The court admitted into evidence the Partnership Agreement and the written instruments that were signed by Elise, Murray, and Berg in July 2006 shortly before Elise's death. The court also heard the testimony of Andrew Katzenstein, who was called as a witness by counsel for Judy and David.

Katzenstein testified he was the estate planning attorney for both Murray and Elise. In 1995, Murray retained him to establish a limited partnership as a means of minimizing estate taxes. Katzenstein explained that, if an owner of real estate could "wrap a partnership around an asset," it could reduce estate taxes by about 30 percent. However, to take advantage of these tax savings, the owner could not be the general partner with the right to control the property. Instead, the owner had to

be the limited partner and “have confidence that the general partner [was] going to do what he wanted him to do.” In establishing the Goldstein Partnership, Murray decided to designate Elise as the general partner because they were law partners and were in business together. Katzenstein thus prepared the Partnership Agreement with Murray as the limited partner and Elise as the general partner in a “classic family limited partnership” plan.

Katzenstein also testified that, in 2006, Murray contacted him because Elise was dying. Murray understood that, because Elise held the general partnership interest in the Goldstein Partnership, she “controlled the partnership” that held “one of his most important assets.” Murray wanted to ensure that Elise’s estate plan left her general partnership interest “to the people he wanted to have it because he wanted to be sure that they were going to do what he said with respect to the management of it.” Katzenstein advised Murray that Elise would have to decide how she wanted to distribute her interest in the partnership, but he would contact Elise about the matter. When Katzenstein spoke with Elise about the estate plan for her partnership interest, she told him “it’s whatever my dad wants.” Katzenstein then consulted with Murray, who expressed that he wanted Elise to leave her general partnership interest to Judy and David.

In describing his discussion with Murray about the estate plan for Elise’s general partnership interest, Katzenberg testified: “What [Murray] wanted me to tell Elise was he believed that Judy and David would manage the partnership as he wished, and that that’s who he wanted her to leave it to, so that after she died, . . . if he wanted a distribution, he could go to his kids, and they would say, sure, here’s a distribution. If he

wanted it sold, he could go to his kids, and they would do whatever he said. So from a tax planning point of view, he couldn't be the general partner with that control, but nobody ever really wants to do any planning unless they keep control . . . in effect. And so his kids were the ones who he thought would do whatever he said with it, and that's why he asked Elise to leave it to them to be the general partner."

Katzenstein stated that he prepared the Third Amendment to Elise's trust in accordance with these wishes and was present when Elise signed the amendment at her home on July 17, 2006. Katzenstein recalled Murray also was at Elise's home at the time of execution, but he did not know if Murray witnessed the signing or received a copy of the amendment. After Elise signed the Third Amendment, Katzenstein gave a copy of the amendment to Berg, who was then serving as the trustee for Elise's trust because Elise was ill. Katzenstein further testified that his law firm prepared the Approval of Limited Partner instrument signed by Murray and Berg on July 18, 2006. According to Katzenstein, that document "was executed in connection with the assignment of [Elise's] general partnership interest in the partnership to the trustee of her revocable living trust."

Following Katzenstein's testimony, the parties stipulated that, if Judy and David were to testify about Murray's stated intentions at the time he signed the July 18, 2006 instrument, their testimony would be consistent with that of Katzenstein. Neither party called any other witnesses to testify. The trial court then took the matter under submission.

V. Statement of Decision on Phase One of the Trial

On May 24, 2013, Judge Hogue issued a Statement of Decision on the first phase of the trial. The court found that “Judy and David inherited a 1% ownership interest in the [Goldstein] Partnership but are not General Partners imbued with managerial authority or control.” In reaching this finding, the court interpreted the language in three of the admitted exhibits: (1) the Partnership Agreement, (2) the Third Amendment to Elise’s trust signed by Elise on July 17, 2006, and (3) the Approval of Limited Partner instrument signed by Murray and Berg on July 18, 2006.

First, with respect to the Partnership Agreement, the court interpreted Paragraph 9.6 requiring Murray’s prior written consent to the transfer of all or any part of Elise’s interest as the general partner as “a provision addressing the managerial aspects of the [general partner’s] role rather than the [general partner’s] ownership interest in the partnership’s assets.” The court noted that its interpretation also was “consistent with the evidence that Murray intended to maintain control over the management of the Apartment Building notwithstanding the [Agreement’s] requirement that he cede managerial control to a [general partner].” Second, the court interpreted the Third Amendment directing Elise’s trustee to distribute her interest in the partnership to Judy and David “to mean that Elise intended to transfer any and all of her interests under the [Goldstein Partnership] to her siblings.” Third, the court interpreted the Approval of Limited Partner instrument signed by Murray and Berg “as Murray’s express written consent to an assignment of Elise’s managerial control to Mr. Berg as her Attorney-in-Fact.”

Based on this contractual interpretation, the court found that “Murray never consented, in writing, to cede managerial control to Judy and David as the new [general partners].” The court found that Murray’s execution of the Approval of Limited Partner instrument prior to Elise’s death was “not sufficient under [Paragraph] 9.6 of the [Partnership Agreement] to express his consent to transfer managerial control to Judy and David.” The court further found that the “allegation in the Cross-complaint that Murray shared managerial control with Judy and David after Elise died (even if supported by admissible evidence) [was] likewise insufficient under Paragraph 9.6.” The court stated that, while it was basing its findings on the language of the Partnership Agreement and the other written instruments, these findings also were “consistent with the undisputed evidence that Murray always intended to maintain ultimate authority over the financial . . . management of the Apartment Building, and in fact maintained that control throughout his life.”

The Statement of Decision concluded as follows: “[F]or purposes of the declaratory relief causes of action alleged in the Complaint and the Second Amended Cross-Complaint, the court finds that Judy and David inherited Elise’s 1% ownership interest in the Limited Partnership. Since Murray never consented, in writing, to their authority to manage and control the Apartment Building as the [general partners], Judy and David were not and are not entitled to manage and control [the partnership’s] assets and affairs. In 2006, while Elise was still alive, Murray consented to have Mr. Berg assume the right to manage and control [the partnership’s] assets as her Attorney-in-Fact. There is no evidence that Murray consented to any other transfer of Elise’s right to managerial control over [the

partnership]. The court therefore finds in favor of [Murray] and against [Judy and David] on the declaratory relief claims alleged in the First Cause of Action in the Complaint and the First Cause of Action in the Second Amended Cross-complaint.”

VI. Motion for Judgment on the Pleadings

The case later was transferred Los Angeles Superior Court Judge Samantha Jessner. On June 8, 2015, Murray filed a motion for judgment on the pleadings. At that time, the only remaining cause of action in the parties’ respective pleadings was Murray’s third cause of action for dissolution of the partnership.⁴ Murray sought judgment on this claim on the ground that the partnership either dissolved as a matter of law upon Elise’s death or her transfer of her partnership interest to her trust, or should be dissolved by a judicial order because it was not reasonably practicable to carry on the activities of the partnership given the conflict between the parties.

⁴ By June 2015, all causes of action in Judy and David’s second amended cross-complaint either had been resolved in phase one of the trial or dismissed with prejudice. Specifically, in May 2014, the trial court granted Murray’s motion for judgment on the pleadings on all remaining causes of action in the cross-complaint except for the fifth cause of action for an accounting. Judy and David later dismissed the accounting cause of action in open court. The only other claim in Murray’s complaint that had not been adjudicated was the second cause of action for a judicial order dissociating Judy and David as general partners. In light of the court’s ruling in phase one of the trial that Judy and David were not general partners of the Goldstein Partnership, Murray asserted that the second cause of action for dissociation of the general partners was moot.

In their opposition to the motion, Judy and David argued that the partnership did not dissolve upon Elise's death or upon her transfer of her partnership interest to her trust. They asserted that, if Elise was the general partner at the time of her death, then Murray had the power to admit a successor general partner after her death and did so by signing documents in which he designated Judy and David as the new general partners. Alternatively, they contended that, if Berg was the general partner at the time of Elise's death in his capacity as the trustee of her trust, then the successor trustee to Berg would be the general partner until he distributed such interest to them.⁵ Judy and David also opposed Murray's request that the partnership be dissolved by a judicial order, and claimed it was still reasonably practicable to continue the business operation of the partnership notwithstanding the current litigation.

On June 29, 2015, Judge Jessner issued an order granting Murray's motion for judgment on the pleadings as to the third cause of action in the complaint for dissolution of the partnership. The court concluded the Goldstein Partnership dissolved upon Elise's death because Murray never agreed, in writing, to admit a successor general partner. In reaching this conclusion, the court stated that Judge Hogue had found that, prior to Elise's death, Murray never gave his written consent to the transfer of Elise's managerial interest in the partnership to the trustee of her trust. The court also stated that Judge Hogue had found that, after

⁵ According to documentary evidence submitted in support of the opposition filed by Judy and David, Berg resigned as the trustee of Elise's trust in May 2007 and was succeeded by Robert Waelleans.

Elise's death, Murray never consented, in writing, to cede managerial control of the partnership to Judy and David. The court concluded that Judge Hogue's prior ruling that Judy and David were not and never had been general partners was binding and could not be re-litigated through evidence that they became general partners after Elise's death. The court further concluded that Judge Hogue's ruling was "sufficient to establish that Elise's managerial interest in the general partnership was not properly transferred," and thus, "the partnership dissolved as a matter of law upon her death."

On August 10, 2015, the court entered judgment in favor of Murray and against Judy and David. The judgment further provided, in relevant part: "1. Neither Judy Egan nor David Goldstein is or ever has been a general partner of the Goldstein Investment Partnership, L.P., a California limited partnership. [¶] 2. The Goldstein Investment Partnership, L.P. is dissolved. [¶] 3. The Goldstein Investment Partnership, L.P. was at all pertinent times the owner of [the Pacific Palisades apartment building]. The former partners of the Goldstein Investment Partnership, L.P. are the Trust of Murray Goldstein dated November 8, 1995, as amended (99%), Judy Egan (0.50%), and David Goldstein (0.50%)." Following the entry of judgment, Judy and David filed a timely notice of appeal.

DISCUSSION

On appeal, Judy and David argue that the judgment should be reversed and the matter remanded for a new trial because the trial court erred in ruling on the declaratory relief causes of action in the first phase of the trial. They specifically assert that the court erred in finding that phase one of the trial was

dispositive on the issue of whether they were general partners of the Goldstein Partnership because the court refused to allow evidence of actions taken by Murray after Elise's death to admit them as general partners, or to consider alternative legal theories under which they could have become general partners apart from a testamentary transfer by Elise. Judy and David also contend that, in ruling on phase one of the trial, the court made factual findings that were not supported by any evidence.

I. Relevant Law

Murray and Elise established the Goldstein Partnership in December 1995, and executed the written instruments regarding the transfer of Elise's general partnership interest in July 2006. Between 1995 and 2006, the Goldstein Partnership was governed by the California Revised Limited Partnership Act (the "RLPA"; former Corp. Code § 15611, et seq.).⁶ Under the RLPA, a person ceased to be a general partner upon the happening of certain events, including: (i) "[i]n the case of a general partner who is an individual, . . . [t]he death of that partner;" and (ii) "in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee, in which case the new trustee automatically becomes the new general partner)."

⁶ The Uniform Limited Partnership Act of 2008 (Corp. Code, § 15900 et seq.) repealed the RLPA, and subject to certain exceptions, became applicable to all limited partnerships, regardless of their date of formation, on January 1, 2010. (Corp. Code, § 15912.06.) The current act, however, "does not affect an action commenced, proceeding brought, or right accrued" before its provisions became operative. (Corp. Code, § 15912.07.)

(former Corp. Code, § 15642, subds. (e), (f).) A limited partnership dissolved by operation of law when the sole general partner ceased to be a general partner, “unless . . . a majority in interest of the limited partners or the greater interest provided in the partnership agreement agree[d] in writing to continue the business of the limited partnership and, within six months after the last remaining general partner [had] ceased to be a general partner, admit[ted] one or more general partners.” (former Corp. Code, § 15681, subd. (c).) The RLPA also provided that, subject to certain exceptions, “[t]he effect of the provisions of this [Act] may be varied as among the partners by the partnership agreement.” (former Corp. Code, § 15618.)

In this case, the issue tried in the first phase of the trial required the court to interpret the relevant provisions of the Partnership Agreement that governed the Goldstein Partnership as well as the written instruments signed by Murray and Elise shortly before Elise’s death. As this court has stated: “The rules governing the role of the court in interpreting a written instrument are well established. The interpretation of a contract is a judicial function. [Citation.] In engaging in this function, the trial court ‘give[s] effect to the mutual intention of the parties as it existed’ at the time the contract was executed. [Citation.] Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract’s terms. [Citations]. [¶] . . . Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous. [Citations.] [¶] When the meaning of the words used in a contract is disputed, the trial court engages in a three-step process. First, it provisionally receives any proffered extrinsic evidence that is relevant to prove a meaning to which the

language of the instrument is reasonably susceptible. [Citations.] If, in light of the extrinsic evidence, the language is reasonably susceptible to the interpretation urged, the extrinsic evidence is then admitted to aid the court in its role in interpreting the contract. [Citations.] When there is no material conflict in the extrinsic evidence, the trial court interprets the contract as a matter of law. [Citations.] This is true even when conflicting inferences may be drawn from the undisputed extrinsic evidence [citations] or that extrinsic evidence renders the contract terms susceptible to more than one reasonable interpretation. [Citations.]” (*Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1125-1127, fn. omitted.)

Extrinsic evidence of the parties’ course of conduct or performance can be relevant to ascertaining the meaning of the contract. (Civ. Proc. Code, § 1856, subd. (c); *City of Hope Nat. Med. Center v. Genentech, Inc.* (2008) 43 Cal.4th 375, 393 (*City of Hope*); *Employers Reinsurance Co. v. Superior Court* (2008) 161 Cal.App.4th 906, 920-921 (*Employers Reinsurance*).) “A party’s conduct occurring between execution of the contract and a dispute about the meaning of the contract’s terms may reveal what the parties understood and intended those terms to mean. For this reason, evidence of such conduct . . . is admissible to resolve ambiguities in the contract’s language. [Citation.]” (*City of Hope, supra*, at p. 393.) Indeed, it has been recognized that “[t]he conduct of the parties after execution of the contract and before any controversy has arisen as to its effect affords the most reliable evidence of the parties’ intentions.” [Citation.]” (*Employers Reinsurance, supra*, at p. 921; see also *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 798 [course of performance evidence ““is entitled to great weight”” in

resolving a dispute about the meaning of a contract].) Moreover, “[a]s with all extrinsic evidence, course of performance evidence can be used not only to interpret an ambiguity, but also to reveal one in language otherwise thought to be clear.” (*Employers Reinsurance, supra*, at p. 920.) “The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible.’ [Citation.]” (*Southern Pacific Transportation Co. v. Santa Fe Pacific Pipelines, Inc.* (1999) 74 Cal.App.4th 1232, 1241.)

II. The Trial Court Improperly Excluded Any Extrinsic Evidence of the Parties’ Course of Performance

In phase one of the trial, the parties disputed the meaning of the July 18, 2006 Approval of Limited Partner instrument signed by Murray and Berg. Murray argued that this instrument reflected his consent to the transfer of Elise’s general partnership interest to her trust, but was not sufficient to establish his prior written consent to the transfer of such interest from Elise’s trust to Judy and David. Judy and David, on the other hand, asserted that the language of the July 18, 2006 instrument, when considered with the circumstances surrounding Murray’s signing of it and the subsequent conduct of the parties, demonstrated that Murray intended for the instrument to constitute his prior written consent to the transfer of Elise’s general partnership interest to her siblings. The parties also disputed whether Elise’s transfer of her general partnership interest, even if approved by Murray, was limited to her one percent ownership interest in the

assets of the partnership, or included her right of managerial control over the partnership's business.

After hearing the arguments of counsel and reviewing the written instruments at issue, the trial court concluded there were ambiguities in the language of the instruments, and the parties should be allowed to present extrinsic evidence as to the meaning of the disputed terms. The court decided, however, that the scope of evidence to be offered at this first phase of the trial would be limited to evidence of the parties' statements and conduct around the time that the instruments were signed. The court expressly declined to consider any evidence of the parties' course of conduct or performance after the execution of the instruments on the ground that such evidence would not be relevant to the issue of whether Murray provided his prior written consent to Elise's transfer of her partnership interest. Based on our review of the record, we conclude the trial court erred in refusing to consider any course of performance evidence in the first phase of the trial.

The extrinsic evidence proffered by Judy and David included evidence that, after Elise died and before the present controversy arose, Murray designated them as general partners in documents prepared for or on behalf of the Goldstein Partnership, such as the partnership's income tax returns and the signature cards for the partnership's bank accounts. Judy and David offered such evidence to show that Murray intended for the July 18, 2006 Approval of Limited Partner instrument to constitute his prior written consent to the transfer of Elise's general partnership interest to them, even though they were not specifically named in the document as the recipients of such interest. Because the trial court found that there was ambiguity in the language of the July 18, 2006 instrument and decided to

admit extrinsic evidence to determine its meaning, the court also should have admitted the evidence of the parties' course of performance to aid in its interpretation of the instrument.

In refusing to permit any evidence of the parties' conduct after Elise's death, the court indicated that such evidence was not relevant because the Partnership Agreement required Murray's prior written consent to any transfer of Elise's partnership interest. The court reasoned: "Prior consent, that's important, in writing. So we can't use the partnership tax returns. We can't use the signature cards in the bank account as his consent because they're not prior, even though that might be written." While it is true these subsequent writings could not themselves constitute Murray's prior written consent to the transfer of Elise's partnership interest to Judy and David, they are relevant to determining whether Murray viewed the July 18, 2006 Approval of Limited Partner instrument as constituting such consent. These subsequent writings are also relevant to showing whether, in signing the July 18, 2006 instrument, Murray intended to give his consent to the transfer of Elise's entire general partnership interest, including the right of managerial control over the partnership's affairs, or only sought to approve the transfer of Elise's one percent ownership interest in the partnership's assets. Because the course of performance evidence was relevant to ascertaining Murray's intent and the meaning of the July 18, 2006 instrument, the trial court should have considered such evidence in interpreting the instrument.

The evidence of the parties' subsequent conduct also was relevant to determining whether Judy and David ever became general partners of the Goldstein Partnership at any time after Elise's death. Although the trial court had decided that the only

issue to be addressed in phase one of the trial would be whether Murray gave his prior written consent to Elise's transfer of her partnership interest under Paragraph 9.6 of the Partnership Agreement, its Statement of Decision went beyond this limited issue. Specifically, the court first found that Murray's signature on the July 18, 2006 Approval of Limited Partner instrument "is not sufficient under [Paragraph 9.6] . . . to express his consent to transfer managerial control to Judy and David." Based on that finding, the court then concluded that "[s]ince Murray never consented, in writing, to their authority to manage and control the Apartment Building as the [general partners], Judy and David were not and are not entitled to manage and control [the partnership's] assets and affairs."

The trial court's conclusion that Judy and David "were not and are not entitled" to managerial control over the affairs of the Goldstein Partnership appears to conflate two distinct issues. The first issue is whether Murray gave his prior written consent to Elise's transfer of her general partnership interest to Judy and David, as was required under Paragraph 9.6 of the Partnership Agreement for the transfer to be valid. That was the sole issue to be decided in phase one of the trial. The second issue is whether, assuming Murray did not give his prior written consent to Elise's transfer, Murray took any other action to appoint Judy and David as the successor general partners after Elise's death, and if so, whether such action complied with the terms of the Partnership Agreement and applicable law.⁷ In ruling that Judy

⁷ For instance, the Goldstein Partnership did not automatically dissolve upon Elise's death or upon the transfer of her general partnership interest to her trust. The Partnership Agreement was silent with respect to the effect of the general

and David were not and never had been general partners of the Goldstein Partnership, the trial court assumed the testamentary transfer made by Elise was the only way that Judy and David could have acquired any interest in the partnership. There is no indication in the record that the court ever considered whether there were other lawful mechanisms by which Judy and David could have become general partners after Elise's death, or allowed the parties an opportunity to offer any evidence on that issue. Instead, the court decided it would first consider whether Elise's testamentary transfer complied with the requirements of Paragraph 9.6; however, after hearing evidence on that limited issue, the court made a ruling that went beyond the scope of the evidence that it had allowed in the first phase of the trial.

The trial court's conclusion in the Statement of Decision that Judy and David never became general partners of the Goldstein Partnership also formed the basis for the subsequent ruling on Murray's motion for judgment on the pleadings. In granting the motion, Judge Jessner concluded the partnership

partner's death on the partnership. However, Paragraph 11.1 of the Partnership Agreement stated that, in cases where the "General Partner ceases to be the General Partner" pursuant to the termination provisions in the Agreement, the partnership shall be dissolved "unless . . . the Limited Partner agrees in writing to admit a successor General Partner and continue the business of the Partnership." The RLPA provided that, in cases where the only remaining general partner ceases to be a general partner, such as upon the death of that partner, a majority of limited partners may "agree in writing to continue the business of the limited partnership and, within six months after the last remaining general partner has ceased to be a general partner, admit one or more general partners." (former Corp. Code, § 15681, subd. (c); see also former § 15642.)

dissolved upon Elise's death because Murray never agreed in writing to admit a successor general partner and continue the business of the partnership after that event. In reaching this conclusion, the court relied on the prior finding by Judge Hogue that Murray "never consented, in writing, to cede managerial control to Judy and David," and thus, "Judy and David were not and are not entitled to manage and control the [partnership's] assets and affairs." Judge Jessner further concluded that Judge Hogue's prior ruling that "Judy and David are not presently general partners is binding," and precluded them from offering any evidence that they became general partners at a later time. However, as discussed, in ruling on phase one of the trial, the court improperly excluded evidence of the parties' course of conduct after Elise's death, including evidence pertaining to Murray's intent to have Judy and David serve as the successor general partners to Elise.

Accordingly, the judgment in favor of Murray and against Judy and David must be reversed and the matter remanded for a new trial. On remand, the court must admit the proffered evidence of the parties' subsequent conduct and course of performance in conducting a retrial on the issue of Murray's prior written consent to the transfer of Elise's general partnership interest to Judy and David. If the court concludes that Murray did not provide his prior written consent to such transfer in accordance with Paragraph 9.6 of the Partnership Agreement, it then should consider whether Murray took any action after Elise's death to appoint Judy and David as the successor general partners to Elise, and if so, whether such action was consistent with the terms of the Partnership Agreement and applicable law.

III. The Trial Court's Finding that Elise's Attorney-in-Fact Acquired Her Partnership Interest Is Not Supported by the Evidence

In its Statement of Decision, the trial court made a finding of fact that is not supported by any evidence. The July 18, 2006 Approval of Limited Partner instrument signed by Murray and Berg provided that Murray granted his prior consent to the following transfer: "The undersigned, as Attorney-in-Fact for Elise Emily Goldstein (the 'Principal') under a general power of attorney . . . , hereby transfers and assigns on the Principal's behalf her entire 1% general partnership interest in the Goldstein Investment Partnership, L.P. to Ronald S. Berg, or his successor(s), as Trustee of the Elise E. Goldstein Revocable Trust . . . , as amended." In his testimony, Katzenstein explained that his firm prepared the July 18, 2006 instrument, and that it was "executed in connection with the assignment of [Elise's] general partnership interest in the partnership to the trustee of her revocable living trust."

In the Statement of Decision, however, the trial court found that the July 18, 2006 instrument constituted "Murray's express written consent to an assignment of Elise's managerial control to Mr. Berg as her Attorney-in-Fact." The court also found that, "[i]n 2006, while Elise was alive, Murray consented to have Mr. Berg assume the right to manage and control [the partnership's] assets as her Attorney-in-Fact." The trial court's finding that Elise assigned her managerial interest in the partnership to Berg as her attorney-in-fact is not supported by the evidence. Rather, the plain language of the July 18, 2006 instrument reflects that Berg performed two distinct functions in executing it. First, in his capacity as the attorney-in-fact for Elise, Berg transferred

and assigned Elise's general partnership interest to the trustee of her trust. Second, in his capacity as the trustee of Elise's trust, Berg accepted the transfer and assignment of Elise's general partnership interest. Berg never acquired any interest in the partnership as the attorney-in-fact for Elise, and Murray never consented to any transfer of Elise's partnership interest to her attorney-in-fact. Therefore, the trial court's finding that Berg acquired Elise's managerial interest in the partnership as her attorney-in-fact is stricken, and on remand, the court must make a new finding that is consistent with the evidence, as expressed in this opinion.

DISPOSITION

The judgment is reversed and the matter remanded for a new trial in accordance with this opinion. Judy and David shall recover their costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.*

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