

IN THE IOWA SUPREME COURT

SUPREME COURT NO. 22-1601

HUNTER THREE FARMS, LLC, Plaintiff-Appellant,

vs.

RICHARD HUNTER, individually and as member of Hunter Three Farms,
LLC, Defendant-Appellee,

APPEAL FROM THE IOWA DISTRICT COURT
FOR GREENE COUNTY
THE HONORABLE JUDGE DEREK JOHNSON
NO. LACV022075

PLAINTIFF-APPELLANT'S FINAL REPLY BRIEF ON APPEAL

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. HUNTER THREE FARMS, LLC HAS STANDING TO BRING SUIT ON A DEBT OWED TO IT.

Nelson v. Lindaman, 867 N.W.2d 1 (Iowa 2015).

Sallee v. Stewart, 827 N.W.2d 128 (Iowa 2013).

Moore v. Eckman, 762 N.W.2d 459 (Iowa 2009).

- a. Hunter Three Farms, LLC's claims for unjust enrichment and conversion arose from ordinary business activities.

Iowa Code § 489.110(2) (2022).

Iowa Code § 489.407(1) (2022).

Iowa Code § 489.407(2)(c) (2022).

54 C.J.S. *Limited Liability Companies* § 12, Westlaw (Mar. 2023).

- i. *There is no evidence in the record on summary judgment establishing what is within Hunter Three Farms, LLC's ordinary course of activities.*

Iowa Code § 489.302 (2022).

Iowa Code § 489.407(2)(e) (2022).

- ii. *Debt collection is an ordinary part of an Iowa farming operation.*

Foster v. Schwickerath, 780 N.W.2d 746 (Iowa Ct. App. 2009).

Kohn v. Muhr, No. 18-2059, 2019 WL 6358433 (Iowa Ct. App. Nov. 17, 2019).

Zimmerman v. Kile, 410 N.W.2d 262 (Iowa 1987).

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Iowa Code § 581.2 (2022).

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- b. Public policy weighs against following the blanket rule advocated by Richard Hunter.

Alvarez v. IBP, Inc., 696 N.W.2d 1 (Iowa 2005).
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Marovec v. PMX Indus., 893 N.W.2d 779, 788 (Iowa 2005).
Iowa Code § 489.701(1)(e) (2022).
Iowa Code § 489.902 (2022).

STATEMENT OF FACTS

The facts behind Hunter Three Farms, LLC's claims are simple. Richard Hunter applied for and received a check in the name of "Hunter Farms" which he deposited into a bank account which he solely controlled. Pl.'s App. on Mot. Summ. J. 6, 15, App. 268, 277. He applied for and received this check without informing the other members of Hunter Three Farms of his actions. Pl.'s App. on Mot. Summ. J. 14, 76 App. 276, 338. When Hunter Three Farms demanded Richard Hunter pay over the company's funds, he refused. Def.'s Ex. Q to Mot. for Summ. J. 1, App. 231; Def.'s Ex. R to Mot. for Summ. J. 1, App. 237.

The primary issue on this appeal, though, is whether it is within the ordinary course of Hunter Three Farms' activities to bring suit against an individual who owes a debt to the company. After dueling summary judgment motions were filed, the district court found there was "little information to determine what is or is not within the scope of Plaintiff's business." Order 6 (Sept. 6, 2022), App. 529. Despite this, the district court determined Hunter Three Farms lacked standing to bring suit against a third-party who took assets of the company. Order 9, App. 532. Specifically, the district court found that "[t]his litigation is not within the scope of Hunter Three Farms, LLC's

ordinary course of business and Plaintiff needed consent of all members to file this action.” Order 9, App. 532.

There is little evidence in the record on summary judgment about the scope of Hunter Three Farms’ business. What is known is that Hunter Three Farms was previously known as Hunter Farms. Def.’s Answer ¶7 (Nov. 29, 2021), App. 12. One facet of Hunter Farms’ business was farming. Def.’s Ex. B to Mot. for Summ. J. 2, App. 61. The Partnership Agreement of Hunter Farms from August 29, 1979 also provides that the purpose of “[t]he partnership shall be for the purpose of conducting any and all lawful general business activities.” Def.’s Ex. B to Mot. for Summ. J. 3, App. 62.

In an effort to resolve an internal partnership dispute, the three general partners of Hunter Farms—Gary Hunter, Robert Hunter, and Richard Hunter—entered into a resolution plan in 2016 which divided various assets of the partnership. Def.’s Ex. E to Mot. for Summ. J. 3, App. 76. Hunter Farms, though, would be converted into Hunter Three Farms, LLC, and the company would hold farm property located in Grimes, Iowa as well as certain mineral rights. Def.’s Ex. E to Mot. for Summ. J. 3, App. 76.

On or about March 3, 2017, Hunter Farms was converted to Hunter Three Farms, L.P., an Iowa limited partnership. Answer ¶7, App. 12. On or

about March 8, 2017, Hunter Farms, L.P. was converted to Hunter Three Farms, LLC, an Iowa limited liability company. Answer ¶7, App. 12.

The resolution plan placed restrictions on how the Grimes property could be sold. Def.'s Ex. E to Mot. for Summ. J. 2, App. 75. If the property were to be sold for less than 80 percent of \$24,356,000, than the sale of the Grimes farm would need to be approved by 75 percent of the voting membership interests. Def.'s Ex. E to Mot. for Summ. J. 2, App. 75. If the property were to be sold for 80 percent or more of \$24,356,000, than only 66 percent of the voting members needed to approve the sale. Def.'s Ex. E to Mot. for Summ. J. 2, App. 75.

To give notice of this understanding to third parties, Hunter Three Farms filed a Statement of Authority with the Iowa Secretary of State on March 21, 2017. Def.'s Ex. H to Mot. for Summ. J. 3, App. 88. The Statement of Authority also included language which mirrored the provisions of Iowa Code section 487.407. *Compare* Def.'s Ex. H to Mot. for Summ. J. 3, App. 88, *with* Iowa Code § 489.407(1) (2017).

Only one other consent action item of Hunter Three Farms is part of the record on summary judgment. On April 28, 2017, Gary Hunter, Robert Hunter, and Richard Hunter all executed a "Consent Action of the Members of Hunter Three Farms, LLC" which established a right for each member to

receive a monthly statement for the company's bank accounts. Def.'s Ex. F to Mot. for Summ. J. 1, App. 78.

Two-thirds of the voting members initiated this lawsuit on behalf of Hunter Three Farms against Richard Hunter. Pet. At. Law. (Aug. 23, 2021), App. 5-10. The lawsuit brought claims against Richard Hunter both in his capacity as a member of the company, but also brought claims against him individually. Pet. At. Law., App. 5-10.

ARGUMENT

I. HUNTER THREE FARMS, LLC HAS STANDING TO BRING SUIT ON A DEBT OWED TO IT.

Richard Hunter advocates that Iowa adopt a rule where an individual member of a limited liability company must approve of any lawsuit brought by the entity against that member. He contends this is the only outcome which can be reached under Iowa Code Chapter 489, and cites to numerous jurisdictions which found that a business entity lacks standing to directly sue its members regarding a breach of the individual member's fiduciary duties. *See Appellee Br. 34-35* (collecting cases).

Hunter Three Farms conceded in its Brief that the company's claims against Richard Hunter for breaching his fiduciary duties may be outside of the scope of Hunter Three Farms' ordinary course of business activities. Appellant Br. 29 ("Claims against a specific member for breach of the

member's duties owed to the LLC may not always be within the ordinary course of business."'). But this Court need not decide that issue, because other claims—claims for conversion and unjust enrichment, resolve the matter. Notably, Richard Hunter does not address this specific argument in his Brief. Further, there is a question of fact based on the record on summary judgment as to whether a reasonable fact finder could conclude that the claims against Richard Hunter are outside the ordinary course of Hunter Three Farms' activities; thus, the district court's grant of summary judgment was in error. *See Nelson v. Lindaman*, 867 N.W.2d 1, 6 (Iowa 2015) ("A matter may be resolved on summary judgment if the record reveals only a conflict concerning the legal consequences of undisputed facts."); *Sallee v. Stewart*, 827 N.W.2d 128, 133 (Iowa 2013) ("The burden is on the moving party to demonstrate that it is entitled to judgment as a matter of law."); *Moore v. Eckman*, 762 N.W.2d 459, 461 (Iowa 2009) ("Summary judgment is inappropriate if reasonable minds would differ on how the factual issue should be resolved."').

- a. Hunter Three Farms, LLC's claims for unjust enrichment and conversion arose from ordinary business activities.

Hunter Three Farms does not have an operating agreement. Order 5, App. 528. Without an operating agreement, Hunter Three Farms is governed by the statutory provisions of Iowa Code Chapter 489. *See* Iowa Code §

489.110(2) (2022) (“To the extent the operating agreement does not otherwise provide for a matter described in subsection 1, this chapter governs the matter.”). Limited liability companies which operate without an operating agreement are managed by their members. *Id.* § 489.407(1).

For member-managed LLCs, “difference[s] arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.” *Id.* § 489.407(2)(c). All acts “outside of the ordinary course of the activities of the company . . . may be undertaken only with the consent of all members.” *Id.*

“The legal term of art ‘ordinary course of business,’ in a statute governing the managers and members of a limited liability company as agents of the company, . . . is intended to encompass transactions that are part of the normal or customary routine, even if only occasional of the commercial world generally, or of businesses of the same kind, or of a particular business.” 54 C.J.S. *Limited Liability Companies* § 12, Westlaw (Mar. 2023). As one legal treatise notes, “[w]hether any particular transaction is in the ordinary course of business is necessarily a fact-intensive inquiry that will turn on the nature of the transaction and the broader context in which the transaction occurred.” *Id.*

- i. *There is no evidence in the record on summary judgment establishing what is within Hunter Three Farms, LLC's ordinary course of activities.*

There is nothing in the record on summary judgment establishing the “particular business” of Hunter Three Farms. *See id.*; *see also* Order 6, App. 529 (noting how there is “little information to determine what is or is not within the scope of Plaintiff’s business.”). The record reveals Hunter Three Farms was previously a partnership which was organized “for the purpose of conducting any and all lawful general business activities.” Def.’s Ex. B to Mot. for Summ. J. 3, App. 62. In 2016, though, it was decided that the partnership would be converted to Hunter Three Farms, and that the entity would own the Grimes farm and hold mineral rights. Def.’s Ex. E to Mot. for Summ. J. 1, App. 74.

The partnership was officially converted to a limited liability company in 2017. Answer ¶7, App. 12. Aside from the consent actions necessary to effectuate that conversion, Richard Hunter only presented on summary judgment evidence of two acts undertaken by a consent action of all three members. *See* Def.’s Ex. F to Mot. for Summ. J. 1, App. 78; Def.’s Ex. H to Mot. for Summ. J. 3, App. 88.

The first occurred on or about March 21, 2017, when the three members of Hunter Three Farms filed a Statement of Authority under Iowa Code

section 489.302. Def.’s Ex. H to Mot. for Summ. J. 3, App. 88; *see* Iowa Code § 489.302. This Statement of Authority articulates how the largest asset of Hunter Three Farms, the Grimes farm, may be sold. *Id.* Absent the filing of the Statement of Authority, Hunter Three Farms would have only been able to sell the Grimes farm with the consent of all its members, as there is no dispute that the Grimes property constitutes “substantially all” of the company’s property. *See* Iowa Code § 489.407(2)(d). The Statement of Authority articulates the price point at which all members agree in advance to sell the Grimes farm (80-percent or more of \$24,356,000); thus, warranting a lower threshold of membership approval for a sale than the statutory default.

The second occurred on or about April 28, 2017, when the members prepared a resolution memorializing that each member had a right to receive the monthly bank statements of Hunter Three Farms. Def.’s Ex. F to Mot. for Summ. J. 1, App. 78. This second action did not, as Richard Hunter claims, establish a new bank account. *See id.*; *see also* Appellee Br. 11 (describing the consent action of April 28, 2017 as the members “agreeing to establish a bank account for Hunter Three and entitling all members to receive monthly bank statements from said bank account.”). What this consent action does is memorialize a right to a specific piece of information regarding Hunter Three Farms’ finances—its monthly bank statements—which the members are

entitled to, and describes how this information is to be provided. Def.’s Ex. F to Mot. for Summ. J. 1, App. 78. This consent action directly addresses the internal governance of Hunter Three Farms, similar to an operating agreement. Under Iowa law, changes to an operating agreement require unanimous consent of the members of a limited liability company. *See* Iowa Code § 489.407(2)(e) (“The operating agreement may be amended only with the consent of all members.”).

The record on summary judgment lacks sufficient evidence regarding the ordinary business activities of Hunter Three Farms for the court to determine as a matter of law that this action is outside the ordinary course of the company’s business. For this reason alone, the district court must be reversed.

- ii. *Debt collection is an ordinary part of an Iowa farming operation.*

The record shows that Hunter Three Farms owns a farm in Grimes. Depo. Tr. of Rachele Smith at 19:13-19:15, App. 461. Farming operations give rise to a variety of activities. Iowa farms enter into and terminate real estate tenancies (*see Foster v. Schwickerath*, 780 N.W.2d 746, 746-47 (Iowa Ct. App. 2009)), they bring suit to collect for harvesting services (*see Kohn v. Muhr*, No. 18-2059, 2019 WL 6358433, at *1-2 (Iowa Ct. App. Nov. 17,

2019), and they bring suit to collect debt owed from farm tenants (*Zimmerman v. Kile*, 410 N.W.2d 262, 263-64 (Iowa 1987)).

Indeed, debt—both the collecting and paying of it—is recognized under Iowa law as a significant component of a farming operation. Iowa, after all, recognizes seven statutory agricultural liens: the Landlord’s Lien, the Custom Cattle Feedlot Lien, the Commodity Production Contract Lien, the Agricultural Supply Dealer’s Lien, the Thresher’s or Cornsheller’s Lien, the Lien for Services of Animals, and the Veterinarian’s Lien. *See* Iowa Code § 570.1, § 570A.3, § 571.1b, § 579A.2, § 579B.3, § 580.1, § 581.2; *see generally* Wyatt P. Peterson, Note, *Revised Article 9 and Agricultural Liens: An Iowa Perspective*, 8 Drake J. Agric. L. 437, 447 (2003) (discussing agricultural liens more broadly). Further, one of the cases Richard Hunter relies on notes that “initiating suit to collect a partnership debt is generally considered to be within the ordinary course of business of a partnership.” *Casey Ranch Ltd. P’ship v. Casey*, 773 N.W.2d 816, 822 (S.D. 2009); *see also Lane v. Krein*, 375 S.E.2d 351, 351 (S.C. Ct. App. 1988) (treating suit against third parties as an ordinary matter); *Delbon Radiology v. Turlock Diagnostic Ctr.*, 839 F. Supp. 1388, 1392 (E.D. Cal. 1993) (“[E]nforcement of a partnership’s claim will often be an ordinary matter and subject to [majority rule].”).

The district court acknowledged the role that debt collection plays in a farming operation when it stated “applying for seed corn [sic] settlement funds may be in the ordinary course of business” Order 6, App. 529. Yet the district court declined to find that collecting misappropriated corn seed settlement funds would also be within the ordinary course of a farming operation’s activities because, in this particular circumstance, the individual who misappropriated the funds happened to be a member of Hunter Three Farms. *See id.*

It is worth reiterating that Richard Hunter and Hunter Three Farms are distinct entities. Iowa Code § 489.104(1) (“A limited liability company is an entity distinct from its members.”); *Liquor Bike, LLC v. Iowa Dist. Court for Polk Cty.*, 959 N.W.2d 693, 698 (Iowa 2021) (finding an abuse of discretion “in disregarding the separate legal status” of a limited liability company and one of its members for purposes of determining whether a conflict of interest existed); *DSM Inv. Grp., LLC v. City of Des Moines*, No. 21-1887, 2022 WL4362323, at *4 (Iowa Ct. App. Sept. 21, 2022) (finding a limited liability company needed to show that it, and not one of its members, sustained damages); *Even v. Title Servs. Corp.*, No. 21-0727, 2022 WL2348189, at *4 (Iowa Ct. App. June 29, 2022) (finding a member of a limited liability company could not recover damages sustained by the company because “any

lost income or profit would be suffered by [the company], not [the member].”). There is no dispute that Hunter Three Farms’ claim in the Syngenta Corn Seed Settlement Program arose over the course of its normal farming operations. Richard Hunter, the individual, used Hunter Three Farms’ information to submit the entity’s claim in the Syngenta Corn Seed Settlement Program and then deposited the funds in his own bank account. Hunter Three Farms’ claims are no different than a claim it may bring against an employee for similar conduct.

Hunter Three Farms’ conversion and unjust enrichment claims do not relate to a dispute which arose over the internal governance of the company, or relate to how the company should distribute its assets among the members. *See Casey Ranch Ltd. P’ship*, 773 N.W.2d at 822. These claims only seek to collect a debt owed to the company. *See id.* The membership status of an individual does not morph what would otherwise be an ordinary business activity into an extraordinary activity requiring the offending member’s approval.

It was error for the district court to conclude that no reasonable fact finder could find, based on the record on summary judgment, that it was within Hunter Three Farms’ ordinary activities to bring a debt collection action against a third party.

- b. Public policy weighs against following the blanket rule advocated by Richard Hunter.

Richard Hunter argues that public policy weighs in favor of adopting a rule requiring a limited liability company to get approval from a member before filing suit against the member under all circumstances, including those occasions involving debt which arose during the ordinary course of the limited liability company's business. Appellee Br. 36-40. His public policy argument is rooted in the premises that he "has been foreclosed from participating in or having his opinion heard regarding substantial commercial operations and expenditures incurred by Hunter Three during the pendency of this litigation." *Id.* at 36. Richard Hunter uses grandiose rhetoric to depict a scene where Hunter Three Farms "has effectively voided or vetoed" his membership stake in the entity. *Id.* at 38. If Richard Hunter could be "oppressed," his argument goes, so could other members of other Iowa limited liability companies.

As a preliminary matter, there is no evidence in the record to support Richard Hunter's assertions that he has been frozen out of the management of Hunter Three Farms. Notably, Richard Hunter makes no citations to the record to support his claims of oppression. *See Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005) ("[F]actual assertions must be supported by references to the record."). There is no evidence to show Hunter Three Farms is withholding

financial documents from him, and no evidence that he has been kept from making decisions related to the company during the pendency of this lawsuit. It is a rudimentary part of Iowa appellate review that the Court may only consider the facts before it on appeal. Iowa R. App. P. 6.801 (describing what composes the record on appeal); *Alvarez*, 696 N.W.2d at 3 (“[A]ppellate courts cannot consider materials that were not before the district court when that court entered its judgment.”).

These claims of oppression are particularly confounding when one of the major pieces of evidence Richard Hunter relies on to claim this lawsuit is outside of the ordinary course of Hunter Three Farms’ activities is the Consent Action dated April 28, 2017. *See* Def.’s Ex. F to Mot. for Summ. J. 1, App. 78. That Consent Action explicitly states that, as long as they live and remain a member of Hunter Three Farms, the members of the company

shall be entitled to receive a copy of the monthly bank statements for any and all bank accounts of the Company, and that the Company will attempt to make arrangements with the bank to issues these statements directly to these three individuals, and in the event that cannot be accomplished, the Company, through its President or other designated agent [sic] will mail copies of the monthly statements to each above identified individual who did not receive a monthly statement directly from the Bank.

Id. The company’s bookkeeper, Rachelle Smith, testified that she has been sending Richard Hunter financial information about the company on a regular

basis; first to his farm office via regular U.S. Mail, then directly to Richard Hunter's attorney. Depo. Tr. of Rachelle Smith at 18:9-19:3, App. 460-61.

Hunter Three Farms also has not placed Richard Hunter in this situation without his consent or action. His hands are not clean. This lawsuit only arose when Richard Hunter submitted a claim under the Syngenta Corn Seed Settlement Program under the name of "Hunter Farms," received a check in the name of "Hunter Farms," deposited said check in one of his bank accounts, and then refused to relinquish the proceeds. Pl.'s App. on Mot. Summ. J. 6, 15, App. 268, 277. Richard Hunter admits he did not tell Gary or Robert Hunter that he submitted a claim under "Hunter Farms" to the Syngenta Corn Seed Settlement Program. *See* Pl.'s App. on Mot. Summ. J. 75, App. 337. The other two members of Hunter Three Farms only learned of Richard Hunter's actions because the company received a 1099-MISC for the proceeds he received. *See* Pet. At Law ¶20, App. 7; Pl.'s App. on Mot. Summ. J. 80, App. 342. Richard Hunter took an adverse position to Hunter Three Farms when he opted to covertly obtain settlement funds owed to the company at the exclusion of the company.

Public policy weighs in favor of adopting the rule proposed by Hunter Three Farms: a limited liability company may bring lawsuits with the consent of a majority of its members to collect debt which arose during the ordinary

course of its activities. If unanimous approval is required for all litigation even tangentially involving a member of a limited liability company, it would permit bad actors to throw up procedural hurdles which could insulate them from liability based on the merits of the claims. Iowa has long held that cases within its judicial system should be decided on their merits. *Lincoln Savings Bank v. Emmert*, No. 20-1663, 2023 WL 2192908, at *1 (Iowa Feb. 23, 2023) (“[T]he law favors resolution of disputes on their merits, not through procedural defaults.”); *Marovec v. PMX Indus.*, 893 N.W.2d 779, 788 (Iowa 2005) (J. Cady, dissenting) (noting how Iowa has a “time-honored judicial policy of deciding cases on their merits.”).

It would also broaden the claims which would need to be brought as derivative actions. Something as routine as a forcible entry and detainer action under Iowa Code Chapter 648 would necessitate a derivative action if the tenant happened to be a member of the limited liability company which owns the land. Arguably, under the same logic Richard Hunter’s position requires, that hypothetical tenant could block even receiving the required notices to terminate the tenancy because of their status as the member of a limited liability company.

Richard Hunter’s claims that Hunter Three Farms’ conduct “should raise alarm bells regarding the potential for abuse” are also overstated.

Appellee Br. 37. If members of an Iowa limited liability company were truly acting in an oppressive manner, an individual member could move to dissolve the limited liability company. *See* Iowa Code § 489.701(1)(e). A derivative lawsuit could be brought if an individual member felt that the limited liability company was being harmed by a breach of another member's fiduciary duties. *See id.* § 489.902. This member would not be without remedies, as Iowa Code Chapter 489 is already equipped to address situations where a member of a limited liability company is being frozen out of managing the company.

Public policy weighs in favor of the rule proposed of Hunter Three Farms, LLC.

CONCLUSION

For the reasons stated herein and in Hunter Three Farms' Brief on Appeal, the district court was wrong to find Hunter Three Farms lacked standing because it failed to get Richard Hunter's consent to file this lawsuit. Hunter Three Farms prays the Court reverse the district court's grant of Appellee's motion for summary judgment, and permit it to proceed with its claims against Richard Hunter.

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Dated March 23, 2023.

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CERTIFICATE OF COSTS

I hereby certify that the actual cost of printing the foregoing Appellant's Final Reply Brief was in the sum of \$0.00.

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