[Cite as *Susany v. Guerrieri*, 2016-Ohio-1062.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

EDWARD SUSANY, et al.,	)	CASE NO. 15 MA 0079
	)	
PLAINTIFFS-APPELLANTS,	)	
	)	
VS.	)	OPINION
	)	
GEORGE GUERRIERI, et al.,	)	
	)	
DEFENDANTS-APPELLEES.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 13CV02336

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiffs-Appellants:

Atty. Vito J. Abruzzino
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For Defendants-Appellees:

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JUDGES:

Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: March 1, 2016

[Cite as *Susany v. Guerrieri*, 2016-Ohio-1062.]
ROBB, J.

{¶1} Plaintiff-Appellants Edward Susany and E & E Susany, Ltd. appeal the decision of the Mahoning County Common Pleas Court finding they failed to establish their claims at the bench trial. Appellants' first assignment of error argues they established a breach of contract claim as the partnership agreement prohibited modification of a contemporaneously entered property management agreement without the written consent of the limited partner. Specifically, the original property management agreement charged a 5% fee on the rental revenue, but the general partners entered subsequent agreements with other entities for an increased property management fee. Each side claims the plain language supports their position.

{¶2} Appellants' second assignment of error asserts breach of fiduciary duty by the general partners who agreed to the increased management fees. There is also an unjust enrichment claim against the property management company. These two arguments lack merit as the partnership agreement expressly permits the use of companies affiliated with a general partner and the evidence supports the trial court's decision that the fees charged were reasonable and customary. For the following reasons, Appellants' assignments of error are overruled, and the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶3} Alex Christoff and George Guerrieri obtained financing to construct an 84-unit apartment complex in Jamestown, New York. After construction began, Edward Susany provided $250,000 as a capital investment, and Westchester Co., L.P. was formed. The March 1, 1979 limited partnership agreement named Alex Christoff and George Guerrieri as the general partners, each with a 25% interest, and Edward Susany as a limited partner with a 50% interest. The partnership agreement specifically permitted employment of firms owned by a partner or his family member. It also referred to a construction agreement and a management agreement, executed at the same time as the partnership agreement, as "prime consideration" and stated they could not be amended without the written consent of all the partners; these agreements were attached as exhibits to the partnership agreement.

{¶4} The management agreement was between Westchester Co., L.P. (signed by Alex Christoff and George Guerrieri as general partners) and Ohio-Goal, Inc. (signed by Christoff and Guerrieri as the sole shareholders of Ohio-Goal). Ohio-Goal agreed to manage Westchester Apartments in return for 5% of the rentals collected from the suites and garages (and not on any other source of income which may be received from operation of the premises). The management agreement was to become effective when the first apartment became occupied and was to continue "until terminated at anytime after sixty (60) days prior written notice served by either party on the other party notifying the other party of its intention to terminate the within agreement." Management Agreement, Sec. 4.

{¶5} Years later, George Guerrieri retired from the property management business. Ohio-Goal, Inc. stopped doing business and the corporation was subsequently dissolved. A new property management company, Christoff Corp., was formed with Alex Christoff as president and 80% owner, his wife as 10% owner, and his son, Thomas Christoff, as 10% owner. In 1986, Christoff Corp. began managing the property for Westchester Co., L.P. The management fee remained at 5%.

{¶6} Near the end of 2004, Alex Christoff conducted a performance analysis and concluded that Christoff Corp. was losing money by managing its various clients at 5%. (Tr. 52-54). He decided to raise the management fees to 7% for all the properties managed by Christoff Corp. (Tr. 60). In 2005, Alex Christoff met with Edward Susany in the presence of his accountant to explain why he believed Christoff Corp. needed to charge 7% instead of 5%. (Tr.54-55, 82-83). Christoff Corp. began charging Westchester Co., L.P. the increased 7% management fee in the latter part of 2005. (Tr. 81). Alex Christoff then retired from the property management business.

{¶7} On January 13, 2006, Westchester Co., L.P. (through Alex Christoff as general partner) entered a management agreement with Christoff Management, Inc., a company owned equally by Thomas Christoff (Alex Christoff's son) and Beverly Flowers (Alex Christoff's long-time secretary). The management fee was 7% of the gross amount of rents and monies paid by tenants. In 2012, Christoff Management,

Inc. increased its management fee to 8% for all of the properties it managed, including Westchester. (Tr. 187).

{¶8} In August 2013, Edward Susany (as the former limited partner of Westchester Co., L.P.) and E & E Susany, Ltd. (as the current limited partner by assignment) filed a complaint against the following defendants: George J. Guerrieri, Executor of the Estate of George R. Guerrieri, as a former general partner of Westchester Co., L.P.; Guerrieri Enterprises, L.L.C., a current general partner by assignment in 2012; Alex Christoff, as a former general partner of Westchester Co., L.P.; Christoff Enterprises, Inc., a current general partner by assignment in 2008; and Christoff Management, Inc., the property management company. Claims for breach of contract and breach of fiduciary duty were asserted against the general partners. A claim for unjust enrichment was asserted against Christoff Management, Inc.

{¶9} The case was tried to the court. On April 28, 2015, the trial court entered judgment in favor of the defendants on all of the plaintiffs' claims. The court stated that the dissolution of Ohio-Goal, Inc. effectively terminated the management agreement with Westchester Co., L.P. and pointed out that Christoff Corp. was not contractually obligated to manage the complex in accordance with the terms of the Ohio-Goal, Inc. management agreement.

{¶10} The court concluded that the general partners of Westchester Co., L.P. did not breach the limited partnership agreement by entering a management agreement with Christoff Corp. or subsequently with Christoff Management, Inc. It was reasoned that after the Ohio-Goal management agreement was terminated, the general partners were free to contract with these other management companies so long as the fee charged was reasonable, usual, and competitive. The court then found the management fees charged by Christoff Corp. and Christoff Management, Inc. were usual, customary, and reasonable rates charged by similar management companies. Appellants filed a timely notice of appeal.

LIMITED PARTNERSHIP AGREEMENT

{¶11} Before addressing Appellants' two assignments of error, we set forth the portions of the limited partnership agreement emphasized by the parties. Appellees point out that it was in their "sole judgment" what firm provided property management and the agreement expressly contemplated and permitted property management services to be provided by the general partners, their family members, or their affiliated entities. On this subject, the partnership agreement provides:

> The fact that a Partner, General or Limited, or a member of his family, is employed by or is directly or indirectly interested in or connected with any person, firm or corporation employed by the Partnership to render or perform any service, or from whom or which the Partnership may buy merchandise or other property, shall not prohibit the General Partners from employing such person, firm or corporation or from otherwise dealing with him or it, and neither the Partnership nor any of the Partners hereof shall have any rights in or to any income or profits derived therefrom. In this connection, the General Partners may, from time to time, employ on behalf of this Partnership such persons, firms or corporations as they, in their sole judgment, shall deem advisable for the operation and management of the business of the Partnership, including accountants and attorneys, on such terms and for such compensation as they in their sole judgment, shall determine. * * *
>
> The General Partner(s) shall not be liable, responsible or accountable in damages or otherwise to any of the Partners for any acts performed by them in good faith within the scope of this Agreement. * * *
>
> It is understood and agreed (and each Limited Partner executing this Agreement hereby approves) that the General Partner(s) or corporations affiliated with General Partner(s) * * * may be engaged by the Partnership to manage the Partnership's Real Estate, on a day to day basis at reasonable and competitive compensation. Such compensation shall be paid monthly, and shall be an expense of the Partnership in determining profits or losses and cash flow. The limited Partner(s) shall

take no part in the conduct or control of the Partnership business, nor shall they have any rights or authority to act for or bind the Partnership.

In confirmation of the authority granted by the provisions hereof the General Partner(s) shall enter into a contract for the construction and management of the Apartments and Improvements in the form of Exhibits "B" and "C" attached hereto.

Partnership Agreement, Sec. 9 (pages 10-11).

{¶12} Appellants point to the latter sentence and emphasize the following provision in the "Authority to Amend" section of the limited partnership agreement:

> Notwithstanding any provision of this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that those certain agreements executed contemporaneously with this Agreement by WESTCHESTER CO. with OHIO-GOAL, INC., entitled Construction Agreement and Management Agreement, are the prime consideration for the execution of this Agreement and as such said agreements shall not be modified changed or amended from their original or initial form and content without the unanimous written consent of all the parties of this Agreement.

Partnership Agreement, Sec. 20 D (page 19).

ASSIGNMENT OF ERROR ONE: BREACH OF CONTRACT

{¶13} Appellants' first assignment of error provides:

> The trial court erred in finding that the Partnership Agreement permitted Appellees to increase the management fee without Appellant Susany's consent.

{¶14} Appellants urge that the clear and unequivocal language of the partnership agreement mandates the written consent of the limited partner prior to changing the management agreement and thus prior to changing the property management fee. Appellants state the clause, "Notwithstanding any provision in this Agreement to the contrary * * *," trumps any conflicting provisions, such as, the

general partners have sole discretion to hire affiliated management companies at reasonable compensation. They point to the use of the term "prime consideration" and urge that the 5% cap was a main reason for entering the agreement.

{¶15} Appellants conclude the termination of the original management agreement and the entry into a new one with an increased fee was a change to the management agreement in violation of the partnership agreement. (They do not claim injury from the 1986 change of the management company as they say there was no injury until the fee was increased in 2006.) Appellants argue the general partners should not be permitted to utilize the unilateral termination clause in the management agreement to breach the partnership agreement. As they assert the language is clear and unambiguous, Appellants state our standard of review is de novo.

{¶16} Appellees respond the plain terms of the partnership agreement were not breached as the plain terms do not prohibit the payment of a different management fee to a subsequent property management company. Subsection D of Section 20 refers to a specific attached management agreement, which was between Westchester Co., L.P. and Ohio-Goal, Inc. Appellees point out the management agreement specifically allows for unilateral termination by either party upon sixty-day notice. They urge the termination of a management agreement was not the modification of that agreement between those parties. Upon termination, the original agreement did not exist to be modified, and thus, the prior agreement was not modified when a new agreement was entered with a substitute company, who was not contractually bound by the management fee in the Ohio-Goal, Inc. agreement.

{¶17} Appellees posit Appellants' are claiming the partnership agreement bars the termination of the provisions of the management agreement. Appellees believe these arguments are outside of the "four corners" of the partnership agreement and should engender an abuse of discretion, rather than a de novo, review. They note a contract is subject to a factual determination of reasonableness and intent where it has language capable of two reasonable but conflicting interpretations or when the intent cannot be gleaned from the four corners of the

agreement. If we find the decision requires evidence outside the four corners or there is an ambiguity, Appellees ask us to afford deference to the trial court's factual decision. *See, e.g., Monroe Excavating, Inc. v. DJD & C Dev., Inc.*, 7th Dist. No.10MA12, 2011-Ohio-3169, ¶ 22 (trial court's factual contract interpretation decision are to be given great deference).

{¶18} "If a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined. * * * However, if a term cannot be determined from the four corners of a contract, factual determination of intent or reasonableness may be necessary to supply the missing term." *Inland Refuse Transfer Co. v. Browning-Ferris Indus. of Ohio, Inc.*, 15 Ohio St.3d 321, 322, 474 N.E.2d 271 (1984). Contrary to Appellees' suggestion, the mere viewing of the management agreement does not make the contract interpretation issue a factual one.

{¶19} To determine whether the management agreement was changed, the trial court must consider evidence of whether there was breach of the partnership agreement which provided that the management agreement could not be changed without written consent of the limited partner. Viewing the management agreement to ascertain whether this term of the partnership agreement was breached is distinct from viewing extrinsic evidence due to ambiguous language employed in a contract. A valid use of the management agreement is to determine whether a change was in fact made.

{¶20} The management agreement has the following important attributes: it was specifically referenced in the partnership agreement as constituting part of the consideration; a specific provision of the partnership agreement was that the management agreement could not be changed without written consent of the limited partner; and, the management agreement was attached to the partnership agreement as an exhibit.

{¶21} "A writing, or writings executed as part of the same transaction, will be read as a whole, and the intent of each part will be gathered from a consideration of the whole." *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities*

Auth., 78 Ohio St.3d 353, 361, 678 N.E.2d 519 (1997). "Where one instrument incorporates another by reference, both must be read together. * * * Courts should attempt to harmonize provisions and words so that every word is given effect." *Christe v. GMS Mgt. Co.*, 124 Ohio App.3d 84, 88, 705 N.E.2d 691 (9th Dist.1997). We review both agreements in order to address whether there is clear language pertaining to the situation before us.

{¶22} The fact the general partners owned the original property management company and one of the general partners owned the replacement property management company would not alter the analysis for a breach of contract claim. An agreement does not become ambiguous due to arguments that its operation produces an inequitable result. *Foster Wheeler*, 78 Ohio St.3d at 362. Likewise, the parties' subjective intent at the time of contracting is irrelevant in ascertaining whether the language is ambiguous. *Shifrin v. Forest City Ent., Inc.*, 64 Ohio St.3d 635, 597 N.E.2d 499 (1992), syllabus.

{¶23} The threshold question is: whether the plain language of the contract permits the general partners to enter into a new property management agreement with a different company (eventually for an increased fee); or whether a new property management agreement constitutes a change to the original management agreement, which would require the written consent of the limited partner under Section 20 D of the partnership agreement.

{¶24} The partnership agreement expresses that an attached management agreement (and an attached construction agreement) executed with Ohio-Goal, Inc. were prime consideration for entering the partnership agreement. The partnership agreement disallows a change to the attached agreements without the written consent of all partners. The management agreement was entered between Ohio-Goal, Inc. and Westchester Co., LP. This management agreement called for a fee of 5% of the rental revenue.

{¶25} The management agreement permitted either Ohio-Goal, Inc. or Westchester Co., L.P. to terminate the agreement after sixty days' notice. Six or seven years later, George Guerrieri (one of the shareholders of Ohio-Goal, who was

also a general partner in Westchester) wished to retire from the property management business. Because Ohio-Goal, Inc. stopped doing business and was subsequently dissolved, the management agreement could no longer be performed and the agreement was terminated.

{¶26} The management agreement specifically referenced in and attached to the partnership agreement no longer existed. This was a risk specifically acknowledged in the termination clause of the management agreement. The language in the partnership agreement can be harmonized as contemplating such an occurrence as well.

{¶27} The partnership agreement could have disallowed (without consent of all partners) not just modification of the attached agreement with Ohio-Goal but also the execution of a new contract with a replacement property manager; or, it could have specified that no property management fee in excess of 5% shall be paid to any property manager without the consent of all partners. It did not. Instead, it discussed the general partners' power to utilize firms deemed advisable at reasonable and competitive fees where the contract is entered with a general partner or his affiliate.

{¶28} Appellants' claim is reliant upon a reading of Section 20 D as remaining applicable even after a management company terminates its relationship with the partnership or stops conducting business altogether and as applying to all future agreements with other property management companies. However, Section 20 D refers to amendments to the Ohio Goal, Inc. agreement attached. A prohibition on modification, change, or amendment would not eliminate the ability to terminate; the words are not equivalent.[1] And, the agreements must be read in pari materia and harmonized. See, e.g., *Foster Wheeler*, 78 Ohio St.3d at 361; *Christe*, 124 Ohio App.3d at 88,

{¶29} The verbs modify, change, or amend as applied to this Ohio-Goal agreement do not encompass the situation of termination of an agreement by Ohio-

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[1] *See* Black's Law Dictionary (10th ed. 2014). *See also Newcomb v. Ogden City Pub. Sch. Teachers' Retirement Comm.*, 117 Utah 557, 576, 218 P.2d 287, 296 (1950) (in a pension case: "amending, modifying and altering is not the same as termination").

Goal and the arising need to replace the property manager under a new agreement with a new manager. Section 20 D does not require consent of all partners for negotiating a contract with a replacement property manager.[2] The introductory clause, "Notwithstanding any provision of this Agreement to the contrary," does not assist Appellants where the section itself is inapplicable.

{¶30} Absent Section 20 D, Appellants do not dispute the power of the general partners to conduct and control the partnership business. The partnership agreement provides that the general partners may, in their sole judgment, employ firms or corporations deemed advisable for the operation and management of the partnership's business on the terms and compensation they determine. It also allows the general partner or an affiliated corporation to be engaged to manage the partnership's real estate at reasonable and competitive compensation.[3] Partnership Agreement, Section 9. *See also* R.C. 1782.24(A) (except as otherwise provided, the general partner has all rights and powers of a partner in a partnership without limited partners).

{¶31} In sum, a breach of the partnership agreement did not occur when the general partners agreed to a property management fee increase in 2006 or 2012, with companies different than the original property manager. This court affirms the trial court's decision finding no breach of contract.

Unjust Enrichment

{¶32} Appellants also argue that the property management company was unjustly enriched by accepting property management fees above 5%. A claim of unjust enrichment entails: (1) a benefit conferred by a plaintiff upon a defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the

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[2]There is no allegation the original termination by Ohio-Goal and replacement by Christoff Corp. was a bad faith act by the general partners (to avoid the consent-to-amendment clause). Appellants concede they were not harmed by the change until the fee increased 20 years later.

[3] The partnership agreement also said a general partner may determine the partnership would be better served by associating with a different contractor for construction or by accepting leases procured by outside brokers; in such case, the new contractor would be paid for such work on a bid or negotiated basis, and the outside brokers' commissions would be in accordance with normal rates.

defendant under circumstances where it would be unjust to do so without payment. *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984). Appellants contend that retention of benefit would be unjust since it was the known result of the general partners breaching a contract with the limited partner. This contention is dependent on Appellants' contract claim, which was disposed of above.

{¶33} Appellants also dispute the trial court's factual finding that the fees were reasonable and customary. As Appellees argued below, there is no unjust enrichment if the fair market value of the property management fee is equal to or greater than the fee charged to Westchester Co., L.P. This issue of fees is addressed in the next assignment of error.

ASSIGNMENT OF ERROR NUMBER TWO

{¶34} Appellants' second assignment of error contends:

> The trial court erred in finding that the General Partners did not breach their fiduciary duty owed to Appellants as the Limited Partners in Westchester.

{¶35} Appellants suggest the fee increase in favor of a firm affiliated with the general partner or his family member was not done in good faith. They characterize the property management agreements as improper self-dealing. Appellants point out that even if the acts of general partners do not constitute breach of a partnership agreement, they can still be held liable to the limited partner for breach of a fiduciary duty. *See Schafer v. RMS Realty*, 138 Ohio App.3d 244, 272-273, 741 N.E.2d 155 (2d Dist.2000) ("actions taken in accordance with a partnership agreement can still be a breach of fiduciary duty if partners have improperly taken advantage of their position to obtain financial gain"; "actions allowed by an agreement can be a breach of fiduciary duty when they are not taken in good faith and for legitimate business purposes").

{¶36} General partners owe a fiduciary duty to a limited partner in a limited partnership. *Goldstein v. Christiansen*, 70 Ohio St.3d 232, 236-37, 638 N.E.2d 541

Partnership Agreement, Section 9 (page 10). This is an example of how Section 20 D does not apply

(1994); *Arpadi v. First MSP Corp.*, 68 Ohio St.3d 453, 458, 628 N.E.2d 1335 (1994). The Supreme Court recognized a fundamental resemblance between a close corporation and a partnership and extended partnership principles to close corporations. *See Crosby v. Beam*, 47 Ohio St.3d 105, 108, 548 N.E.2d 217 (1989). In doing so, the Court expressed a fiduciary duty to act in "utmost good faith and loyalty." *Id.* Just as a majority shareholder in a close corporation is to refrain from misusing his power to promote his personal interests at the expense of corporate interests, a general partner should be expected to refrain from promoting his personal interests over the partnership's interests. *See id.* at 108-109. One is to consider whether a legitimate business purpose can be attributed to the disputed action. *See id.*

{¶37} Contrary to Appellants' suggestion, it was not a per se breach of fiduciary duty to agree to a property management fee increase merely because the property management company was affiliated with the general partner or his family member. The partnership agreement specifically contemplates and permits a general partner or a member of his family to be interested in any firm or corporation employed by the partnership to render any service; these interests shall not prohibit the general partners from "dealing with" the interested party. The partnership agreement also provides that a general partner shall not be accountable to another partner for any act performed in good faith within the scope of the agreement. The general partners "in their sole judgment" can employ those they deem advisable for the management of the business on such terms and for such compensation as they, in their sole judgment, shall determine. More specifically, it is thereafter reiterated that a general partner or his affiliated corporations may be engaged by the partnership to manage the property at reasonable and competitive compensation.

{¶38} The question is whether the increased fee constituted reasonable and competitive compensation agreed to by the general partners in good faith for a legitimate business purpose of the partnership. The question of the reasonableness of the fees is also presented under the unjust enrichment argument in the first

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to replacement companies.

assignment of error. Appellants disagree with the trial court's finding as to the fees and seem to acknowledge their unjust enrichment argument would be defeated if the fees were reasonable.

{¶39} Despite Appellants' initial position, our standard of review here is not de novo as these issues are not pure questions of law. The case relied upon by Appellants does not support the application of de novo review here. *See Groob v. KeyBank*, 108 Ohio St.3d 348, 354, 2006-Ohio-1189, 843 N.E.2d 1170, ¶ 29. First, the *Groob* Court was reviewing a directed verdict for the bank on the plaintiff's breach of fiduciary duty claim, which involves the legal question of sufficiency of the evidence. *Id.* at ¶ 14. Second, *Groob* dealt with whether a fiduciary relationship existed, not whether it was breached or whether there was an injury. *Id.* at ¶ 30.

{¶40} The questions presented here are factual, and we are reviewing a trial court's decision after a bench trial. As Appellees counter, our review concerns the weight of the evidence. Weight depends on the effect of the evidence in inducing belief. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Fact-finders are to weigh the evidence in their minds to ascertain whether the inclination of the greater amount of credible evidence supports one side of the issue rather than the other. *Id.*

{¶41} "In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley*, 132 Ohio St.3d 328 at ¶ 21. "[E]very reasonable presumption must be made in favor of the judgment and the finding of facts. * * * If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment." *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3.

{¶42} Alex Christoff conducted a performance analysis in 2004 and concluded that Christoff Corp. was losing money by managing its various clients at 5%. (Tr. 52-54). There was no testimony that imposition of a 7% property management fee in

2005 was unreasonable or contrary to custom in the industry at the time. Alex Christoff raised the management fees to 7% for all the properties managed by Christoff Corp. (Tr. 60).

{¶43} Christoff Management, Inc. began managing the property in 2006 for this same 7% fee, the same fee charged-the-board to all its clients. Tom Christoff opined the 7% fee was reasonable based in part upon the expenses and overhead. He pointed out the complex was no longer a brand new building with brand new fixtures and appliances; rather, it was aging, which meant more involvement in evaluating and scheduling repairs and in negotiating with vendors and servicers. (Tr. 223).

{¶44} As to the statement that Christoff Management, Inc. charged all of its clients the same fee, Appellants assert this was the result of negotiation memorialized into management agreements signed by those clients, whereas Edward Susany, as limited partner, had no say in the increase imposed since the agreement was negotiated with an affiliated general partner. (Tr. 172, 190). In any event, an across-the-board fee helps to establish the fee charged to Westchester was not the result of a lack of good faith. It was not only the Westchester general partners, but also all of the other clients of Christoff Management, Inc., who agreed to the property management fee. This was some evidence of a reasonable and usual fee. In fact, Christoff Management, Inc. manages an unrelated property owned in part by Edward Susany for the same 8% fee. (Tr. 110, 186).

{¶45} Appellants attach significance to the allegation Christoff Management, Inc. would still have been a profitable corporation if the management fee charged to Westchester was only 5%. (Tr. 154, 195). Firstly, testimony indicated that if the fee was reduced for all its clients, the company would not be profitable. (Tr. 197, 226, 238). In any event, proof that a company could be profitable if it charged a lower fee does not prove that a fee was unreasonable.

{¶46} In 2012, Christoff Management, Inc. began charging 8% to all it clients. (Tr. 169). Tom Christoff spoke of a combination of reasons, including market changes and increased expenses related to employees and office utility bills. (Tr.

234-235). George J. Guerrieri testified when he became involved in overseeing his father's former interest, he researched the issue of property management fees and found they ranged from 4% to 10%, depending on the property. When asked if the 8% fee was appropriate, he answered, "I think it's within range, yes." (Tr. 206). He also advised he was satisfied with the management services. (Tr. 207).

{¶47} Additionally, the testimony of Beverly Flowers indicated the 8% fee was reasonable based upon factors such as inflation, overhead, the expenses of operating in New York, the comprehensive management services provided, and the size of the apartment complex. (Tr. 169, 187, 189). She determined a fee of 8-10% was common in the comparables she researched by talking to realtors, other property managers, and her accountant. (Tr. 169, 189).

{¶48} Furthermore, the partnership's interest is not merely in the amount of fees charged but is also about the quality and quantity of property management services. There were no issues with the property management services provided. There was no evidence another reputable management company could have provided the same level of services at a lower rate.

{¶49} The trial court weighed this evidence and concluded the fees charged were reasonable, usual, competitive, and customary. The evidence supported this conclusion. If the fees are reasonable and customary, then evidence of bad faith in entering the management agreements at 7% and then 8% is lacking as is evidence of unjust enrichment. The trial court's decision finding the general partners did not breach a fiduciary duty and the property management companies were not unjustly enriched is supported by competent and credible evidence. In accordance, this assignment of error is overruled.

{¶50} Lastly, Appellees' contend their affirmative defenses of "waiver by estoppel" and laches are alternative bases for upholding the trial court's judgment. These doctrines are set forth in case this court finds merit to one of Appellants' arguments. As we have overruled Appellants' arguments, Appellees' alternative arguments need not be reached by this court.

{¶51} Judgment affirmed.

Donofrio, P.J., concurs.

DeGenaro, J.,concurs.